

**CITY OF WEST SACRAMENTO CITY COUNCIL AND  
WEST SACRAMENTO REDEVELOPMENT SUCCESSOR AGENCY AND  
WEST SACRAMENTO FINANCING AUTHORITY  
City Council Closed Session  
NOVEMBER 15, 2023  
AGENDA**

Martha Guerrero, Mayor

Quirina Orozco, Mayor Pro Tem  
Norma Alcalá, Council Member

Dawnté Early, Council Member  
Verna Sulpizio Hull, Council Member

Aaron Laurel, City Manager  
Jeffrey Mitchell, City Attorney

6:00 PM      Closed Session Call to Order  
7:00 PM      Regular Meeting Call to Order  
                 Land Acknowledgment  
                 Pledge of Allegiance

**CLOSED SESSION AGENDA**

**1. Capital Projects**

Conference with Real Property Negotiator (Govt Code §54956.8)

**Negotiating Parties:** Fred Arnold / City of West Sacramento Redevelopment Successor Agency

**Property:** 103 4th Street – Broderick Boat Ramp – APN's: 010-102-08, 09; 010-103-01, 02; 010-493-01 & 02; 485 Lighthouse Drive – APN 010-523-037; 2400 West Capitol Avenue – APN 008-441-007; 2600 West Capitol Avenue – APN 008-441-016

**Under Negotiation Price and terms of payment:** Price and terms (Property Transfer from Successor Agency to City)

**2. Community Development**

Conference with Real Property Negotiator (Govt Code §54956.8)

**Negotiating Parties:** Fred Arnold, Katie Yancey

**Property:** 485 Lighthouse Dr, 2400 and 2600 West Capital Ave, APNs: 010-102-08 & -09; 010-103-01 & -02; 010-493-01 & -02

**Under Negotiation Price and terms of payment:** Price

**3. Economic Development & Housing**

Conference with Real Property Negotiator (Govt Code §54956.8)

**Negotiating Parties:** Katie Yancey and Alberto Esquivel

**Property:** 008-150-033, 008-150-066, 008-150-067, 067-320-007, 067-330-017, 067-330-017, and 067-330-017 811

**Under Negotiation Price and terms of payment:** Price and Terms

**4. Economic Development & Housing**

Conference with Real Property Negotiator (Govt Code §54956.8)

**Negotiating Parties:** Traci Michel, Jerry Mason

**Property:** 1016 S. River Road, 1020 S. River Road, 101 Tower Street

**Under Negotiation Price and terms of payment:** Price and Terms

I, Jennifer Cusmir, City Clerk, declare under penalty of perjury that the foregoing agenda for the November 15, 2023 regular and closed session meetings of the West Sacramento City Council, Redevelopment Successor Agency and Financing Authority was posted November 9, 2023 in the office of the City Clerk, 1110 West Capitol Avenue, West Sacramento, CA and was available for public review.

**NOTE:** If you challenge the nature of a proposed action in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City Council at, or prior to, the public hearing.

*The agenda and agenda reports are also available on the City's website at [www.cityofwestsacramento.org](http://www.cityofwestsacramento.org)*

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*All public materials related to an item on this agenda submitted to the City Council after distribution of the agenda packet are also made available for public inspection on the City's website at: [www.cityofwestsacramento.org](http://www.cityofwestsacramento.org). Any document provided at the meeting by staff or by the public will be provided by the City Clerk upon request by phone at (916) 617-4500, or by email at: [clerk@cityofwestsacramento.org](mailto:clerk@cityofwestsacramento.org).*

**WEST SACRAMENTO CITY COUNCIL AND WEST SACRAMENTO REDEVELOPMENT SUCCESSOR AGENCY & WEST SACRAMENTO FINANCING AUTHORITY**

**City Council Regular Meeting  
NOVEMBER 15, 2023 AGENDA**

Quirina Orozco, Mayor Pro Tem  
Norma Alcala, Council Member  
Martha Guerrero, Mayor  
Aaron Laurel, City Manager  
Jeffrey Mitchell, City Attorney  
Dawnté Early, Council Member  
Verna Sulpizio Hull, Council Member

6:00 PM Closed Session Call to Order  
7:00 PM Regular Meeting Call to Order  
Pledge of Allegiance  
Land Acknowledgment

The meeting will be held at City Hall, City Council Chambers, 1110 West Capitol Avenue, West Sacramento

*Anyone wishing to address the Council, or any agenda item, may fill out the Request to Speak card and present it to the City Clerk **prior to the completion of staff presentation**. Items on the Consent Agenda will be considered in one motion and the Request to Speak card should be turned in prior to the first item on Consent.*

**GENERAL ADMINISTRATION FUNCTION – PART I**

- 1. **PRESENTATIONS BY THE PUBLIC ON MATTERS NOT ON THE AGENDA WITHIN THE JURISDICTION OF THE COUNCIL**  
*The Council is prohibited from discussing issues not on the agenda brought to them at this time. According to State Law (the Brown Act), items must first be noticed on the agenda before any discussion or action.*

**PRESENTATIONS**

- 2. **City Manager's Office**  
**PRESENTATION OF A CITY COUNCIL PROCLAMATION RECOGNIZING NOVEMBER 2023 AS NATIVE AMERICAN HERITAGE MONTH**  
  
**Objective:** The purpose of this proclamation is to honor the contributions and sacrifices of Native Americans in the Sacramento region.  
  
**Recommendation:** Staff respectfully requests the City Council adopt a proclamation declaring November 2023 as Native American Heritage Month.

**CONSENT AGENDA**

- 3. **Capital Projects**

CONSIDERATION OF RESOLUTION 23-89 AMENDING THE CAPITAL IMPROVEMENT PROGRAM (CIP) AND CONSIDERATION OF AWARD FOR A CONSTRUCTION CONTRACT TO BEAR ELECTRICAL SOLUTIONS, INC FOR THE TRAFFIC SIGNAL FUEL CELL BACKUP SYSTEM PROJECT (CIP 12025).

**Objective:** The objective of this report is to provide the City Council with sufficient information to adopt Resolution 23-89 amending the Capital Improvement Program (CIP) and to award a construction contract to Bear Electrical Solutions Inc. for the Traffic Signal Fuel Cell Backup System Project (CIP 12025).

**Recommendation:** Staff respectfully recommends that the City Council: (1) Find the procurement and installation of traffic signal equipment is exempt from environmental review under California Code of Regulations, Title 14, Division 6, Chapter 3, Section 15301 Class 1 (b) of the California Environmental Quality Act; (2) Approve the Plans and Specifications for the Fuel Cell Backup Project;(3) Adopt Resolution 23-89 amending the Capital Improvement Program (CIP) budget for CIP 12025; (4) Award a construction contract to the lowest responsive, responsible bidder, Bear Electrical Solutions, Inc. in the amount of \$474,120.00; (5) Authorize the City Manager or his designee to execute the construction contract with Bear Electrical Solutions, Inc. for an amount not to exceed \$474,120.00; (6) Authorize the City Manager, or his designee, to execute changes or modifications to the construction contract, with approval from the City Attorney; and (7) Authorize the City Manager, or his designee, to execute amendments or change orders up to 10% (\$47,412) of the value of the contract.

4. **Capital Projects**

CONSIDERATION OF AWARD OF CONTRACT TO PAINE CONSTRUCTION INC. FOR CONSTRUCTION SERVICES FOR THE FIRE STATION 44 FACILITY REPAIRS PROJECT (CIP 51042)

**Objective:** The objective of this report is to provide the City Council with sufficient information to award a construction contract to Paine Construction Inc. for the Fire Station 44 Facility Repairs Project (CIP 51042).

**Recommendation:** Staff respectfully recommends that the City Council: (1) Find that the construction contract with Paine Construction Inc. for the Fire Station 44 Facility Repairs Project (CIP 51042) is exempt from review under California Environmental Quality Act (CEQA) pursuant to the Categorical Exemptions under California Code of Regulations, Title 14, Division 6 Chapter 3 (“CEQA Guidelines”), Sections 15301, 15303, and 15304 and find that the determination represents the independent judgement of the City; (2) Award a construction contract to the lowest responsive, responsible bidder, Paine Construction Inc. in the amount of \$138,000; (3) Authorize the City Manager, or his designee, to execute a contract with Paine Construction Inc. in the amount not to exceed \$138,000; (4) Authorize the City Manager, or his designee, to execute non-substantive changes or modification to the contract with Paine Construction Inc. with the approval from the City Attorney; and (5) Authorize the City Manager, or his designee, to execute contract amendments, up to 15% (\$20,700) of the value of the contract.

5. **Capital Projects**

CONSIDERATION TO AWARD A CONSTRUCTION CONTRACT TO BAY AREA CONCRETES, INC. FOR THE RECREATION CENTER POOL DECK REPAIRS PHASE II PROJECT (CIP 52045)

**Objective:** The objective of this report is to provide the City Council with sufficient information to award a construction contract to Bay Area Concretos, Inc. for the Recreation Center Pool Deck Repairs Phase II Project (CIP 52045).

**Recommendation:** Staff respectfully recommends that the City Council: (1) Find that the proposed Recreation Center Pool Deck Repairs Phase II Project is exempt from CEQA pursuant to the Categorical Exemptions under California Code of Regulations, Title 14, Division 6, Chapter 3 (“CEQA Guidelines”), Sections 15301, 15303, and 15304, and find that the determination represents the independent judgment of the City; (2) Award a construction contract to the lowest responsive, responsible bidder, Bay Area Concretos, Inc, in the amount of \$199,680; (3) Authorize to the City Manager, or his designee, to execute a construction contract with Bay Area Concretos, Inc. for an amount not to exceed \$199,680; (4) Authorize the City Manager, to execute non-substantive changes or modifications to the contract with Bay Area Concretos, Inc, with approval from the City Attorney; and (5) Authorize the City Manager, or his designee to execute contract amendments up to 10%, (\$19,968) of the value of the of the contract.

6. **Economic Development & Housing**

CONSIDERATION OF AFFORDABLE HOUSING AGREEMENT WITH R1P2, LLC, FOR THE RIVER ONE PHASE 2 PROJECT

**Objective:** The objective of this report is to facilitate the Council’s consideration of an Affordable Housing Agreement with R1P2, LLC, for a 95-unit multifamily residential development located in the Washington District.

**Recommendation:** Staff respectfully recommends that the Council: (1) Approve the Affordable Housing Agreement with R1P2, LLC, in substantially the form included as Attachment 1 for the River One Phase 2 project (Agreement); and (2) Authorize the City Manager or his designee to execute the Agreement and make non-substantive corrections or modifications with the approval of the City Attorney.

7. **Economic Development & Housing**

CONSIDERATION OF AFFORDABLE HOUSING AGREEMENT WITH SMART GROWTH INVESTORS II, LP, FOR THE BRIDGE DISTRICT PHASE VI PROJECT

**Objective:** The objective of this report is to facilitate the Council’s consideration of an Affordable Housing Agreement with Smart Growth Investors II, LP, for a 260-unit multifamily residential development located in the Bridge District.

**Recommendation:** Staff respectfully recommends that the Council: (1) Approve the Affordable Housing Agreement with Smart Growth Investors II, LP, in substantially the form included as Attachment 1, for the Bridge District Phase VI Project (Agreement); and (2) Authorize the City Manager or his designee to execute the Agreement and make non-substantive corrections or modifications with the approval of the City Attorney.

8. **City Manager's Office**

CONSIDERATION OF ADOPTION OF THE TOTAL TENTATIVE AGREEMENT ON ECONOMIC TERMS FOR THE NEW MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF WEST SACRAMENTO AND THE WEST SACRAMENTO BATTALION CHIEFS' ASSOCIATION AND ADOPTION OF RESOLUTION 23-91 APPROVING AMENDMENTS TO THE BUDGET FOR FISCAL YEARS 2023/24 AND 2024/25

**Objective:** The purpose of this report is to seek City Council consideration of approval of a total tentative agreement on economic terms for a new two-year Memorandum of Understanding between the City of West Sacramento and the West Sacramento Battalion Chiefs' Association (BCA) and updated Salary Schedule, and Resolution 23-91, approving related budget amendments.

**Recommendation:** Staff respectfully recommends that the City Council: (1) Approve the total tentative agreement on economic terms for a new two-year Memorandum of Understanding between the City of West Sacramento and the West Sacramento Battalion Chiefs' Association (BCA); (2) Approve the updated Classification Plan (Salary Schedule) for the BCA; and (2) Adopt Resolution 23-91 approving amendments to the approved biennial budget for Fiscal Years 2023/24 and FY 2024/25 to fund the proposed salary and benefit changes.

9. **City Manager's Office**

CONSIDERATION OF RESOLUTION 23-76 SETTING THE TIME AND DATE FOR THE 2024/25 REGULAR MEETINGS OF THE CITY COUNCIL

**Objective:** The objective of this report is to seek Council approval of the City Council meetings scheduled for February 1, 2024 through January 31, 2025.

**Recommendation:** It is respectfully recommended that the City Council adopt Resolution 23-76 setting the time and date for City Council meetings commencing February 1, 2024 through January 31, 2025.

**PUBLIC HEARINGS**

NONE

**REGULAR AGENDA**

10. **Community Development**

PUBLIC WORKSHOP REGARDING PROPOSED AMENDMENTS TO TITLE 17 (ZONING) OF THE MUNICIPAL CODE TO FACILITATE TINY HOMES ON WHEELS AS LEGAL DWELLINGS

**Objective:** This item is a public workshop regarding proposed amendments to Title 17 (Zoning) of the Municipal Code to accommodate tiny homes on wheels as legal dwellings.

**Recommendation:** Staff respectfully recommends that the City Council: (1) Receive a presentation from staff; (2) Take public comment in a workshop format; and (3) Provide direction to staff regarding the proposed Municipal Code amendments.

**11. Community Development**

**WORKSHOP ON THE FUTURE OF CITY’S ON-DEMAND RIDESHARE PROGRAM**

**Objective:** The purpose of this report is to provide information to and request feedback from the City Council on the future of the On-Demand Rideshare Program to proceed with the development and evaluation of a Request for Proposal.

**Recommendation:** It is respectfully recommended that the City Council receive staff’s presentation on the future of the On-Demand Rideshare Program and provide feedback and direction to staff on priority service operations and parameters.

**GENERAL ADMINISTRATION FUNCTION – PART II**

**12. COUNCIL COMMUNICATIONS / ASSIGNMENTS**

Bikeshare Policy Steering Committee -----	Guerrero, Alternate - Early
City/County 2x2 -----	Guerrero/Orozco, Alternate – Sulpizio Hull
City/School 2x2 -----	Guerrero/Sulpizio Hull, Alternate - Alcalá
Executive Commission to Address Homelessness -----	Sulpizio Hull, Alternate - Orozco
EIFD Public Financing Authority-----	Vacant, Alternate - Vacant
League of California Cities -----	Alcalá, Alternate – Sulpizio Hull
Local Agency Formation Commission -----	Alcalá
Port District Commission -----	Guerrero, Early, Sulpizio Hull
Remote Access Network -----	Guerrero
River City Regional Stadium Financing Authority-----	Guerrero, Orozco
Sacramento Area Council of Governments (SACOG)-----	Guerrero; Alternate - Early
Sacramento Regional County Sanitation District Board -----	Orozco; Alternate - Sulpizio Hull
West Sacramento Area Flood Control Agency JPA-----	Alcalá; Alternate - Orozco
Yolo Animal Services Planning Agency JPA-----	Guerrero; Alternate – Sulpizio Hull
Yolo County Housing Authority-----	Early, Alternate - Sulpizio Hull
Yolo Transportation District -----	Early, Alternate - Sulpizio Hull
Yolo Habitat Conservancy -----	Sulpizio Hull
Yolo-Solano Air Quality Management District -----	Alcalá; Alternate – Sulpizio Hull
Yolo Subbasin Sustainable Groundwater Agency-----	Sulpizio Hull; Alternate - Early

**COUNCIL INTERMEDIARY REPRESENTATIVES**

Delta Protection Commission -----	Vacant; Alternate - Vacant
New Hope Community Development Corporation-----	Early; Alternate - Alcalá
Yolo County Consolidated Redevelopment Successor Agency Oversight Board -----	Sulpizio Hull

**13. COUNCIL APPOINTMENTS, REAPPOINTMENTS, REMOVALS TO/FROM CITY AND NON-CITY BOARDS AND COMMISSIONS**

**14. PART II**

- A. Council Calendar**
- B. City Manager Report**
- C. City Attorney Report**

- D. **Staff Direction from City Council Members**
- E. **Future Agenda Item Requests by Council**
- F. **Adjourn**

I, Jennifer Cusmir, City Clerk, declare under penalty of perjury that the foregoing agenda for the November 15, 2023 regular and closed session meetings of the West Sacramento City Council, Redevelopment Successor Agency and Financing Authority was posted November 9, 2023 at the rear entrance at City Hall, 1110 West Capitol Avenue, West Sacramento, CA and was available for public review.

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*If you need assistance to participate in this meeting, including translation support, please contact the City Clerk's Office at 916-617-4500 or [clerk@cityofwestsacramento.org](mailto:clerk@cityofwestsacramento.org). Notifying the City Clerk's Office at least 48 hours prior to the meeting will assist staff in assuring reasonable arrangements can be made to provide accessibility to the meeting. Assisted listening devices are available at this meeting.*



<b>MEETING DATE:</b> November 15, 2023		<b>ITEM 2</b>	
 <p><b>SUBJECT:</b></p> <p style="text-align: center;"><b>PRESENTATION OF A CITY COUNCIL PROCLAMATION RECOGNIZING NOVEMBER 2023 AS NATIVE AMERICAN HERITAGE MONTH</b></p>			
<b>INITIATED OR REQUESTED BY:</b> <input checked="" type="checkbox"/> Council <input type="checkbox"/> Staff  <input type="checkbox"/> Other		<b>REPORT COORDINATED OR PREPARED BY:</b> Paul Hosley, Public Information Officer <b>City Manager's Office</b>	
<b>ATTACHMENT</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Information <input type="checkbox"/> Direction <input checked="" type="checkbox"/> Action	

**OBJECTIVE**

The purpose of this proclamation is to honor the contributions and sacrifices of Native Americans in the Sacramento region.

**RECOMMENDED ACTION**

Staff respectfully requests the City Council adopt a proclamation declaring November 2023 as Native American Heritage Month.

**BACKGROUND**

The City of West Sacramento's establishment in 1987 took place in an area that indigenous people, particularly the Patwin or Southern Wintun, recognize as unceded territory. The Patwin people were forced from their ancestral lands onto rancherias in the early 1900s and are now citizens of three sovereign, federally recognized tribal governments: the Yocha Dehe Wintun Nation, Kletsel Dehe Band of Wintun Indians, and Cachil Dehe Band of Wintun Indians. In 2018, the City Council voted unanimously to approve the transfer of a 43-acre riverfront property to California State Parks for the construction of a \$100 million California Indian Heritage Center. In 2022, the City Council adopted a resolution to establish an official land acknowledgement, which is now read before each City Council meeting. This acknowledgment demonstrates the City's recognition of the significant role Native Americans have played in the area's history.

**ANALYSIS**

The City of West Sacramento has a government-to-government relationship with the Yocha Dehe Wintun Nation and collaborates with the tribe to address community needs. The tribe's support during the pandemic included donations to the Yolo County Food Bank and clinics organized by the Yocha Dehe Fire Department, providing over two thousand vaccines. Additionally, the City has committed to recognizing November as Native American Heritage Month each year and discourages the use of racial slurs, names, or imagery that depict indigenous people as mascots or logos in educational institutions, sports teams, or any other organization within the City.

Environmental Considerations

N/A

Commission Recommendation

N/A

Strategic Plan Integration

The adoption of this proclamation demonstrates the City's commitment to inclusiveness not only in economic development but also in promoting diversity within the municipal workforce and management.

Alternatives

N/A

Coordination and Review

This report was prepared City Staff in coordination with the Yocha Dehe Wintun Nation.

Budget/Cost Impact

N/A

**ATTACHMENT**

Proclamation

**PROCLAMATION OF THE WEST SACRAMENTO CITY COUNCIL  
DECLARING NOVEMBER 2023 AS “NATIVE AMERICAN HERITAGE MONTH”**

**WHEREAS**, “Native American Heritage Month” has been established at the national and state levels with proclamations and celebrations to recognize the diverse cultures, traditions, histories, significant contributions and present day lives of Native Americans; and

**WHEREAS**, the City of West Sacramento was established in 1987 within an area of California that represented the un-ceded territory of indigenous people known as the Patwin or Southern Wintun; and

**WHEREAS**, the earliest historic written records of the Patwin begin with the Spanish mission explorations and registers, and ethno-historic records show the Patwin inhabited land from the hills of the eastern North Coast Ranges to the Sacramento River, and from Princeton south to the San Pablo and Suisun bays; and

**WHEREAS**, like most indigenous people throughout the United States, the Patwin were forced from their ancestral lands onto reservations and rancherias during the early 1900s, where they currently reside, as citizens of three sovereign, federally recognized tribal governments, today known as the Yocha Dehe Wintun Nation, Kletsel Dehe Band of Wintun Indians, and Cachil Dehe Band of Wintun Indians; and

**WHEREAS**, the City of West Sacramento has a meaningful government-to-government relationship with the Yocha Dehe Wintun Nation and works in partnership to address the needs of the community and improve the lives of people who live within their respective jurisdictions today; and

**WHEREAS**, Native people have made and continue to make distinct and significant contributions in many fields, including academic scholarship, agriculture, astronomy, art, business, education, ecology, engineering, environmentalism, economics, forestry, government, language, leadership, literature, mathematics, medicine, military, music, politics, poetry, science, and traditional cultural practices; and

**WHEREAS**, the City of West Sacramento discourages any and all forms of racial slurs, names, or imagery that depict indigenous people as mascots or logos in educational institutions, sports teams, or any other organization within this City; and

**WHEREAS**, the City of West Sacramento will encourage its citizens to acknowledge and celebrate November as Native American Heritage Month every year to foster education, relationships, and cooperation with Native people while also supporting social and economic opportunities for them within the City of West Sacramento and Yolo County.

**NOW, THEREFORE, BE IT HEREBY PROCLAIMED** by the West Sacramento City Council that the month of November 2023 be recognized as “Native Heritage Awareness Month.”

PROCLAIMED THIS 15<sup>h</sup> day of November 2023.

ATTEST:

\_\_\_\_\_  
Martha Guerrero, Mayor

\_\_\_\_\_  
Jennifer Cusmir, City Clerk

MEETING DATE: November 15, 2023

ITEM # 3

**SUBJECT:**

**CONSIDERATION OF RESOLUTION 23-89 AMENDING THE CAPITAL IMPROVEMENT PROGRAM (CIP) AND CONSIDERATION OF AWARD FOR A CONSTRUCTION CONTRACT TO BEAR ELECTRICAL SOLUTIONS, INC FOR THE TRAFFIC SIGNAL FUEL CELL BACKUP SYSTEM PROJECT (CIP 12025)**

**INITIATED OR REQUESTED BY:**

Council     Staff  
  
 Other

**REPORT COORDINATED OR PREPARED BY:**

Joshua Bailey, Project Manager II  
**Capital Projects Department**

**ATTACHMENT**     Yes     No             Information     Direction             Action

**OBJECTIVE**

The objective of this report is to provide the City Council with sufficient information to adopt Resolution 23-89 amending the Capital Improvement Program (CIP) and to award a construction contract to Bear Electrical Solutions Inc. for the Traffic Signal Fuel Cell Backup System Project (CIP 12025).

**RECOMMENDED ACTION**

Staff respectfully recommends that the City Council:

- 1) Find the procurement and installation of traffic signal equipment is exempt from environmental review under California Code of Regulations, Title 14, Division 6, Chapter 3, Section 15301 Class 1 (b) of the California Environmental Quality Act;
- 2) Adopt Resolution 23-89 amending the Capital Improvement Program (CIP) budget for CIP 12025;
- 3) Award a construction contract to Bear Electrical Solutions, Inc. in the amount not to exceed \$474,120.00 for the Traffic Signal Fuel Cell Backup Project;
- 4) Authorize the City Manager, or his designee, to execute a construction contract with Bear Electrical Solutions, Inc. for an amount of \$474,120;
- 5) Authorize the City Manager, to execute non-substantive changes or modifications to the contract with Bear Electrical Solutions, Inc with approval from the City Attorney; and
- 6) Authorize the City Manager, or his designee, to execute contract amendments up to 10% (\$47,412) of the value of the contract.

**BACKGROUND**

The City is subject to planned and unplanned power outages that have, and will continue to, disrupt power to traffic signal-controlled intersections. City residents, staff & the Council have requested longer traffic signal runtimes during power outages. Currently, traffic signals will not operate during an outage without a backup system or will operate only 5-10 hours with a fully functional battery backup system. The new Fuel Cell Systems will improve the existing runtime to between 5-14 or more days.

**ANALYSIS**

Traffic signal-controlled intersections control the mobility of pedestrians, bicyclists, and motorists. Generally, when power is lost, there is increased potential for accidents due to lack of signalized control. Although the intersections located at freeway interchanges such as Highway 50 & Jefferson Blvd and Park Blvd would benefit from this backup option, these are Caltrans owned/maintained intersections and thus are outside the jurisdiction of the City. The new Fuel Cell Backup Systems will greatly reduce the downtime in City owned and operated signalized control and potential accidents caused by the power interruptions at the following eight (8) intersections:

1. Jefferson Blvd & Higgins Rd
2. Jefferson Blvd & Lake Washington Blvd
3. Jefferson Blvd & 15<sup>th</sup> St
4. Jefferson Blvd & West Capitol Ave
5. Harbor Blvd & Reed Ave/Sacramento Ave
6. Harbor Blvd & West Capitol Ave
7. Harbor Blvd & Industrial Blvd
8. Southport & Lake Washington Blvd

Traffic Signal Fuel Cell Backup System Project was publicly advertised on January 26, 2023 electronically on OpenGov (formerly ProcureNow) website. Two (2) electronic bids were received and opened on September 9

28, 2023. After examining the Contractor's licenses, work experience, qualifications and proposal submitted in each of the completed bid packages, staff determined that Bear Electrical Solutions, Inc. is the lowest responsive and responsible bidder. The original bid was for (10) locations with four (4) requiring only Fuel Cell Systems and six (6) requiring complete Fuel Cell Systems and battery backup systems (BBS). The cost of all 10 locations exceeded the engineers' estimate. Staff reevaluated the locations and reduced the quantity as follows: four (4) locations requiring Fuel Cell Systems and four (4) locations that require Fuel Cell Systems and BBS. On this basis, staff recommends awarding a construction contract to Bear Electrical Solutions, Inc. in the amount of \$474,120.

Original bid results based on 10 locations total as follows:

<b>Rank</b>	<b>Contractor</b>	<b>Base Bid Amount</b>
1	Bear Electrical Solutions, Inc.	\$596,580.00
2	St. Francis Electric, LLC.	\$642,104.00

The revised bid results are based off of eight (8) locations as follows:

<b>Rank</b>	<b>Contractor</b>	<b>Base Bid Amount</b>
1	Bear Electrical Solutions, Inc.	\$474,120.00
2	St. Francis Electric, LLC.	\$510,020.00

Environmental Considerations

The California Environmental Quality Act Title 14, Chapter 3, Article 19 defines what projects or categories are allowed to be considered Categorically Exempt. Section 15301, Class 1 allows public entities to perform operations such as repair, maintenance, or minor alteration of existing public structures, facilities, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination without review of the project under CEQA. The Traffic Signal Fuel Cell Backup System Project falls under the category of rehabilitation and/or maintenance of existing traffic signal involving no expansion of use beyond the existing.

Commission Recommendation

N/A

Strategic Plan Integration

N/A

Alternatives

The Council's primary alternatives are summarized below:

- 1) Approve the recommended actions as described above in this report.
- 2) Alter the recommended actions.
- 3) Defer or cancel the project.

Staff recommends the Council proceed with Alternative 1, to increase runtime of traffic signal-controlled intersections during power outages or interruptions.

Coordination and Review

This report was prepared by the Capital Projects Department and has been coordinated with and reviewed by the Finance Department.

Budget/Cost Impact

This project is included in the City's Capital Improvement Program (CIP) as CIP 12025 with a total available budget of approximately \$525,000. There is sufficient funding available in the project budget for the construction contract and contingency total of \$521,532. City staff is recommending an additional appropriation of \$50,000 for staff time needed to manage the project through completion and closeout. This request is based on average monthly project management costs incurred during the pre-contract phase. Resolution 23-89 requests an

amendment to the project budget to add an additional \$50,000 from Measure K Fund (Fund 108) – Road Maintenance category to complete the project.

**ATTACHMENTS**

1. Notice of Exemption (NOE)
2. Resolution 23-89
3. Contract with Bear Electrical Solutions, Inc

# Notice of Exemption

# Appendix E

To: Office of Planning and Research  
P.O. Box 3044, Room 113  
Sacramento, CA 95812-3044

County Clerk

County of: YOLO

625 Court Street, Woodland, CA 95696

From: (Public Agency): City of West Sacramento

1110 West Capitol Ave.,

West Sacramento, CA 95691

(Address)

Project Title: Traffic Signal Fuel Cell Backup System Project

Project Applicant: Bear Electrical Solutions Inc.

Project Location - Specific:

Citywide (8 City owned and maintained traffic intersections: listed in Description)

Project Location - City: West Sacramento

Project Location - County: YOLO

Description of Nature, Purpose and Beneficiaries of Project:

Install Fuel Cell Backup Systems at: (1) Jefferson Blvd & Higgins Rd (2) Jefferson Blvd & Lake Washington Blvd (3) Jefferson Blvd & 15th St (4) Jefferson Blvd & West Capitol Ave (5) Harbor Blvd & Reed Ave/Sacramento Ave (6) Harbor Blvd & West Capitol Ave (7) Harbor Blvd & Industrial Blvd (8) Southport & Lake Washington Blvd

Name of Public Agency Approving Project: City of West Sacramento

Name of Person or Agency Carrying Out Project: Joshua Bailey

Exempt Status: (check one):

Ministerial (Sec. 21080(b)(1); 15268);

Declared Emergency (Sec. 21080(b)(3); 15269(a));

Emergency Project (Sec. 21080(b)(4); 15269(b)(c));

Categorical Exemption. State type and section number: 15301 Class 1 (b)

Statutory Exemptions. State code number: \_\_\_\_\_

Reasons why project is exempt:

The California Environmental Quality Act Title 14, Chapter 3, Article 19 defines what projects or categories are allowed to be considered Categorically Exempt. Section 15301, Class 1 allows public entities to perform operations such as repair, maintenance, or minor alteration of existing public structures, facilities, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination without review of the project under CEQA. The Traffic Signal Fuel Cell Backup System Project falls under the category of a rehabilitation and/or maintenance of existing traffic signal involving no expansion of use beyond the existing.

Lead Agency

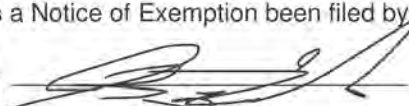
Contact Person: Joshua Bailey

Area Code/Telephone/Extension: (916) 617-4720

If filed by applicant:

1. Attach certified document of exemption finding.

2. Has a Notice of Exemption been filed by the public agency approving the project? Yes  No

Signature: 

Date: 11/15/23

Title: Project Manager II

Signed by Lead Agency

Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.  
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: \_\_\_\_\_

**RESOLUTION 23-89****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST SACRAMENTO APPROVING A BUDGET AMENDMENT OF \$50,000 TO FULLY FUND TRAFFIC SIGNAL FUEL CELL BACKUP SYSTEMS PROJECT (CIP 12025) FOR FISCAL YEAR 2023/24**

**WHEREAS**, the City Council adopted the biennial Capital Improvement Program (CIP) budget for Fiscal Years 2023/24 and 2024/2025 on June 28, 2023; and

**WHEREAS**, CIP-12025 – Traffic Signal Fuel Cell Backup System Project was established, and appropriations of \$550,000 from the One-Time General Fund were approved to fund the project; and

**WHEREAS**, on September 28, 2023, the Capital Projects Department conducted a competitive bid to select a contractor for the Traffic Signal Fuel Cell Backup Systems Project and staff determined that Bear Electrical Solutions Inc. is the lowest-cost, responsive, qualified bidder, with a total bid of \$474,120; and

**WHEREAS**, remaining funds available in the project total \$525,000 and is sufficient to fund the total contract cost, including 10% contingency, of \$521,532; and

**WHEREAS**, additional funding of \$50,000 is needed to fully fund the staff time associated with the construction of the Traffic Signal Fuel Cell Backup System Project; and

**WHEREAS**, staff is proposing to transfer \$50,000 of Measure K Road Rehabilitation funds; and

**WHEREAS**, there is approximately \$554,000 estimated to be available in the Measure K fund after funding Council adopted appropriations for the two-year budget, which is sufficient to fund the additional appropriations requested for this project; and

**WHEREAS**, the City Council has considered all information related to this matter, as presented at the public meetings of the City Council identified herein, including any supporting reports by City staff, and any other information provided during public meetings; and

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of West Sacramento as follows:

1. The City Council hereby approves amendments to the Capital Improvement Program (CIP) for the 2023/24 fiscal year as listed below:

**SOURCES**

\$50,000	400-9900-4990/400-12025-4990	Transfer in from Measure K
\$50,000	108-0000-3085	Measure K Fund Balance
<b>\$50,000</b>	<b>TOTAL USES</b>	

**USES**

\$50,000	108-9211-5950	Transfer out from Measure K
\$50,000	400-9900-5530/400-12025-5800	Traffic Signal Fuel Cell
<b>\$50,000</b>	<b>TOTAL USES</b>	Backup System Project Budget

*\*Note: Interfund transfers not included in total to avoid duplication of total costs.*

2. The City Council hereby finds that the facts set forth in the recitals to this Resolution are true and correct and establish the factual basis for the City Council's adoption of this Resolution.

3. This Resolution shall take effect immediately upon its adoption.

**PASSED AND ADOPTED** by the West Sacramento City Council this 15<sup>th</sup> day of November 2023, by the following vote:

**AYES:**  
**NOES:**  
**ABSENT:**

---

Martha Guerrero, Mayor

ATTEST:

---

Jennifer Cusmir, City Clerk





**CITY OF WEST SACRAMENTO**

**CAPITAL PROJECTS  
DEPARTMENT**

**YOLO COUNTY CALIFORNIA**

**CONTRACT DOCUMENTS  
FOR  
FUEL CELL Back Up System Furnish and Install -  
Rebid  
CITY WORK ORDER NUMBER: 12025**

These Specifications were prepared by or  
under the direction and responsible charge.

\_\_\_\_\_  
Joshua Bailey

Date:

Sealed proposals will be received and submitted electronically through the City's Procurement system at <https://procurement.opengov.com/portal/cityofwestsacramento> until 1:00PM local time on September, 28, 2023.

**CITY OF WEST SACRAMENTO  
CONTRACT DOCUMENTS**

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**EXPERIENCE & QUALIFICATIONS**

The Bidder has been engaged in the contracting business under the present business name for 10 years. Experience in work of a nature similar to that covered in the proposal extends over a period of 10 years.


The Bidder, as a Contractor, has never failed to satisfactorily complete a Contract awarded to it, except as follows:

The following contracts have been satisfactorily completed in the last three (3) years for the persons, firm or authority indicated, and to whom reference is made:

Year	Type of Work	Contract Amount	Owner/Agency for Whom Work was Performed
2023	LUMINAIRE RETROFIT	\$701,790.00	City of Stockton
2023	Street Lighting Improvements	\$221,907.00	City of Stockton
2023	RRFB Installation	\$140,480.00	City of Vacaville

The following is a list of plant and equipment owned by the Bidder, which is available for use on the proposed work as required.

Quantity	Name, Type and Capacity	Condition	Location
	<u>SEE ATTACHED NEXT PAGE</u>		

Bidder's Name (Printed): Robert Asuncion  
 Bidder's Signature:   
 (Same Signature as on Proposal)  
 Bidder's Title: Vice President  
 Date: 09-26-23

**List of Plant and Equipment owned by Bear Electrical Solutions Inc found at our Alviso and Sacramento offices:**

- TYPE: Pick-up Service Truck  
Ford F-150 or F-250                      Number: 24
- TYPE: Bucket Truck                      Number: 22
- TYPE: Dump Truck                      Number: 10
- TYPE: Contractor Utility Truck                      Number: 8
- TYPE: Service Van                      Number: 7
- TYPE: Flat Bed Truck                      Number: 4
- TYPE: Crane Truck                      Number: 2

**Power Equipment**

- TYPE: Power Tools                      Number 80
- TYPE: Power Meters                      Number: 60
- TYPE: Arrow Boards                      Number: 11
- TYPE: Arrow Boards                      Number: 11
- TYPE: Air Compressor (Trailer)                      Number: 8
- TYPE: Trailer (Dump)                      Number: 7
- TYPE: Bobcat Mini-Ex                      Number: 4
- TYPE: Light Tower                      Number: 3
- TYPE: Vactron                      Number: 3
- TYPE: Water Buffalo                      Number: 2
- TYPE: Backhoe Loader                      Number: 2
- TYPE: Skid steer                      Number: 1

**PART 2 CONTRACT DOCUMENTS**

## BIDDER'S CHECKLIST

All items on the Bidder's Checklist must be initialed, dated and submitted for the Proposal to be considered complete. The City of West Sacramento reserves the right to award a Contract in a manner and on the basis which will best serve the City, taking into consideration the information in the statement of Bidder's qualifications and past work history with the City.

The Bidder's attention is especially called to the following forms which must be executed in full as required:

1. a) **BID PROPOSAL**  
To be filled in and signed by the Bidder.  
Initial: RA Date: 09-26-23
- b) **BID SCHEDULE (If applicable)**  
The unit prices Bid must be shown in the space provided. The total Bid price must be shown in the space provided.  
Initial: RA Date: 09-26-23
2. **BID SECURITY**  
The Bid bond is to be executed by the Bidder and the surety company unless Bid is accompanied by cash or certified check. The amount of this Bid bond shall be not less than ten percent (10%) of the total amount Bid and may be shown in dollars or on a percentage basis.  
Initial: RA Date: 09-26-23
3. **NON-COLLUSION DECLARATION**  
A Non-Collusion Declaration must be filled out, signed, and submitted with the Bid proposal for the Bid documents to be considered complete.  
Initial: RA Date: 09-26-23
4. **EXPERIENCE QUALIFICATIONS**  
A statement of the Bidder's Experience & Qualifications must be filled out, signed, and submitted with the Bid proposal for the Bid documents to be considered complete.  
Initial: RA Date: 09-26-23
5. **DESIGNATION OF SUBCONTRACTORS**  
A Designation of Subcontractors must be filled out and submitted with the Bid proposal for the Bid documents to be considered complete.  
Initial: RA Date: 09-26-23
6. **INSURANCE**  
The insurance requirements, Section 6.24 of the General Conditions, for this project have been read and understood.  
Initial: RA Date: 09-26-23

7. **SITE VISIT**

The Bidder certifies that it has toured the project site and is familiar with the work involved.

Initial: RA Date: 09-26-23

8. **PERFORMANCE AND PAYMENT BONDS (IN PART 2)**

The Bidder understands that a performance bond issued by an approved surety equaling one hundred percent (100%) of the Contract amount will be required. A payment bond equaling one hundred percent (100%) of the Contract amount will also be required.

Initial: RA Date: 09-26-23

9. **WORK SCHEDULE**

The City makes no guarantee as to the method of work chosen by the Bidder. It is the Bidder's responsibility to plan and schedule the work in order to complete the work in the time specified in the Special Provisions.

Initial: RA Date: 09-26-23

10. **ADDENDA**

The Bidder acknowledges that it must sign and attach any applicable Addenda to the Bid proposal.

Initial: RA Date: 09-26-23

11. **CONTRACTOR'S CERTIFICATE REGARDING WORKERS COMPENSATION (IN PART 2)**

The Bidder acknowledgment that Worker's Compensation Insurance will be required for this project.

Initial: RA Date: 09-26-23

### BID SCHEDULE

The following quantities are approximate only and are given for the purpose of comparing proposals. The City does not expressly or by implication agree that the actual amount of work will correspond with quantities given herein, but reserves the right to increase or decrease the amount of any class or portion of the work as may be deemed necessary or advisable by the Engineer. **Payment** will be based upon the actual quantities installed or constructed, unless otherwise specified.

ITEM NO.	DESCRIPTION	UNIT	ESTIMATED QUANTITY	UNIT PRICE (\$)	TOTAL (\$)
1.	Furnish and Install - 1KW FUEL CELL BACKUP POWER SYSTEM, FUEL CELL CHASSIS ENCLOSURE, UPS ENCLOSURE, & HYDROGEN FUEL STORAGE CABINET	4	Each	\$57,300.00	\$229,200.00
2.	Furnish and Install - 1KW FUEL CELL BACKUP POWER SYSTEM, FUEL CELL CHASSIS ENCLOSURE, UPS ENCLOSURE, HYDROGEN FUEL STORAGE CABINET, & BATTERY BACKUP SYSTEM (BBS) UNIT	4	Each	\$61,230.00	\$244,920.00
<b>TOTAL BID PRICE \$</b>					<b>\$474,120.00</b>

In the case of discrepancy between unit prices and totals, unit prices will prevail and the City will recalculate the Bid total based on the unit prices and estimated quantities. In case of discrepancy between words and figures, words will prevail.

**Note:** LS = Lump Sum                      FL = Linear Feet                      EA = Each  
 SY = Square Yard                      SF = Square Feet



**BID PROPOSAL**

Proposal to: Ariana Adame, Director of Capital Projects  
City of West Sacramento  
1110 West Capitol Avenue, 1st Floor  
West Sacramento, CA 95691

The undersigned Bidder hereby proposes to furnish and deliver all necessary labor, tools, equipment, and other means of construction to perform the work required for the completion of the project entitled "FUEL CELL BACK UP SYSTEM FURNISH AND INSTALL PROJECT" in accordance with the intent of all plans, specifications, and Addenda issued by the City of West Sacramento prior to the opening of the Bid proposals.

Bidder has read the accompanying instructions to Bidders, has carefully examined the location(s) of the proposed work, and has examined all Contract Documents, drawings and Addenda issued by the City and will contract with the City to construct the project, complete and in satisfactory condition.

The Bidder further agrees to complete all work required under the Contract within one hundred eighty (180) working days from the date designated in the Notice to Proceed, and to accept in full payment therefore the price indicated on the Bid Schedule.

The Bidder acknowledges that it understands that a waiting period from time of Bid opening until award may be sixty (60) days during which time Bidder may not withdraw its bid. The Bidder further acknowledges that it has adjusted its Bid price to include all possible items which may influence the proposal during the waiting period. Requests for Bid price change due to the delay shall not be agreed to by the City.

Company Name: Bear Electrical Solutions, Inc.  
Bidder's Name (Printed): Robert Asuncion  
Bidder's Title: Vice President  
Bidder's Signature:   
Date: 09-11-23  
Address: 1252 State Street P.O. Box 924, Alviso, CA 95002  
Phone Number: 408-449-5178  
Contractor's License Number: 982079  
Classification: C-10, C-31, A, C-61/D-31  
Expiration Date: 03-31-25  
Public Works Contractor  
Registration Number: 1000002158

**NON-COLLUSION DECLARATION**

STATE OF CALIFORNIA    )  
  )  
COUNTY OF YOLO        )

The undersigned declares:

Vice                    Bear Electrical

I am the President of Solutions, Inc., 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 its 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.

Any person executing this declaration on behalf of a Bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that it has full power to execute, and does execute, this declaration on behalf of the Bidder.

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 9-26-23 [date], at AVISO [city], CA [state].

Bidder's Name (Printed): Robert Asuncion

Bidder's Signature:   
(Same Signature as on Proposal)

Bidder's Title: Vice President



## CONSTRUCTION CONTRACT

THIS CONTRACT made on November 15th, 2023 by and between the City of West Sacramento ("City"), and Bear Electrical Solutions, hereinafter "Contractor". The City and Contractor may be collectively referred to as the "parties".

The parties have mutually covenanted and agreed as follows:

### 1. THE CONTRACT DOCUMENTS:

The complete Contract consists of the following documents ("Contract Documents"):

- Invitation to Bid (See Part 1)
- Accepted Bid (and all accompanying documents)
- Addenda Nos. zero (0) as issued
- Designation of Subcontractors, (See Part 1)
- Construction Contract (See Part 2)
- Payment Bond to accompany Contract (See Part 2)
- Performance Bond to accompany Contract (See Part 2)
- Contractor's Certification Regarding Workers' Compensation (See Part 2)
- General Conditions (See Part 3)
- Supplemental Conditions (Special Provisions) (See Part 4)
- Drawings
- Technical Specifications (See Part 4)
- Change Orders
- City of West Sacramento Standard Specifications 2002, with Amendments #1 & #2
- State of California Department of Transportation (Caltrans) Standard Specifications 2015

### 2. THE WORK:

The Contractor agrees to furnish all tools, equipment, apparatus, facilities, labor, transportation, and material necessary to perform and complete in a good and workmanlike manner, the furnish & installation of Fuel Cell Back-up Systems (FCBS) at designated locations throughout the City. Four (4) of the eight (8) locations have existing TESCO 24VDC Battery Backup System (BBS)/Service Pedestal enclosures. The remaining four (4) will need new BBS systems specifically described under the "Battery Back-up System" section. This FUEL CELL Back Up System Furnish and Install - Re-bid "Project" as called for, and in the manner designated in, and in strict conformity with, the Contract Documents. It is understood and agreed that the tools, equipment, apparatus, facilities, labor, transportation, and material shall be furnished and the work performed and completed as required in the Drawings and Specifications under the sole direction and control of the Contractor, and subject to inspection and approval of the City, or its representatives. The City hereby designates as its representative for the purpose of this Contract the following named person: Joshua Bailey.

### 3. CONTRACT PRICE:

The City agrees to pay and the Contractor agrees to accept, in full payment for the work above agreed to be done, the sum of four hundred seventy four thousand one hundred twenty dollars (\$474,120.00) for the Project subject to additions and deductions as provided in the Contract Documents.

**4. COMPLETION DATE:**

The Project shall be commenced on the date specified in the Notice to Proceed. The total project will be completed within one hundred twenty (120) working days, as defined in the General Conditions, after the date stated in the Notice to Proceed.

**5. NOTICE AND SERVICE THEREOF:**

Any notice from one party to the other under the Contract shall be in writing and shall be dated and signed by the party giving such notice or by a duly authorized representative of such party. Any such notice shall not be effective for any purpose whatsoever unless served in the following manner, namely:

(a) If the notice is given to the City, by personal delivery thereof to the Director of Public Works, or by depositing the same in the United States mail, enclosed in a sealed envelope, postage prepaid, and certified; addressed to the City at:

City of West Sacramento  
Ariana Adame, Director of Capital Projects  
1110 West Capitol Avenue, 1st Floor  
West Sacramento, CA 95691

(b) If the notice is given to the Contractor, by personal delivery thereof to said Contractor or to its duly authorized representative at the site of the project, or by depositing the same in the United States mail, enclosed in a sealed envelope, postage prepaid, and certified; addressed to the Contractor at:

Business	<u>Bear Electric Solutions Inc</u> _____
Attention	<u>Robert Asuncion</u> _____
Street Address	<u>1341 Archer St</u> _____
City, State, Zip Code	<u>Alviso, CA 95002</u> _____

(c) If the notice is given to the surety or any other person, by personal delivery to such surety or other person, or by depositing the same in the United States mail, enclosed in a sealed envelope, addressed to such surety or other person, as the case may be, at the address of such surety or person last communicated by it to the party giving the notice, postage prepaid and certified.

**6. LIQUIDATED DAMAGES:**

Liquidated damages as provided for in the General Conditions of the Contract shall be in the sum of One Thousand Dollars (\$1,000.00) for each and every day as defined therein for each different scope of work as defined by the Base Bid and each change order except as otherwise specified in the Supplemental Conditions.

**7. PREVAILING WAGE:**

Copies of the prevailing rate of per diem wages as determined by the Director of the Department of Industrial Relations in accordance with Labor Code section 1773.2 are on file at the City, and copies are available for inspection at that office to any interested party on request. Bidders shall be responsible for verifying with the Director of the Department of Industrial

Relations that all such copies of the prevailing rate provided by the City are current and accurate. The requirement to pay the wage rate so specified is further detailed in the General Conditions.

**8. CONTRACTOR REGISTRATION**

By the execution of this Contract, Contractor hereby certifies that it is registered with the California Department of Industrial Relations as required pursuant to Labor Code section 1725.5 (Contractor registration).

IN WITNESS WHEREOF, four (4) identical counterparts of this Contract, each of which shall for all purposes be deemed an original, have been duly executed by the above-named parties, on the date noted on the first page of this Contract.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Aaron Laurel, City Manager  
City of West Sacramento

Approved as to form:

\_\_\_\_\_  
Jeffrey Mitchell, City Attorney

Attest:

\_\_\_\_\_  
Jennifer Cusmir, City Clerk

## PERFORMANCE BOND

The CITY OF WEST SACRAMENTO, hereinafter "City," entered into a Contract dated \_\_\_\_\_, 20\_\_\_\_ with \_\_\_\_\_ hereinafter "Contractor," for the work described as follows:

### FUEL CELL BACK UP SYSTEM FURNISH AND INSTALL - RE-BID

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

WHEREAS, the Contract is by reference made a part hereof.

NOW, THEREFORE, we, \_\_\_\_\_, the undersigned Contractor, as Principal, and \_\_\_\_\_ (corporate surety), a corporation organized and existing under the laws of the State of \_\_\_\_\_, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the City in the penal sum of four hundred seventy four thousand one hundred twenty dollars (\$474,120.00), lawful money of the United States, said sum being not less than one hundred percent (100%) of the total Contract amount, for the payment of which sum be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, THAT, if the above-bounded Contractor, its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and perform the covenants, conditions, and agreements in said Contract and any alterations thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City, its officers and agents, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and virtue.

As a condition precedent to the satisfactory completion of said Contract, the above obligation in said amount shall hold good for a period of one (1) year after the completion and Acceptance of said work, during which time if the above-bounded Contractor, its heirs, executors, administrators, successors or assigns shall fail to make full, complete, and satisfactory repair and replacements or totally protect the City from loss or damage made evident during said period of one (1) year from the date of Acceptance of said work, and resulting from or caused by defective materials or faulty workmanship in the prosecution of the work done, the above obligation in said sum shall remain in full force and effect. However, anything in this paragraph to the contrary notwithstanding, the obligation of the Surety hereunder shall continue so long as any obligation of the Contractor remains.

And the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall, in any way, affect its obligations on this bond and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract or to the work or the specifications. Said Surety hereby waives the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

In the event suit is brought upon this bond by the City and judgment is recovered, the Surety shall pay all costs incurred by the City in such suit, including reasonable attorneys' fees to be fixed by the Court.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Contractor as Principal)

(Seal)

By

\_\_\_\_\_

(Seal)

By

\_\_\_\_\_

NOTE: If Contractor is a Partnership, all parties must execute the Bond.

IMPORTANT: Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in California.



## PAYMENT BOND

The CITY OF WEST SACRAMENTO, hereinafter "City," has awarded to \_\_\_\_\_, hereinafter "Contractor," a Contract for the work described as follows:

### FUEL CELL BACK UP SYSTEM FURNISH AND INSTALL - RE-BID

WHEREAS, the Contractor is required by the Contract and by the provisions of Third Division, Part 4, Title 15, Chapter 7 of the Civil Code to furnish a bond in connection with the Contract, as hereinafter set forth.

NOW, THEREFORE, we, \_\_\_\_\_, the undersigned Contractor, as Principal, and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_ duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the \_\_\_\_\_ in the sum of four hundred seventy four thousand one hundred twenty dollars (\$474,120.00), said sum being not less than one hundred (100) percent of the total Contract amount payable by the City, under the terms of the Contract, for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, THAT, if the Contractor, its heirs, executors, administrators, successors, and assigns or Subcontractors shall fail to pay for any materials, provisions, provender or other supplies or teams, implements or machinery used in, upon, for or about the performance of the work contracted to be done, or shall fail to pay for any work or labor thereon of any kind, or shall fail to pay any persons named in Civil Code section 9100, or shall fail to pay for amounts due under the Unemployment Insurance Code with respect to such work or labor thereon of any kind, or shall fail to pay for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Contractor and Subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work or labor, and provided that the claimant shall have complied with the provisions of that code, the Surety or Sureties hereon will pay for the same in an amount not exceeding the sum specified in the Contract; otherwise, the above obligation shall be void. In case suit is brought upon this bond, the Surety will pay reasonable attorneys' fees to the prevailing party to be fixed by the court.

This bond shall insure to the benefit of any and all persons, companies and corporations entitled to file claims under Section 9100 of the Civil Code, so as to give a right of action to them or to their assigns in any suit brought upon this bond.

It is further stipulated that the Surety of this bond shall not be exonerated or released from the obligation of the bond by any change, extension of time for performance, addition, alteration, or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement described above or pertaining or relating to the furnishing of labor, materials, or equipment therefor, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement described above, nor by any rescission or attempted rescission of the Contract, agreement, or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond, and that this bond be

construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the City and original Contractor or on the party of the obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 8400 and 8402 of the California Civil Code and has not been paid the full amount of its claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration, or modification.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Contractor as Principal)

(Seal) By \_\_\_\_\_

(Seal) By \_\_\_\_\_

NOTE: If Contractor is a Partnership, all partners should execute Bond.

IMPORTANT: Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in California.

**CONTRACTOR'S CERTIFICATE REGARDING WORKER'S COMPENSATION**

TO: Ariana Adame, Director of Capital Projects  
City of West Sacramento  
1110 West Capitol Avenue, 1st Floor  
West Sacramento, CA 95691

I am aware of the provisions of Section 3700 of the Labor Code of the State of California 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 of this Contract.

\_\_\_\_\_  
(Bear Electric Solutions, Inc)

By \_\_\_\_\_

1341 Archer St, Alviso, CA 95002

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(Place of Residence)

## **PART 3 GENERAL CONDITIONS**

## **PART 3: GENERAL CONDITIONS**

### **SECTION 1**

#### **DEFINITIONS AND TERMS**

##### **1.01. GENERAL**

Wherever the following abbreviations and terms, or pronouns in place of them, are used in these Conditions and other Contract Documents of which these Conditions are a part, the intent and meaning shall be interpreted as provided below.

##### **1.02. ABBREVIATIONS**

The following abbreviations may be used in the Contract Documents:

AA	Aluminum Association
AASHTO	American Association of State Highway/Transportation Officials
ABMA	American Boiler Manufacturer's Association
ACI	American Concrete Institute
AFBMA	Anti-Friction Bearing Manufacturers Association
AGA	American Gas Association
AGC	Associated General Contractors
AGMA	American Gear Manufacturer's Association
AI	The Asphalt Institute
AIA	American Institute of Architects
AIEE	American Institute of Electrical Engineers
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute, Inc.
APA	American Plywood Association
API	American Petroleum Institute
APWA	American Public Works Association
ARA	American Railway Association
AREA	American Railway Engineering Association
ASCE	American Society Civil Engineers
ASHRAE	American Society of Heating, Refrigeration and Air Conditioning Engineers
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
AWG	American Wire Gage
AWPA	American Wood Preservers' Association
AWS	American Welding Society
AWWA	American Water Works Association
BHMA	Builders Hardware Manufacturers Association
CCMTC	California Concrete Masonry Technical Committee
CRSI	Concrete Reinforcement Steel Institute
ETL	Electrical Testing Laboratory
FS	Federal Specification
ICBO	International Conference of Building Officials
IEEE	The Institute of Electrical and Electronics Engineers
IES	Illuminating Engineering Society

IPCEA	Insulated Power Cable Engineers Association
JICS	Joint Industry Conference Standards
MBMA	Metal Building Manufacturer's Association
MSS	Manufacturers Standardization Society of the Valve and Fitting Industry Standards
NBFU	National Board of Fire Underwriters
NBS	National Building Standards
NEC	National Electrical Code
NEMA	National Electrical Manufacturers Association
NFPA	National Fire Protection Association
OSHA	Occupational Safety and Health Act of 1970
PCA	Portland Cement Association
SMACNA	Sheet Metal and Air Conditioning Contractor's National Association
SSPC	Steel Structures Painting Council
SSPWC	Standard Specifications for Public Works Construction
UBC	Uniform Building Code
UL	Underwriter's Laboratory
UMC	Uniform Mechanical Code
UPC	Uniform Plumbing Code
USAS	The United States of America Standard Institute
USBR	United States Bureau of Reclamation
USPHS	United States Public Health Service
WCLIB	West Coast Lumber Inspection Bureau
WIC	Woodwork Institute of California

### 1.03. DEFINITIONS

The intent and meaning of the following, wherever they appear in the Contract Documents, shall be interpreted as follows:

**Acceptance** - The formal Acceptance by the Engineer of the entire Contract, which has been completed in all respects in accordance with the Specifications and any, approved modifications.

**Addenda** - Any written change, clarification or supplement to documents issued for bidding, issued by the City or its Engineer prior to bid.

**As Approved** - The words "as approved", unless otherwise qualified, shall be understood to be followed by the words "by the Engineer".

**As Shown, and As Indicated** - The words "as shown" and "as indicated" shall be understood to be followed by the words "on the Plans".

**Award** - The decision of the City Council to accept the proposal of the lowest responsible Bidder for the Work, subject to the execution and approval of a satisfactory contract therefore and bond to secure the performance thereof and to such other conditions as may be specified or required by law.

**Bid** - The offer of the Bidder for the Work when made out and submitted on the prescribed Bid form, properly signed and guaranteed. A Bid is also known as a Proposal.

**Bid Security** - The cash, cashier's check, certified check, or bidder's bond accompanying the Bid submitted by the bidder, as a guarantee that the Bidder will enter into a Contract with the City for the performance of Work herein described.

**Bidder** - Any individual, firm, partnership or corporation submitting a Bid for the Work contemplated, and acting directly or through a duly authorized representative.

**Bureau** - United States Bureau of Reclamation.

**Calendar Day** - Each day shown on the calendar.

**Change Order** - Written order issued by the Engineer to the Contractor covering changes in the Contract and establishing the bases of compensation and time adjustments for work affected by the changes.

**City** - The City of West Sacramento, also referred to as the Owner.

**City Council or Council** - The City Council of the City of West Sacramento.

**City Standard Details** - The standard details contained in the City Standard Specifications as modified.

**City Standard Specifications** - 2002 edition of the City of West Sacramento Standard Specifications and Details as amended to date of Bid submittal.

**Claim** - A separate demand by the Contractor for (i) a time extension, (ii) payment of money or damages arising from work done by or on behalf of the Contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (iii) an amount the payment of which is disputed by the City.

**Contract** - The written agreement covering the performance of the work and the furnishing of labor, materials, tools and equipment in the construction of the Work. The Contract shall include all Contract Documents and supplemental agreements amending or extending the work contemplated which may be required to complete the Work in a substantial and acceptable manner. Supplemental agreements are written agreements covering alterations, amendments, or extensions to the contract and include Addenda and change orders.

**Contract Documents** - Contract Documents is the collective term for all of the following documents and any other document incorporated therein by reference: Invitation to Bid, Accepted Bid (and all accompanying documents), Designation of Subcontractors, Construction Contract, Payment Bond to Accompany Contract, Performance Bond to Accompany Contract, General Conditions, Supplementary and Special Conditions, (if any), Drawings (and Specifications), Addenda, Change Orders, City of West Sacramento Standard Specifications, State of California Department of Transportation (Caltrans) Standard Specifications 2015, Contractor's Certification Regarding Workers' Compensation.

**Contractor** - The person or persons, firm, partnership or corporation or other entity who has entered into the Contract with the City to perform the Work.

**County** - County of Yolo, California.

**Date of Completion** - Date of filing of the Notice of Completion with the Yolo County Clerk-Recorder's Office.

**Date of Execution of the Contract** - The date on which the Contract is signed by the City's authorized representative.

**Datum** - The Figures given in the Specifications or upon the drawings after the word "Elevation" or an abbreviation of it, shall mean U.S.G.S. datum, unless otherwise noted.

**Days** - Unless otherwise designated, days as used in the Contract Documents shall mean calendar days.

**Elevation** - The figures given on the Plans or in the other Contract Documents after the word "elevation" or abbreviation of it shall mean the distance in feet above the standard datum used by the City.

**Engineer** - The City Engineer, or the person designated by the City as its engineering representative during the course of construction, acting either directly or through properly authorized agents, such agents acting within the scope of the particular duties delegated to them.

**Extra Work** - Work other than that required either expressly or implied by the Contract in its executed form.

**Notice of Completion** - notice of completion is the recorded project completion document filed with the Yolo County Clerk.

**Or Equal** - The term "or equal" shall be understood to indicate that the "equal" product be the equivalent or better than the product named in function, performance, reliability, quality, and general configuration. Determination of equality in reference to the project design requirements will be made by the Engineer.

**Plans or Specification Drawings** - The term "Plans" or "Specification Drawings" refers to the official plans, profiles, cross sections, elevations, details, and other Working Drawings and supplementary drawings, or reproductions thereof, signed by the Engineer, which show the location, character, dimensions, and details of the work to be performed. Plans may either be bound in the same book as the balance of the Contract Documents or bound in separate sets. Regardless of the method of binding, Plans shall be part of the Contract Documents.

**Plant** - All physical, resources, facilities, machinery, equipment, staging, tools, work and storage space other than provided by the Contract, together with subsidiary essentials and necessary maintenance for proper construction and acceptable completion of the project.

**Project** - The entire Work to be completed under the Contract.

**Project Manager** - The person designated by the City as its project management representative during the course of construction, acting either directly or through properly authorized agents, such agents acting within the scope of the particular duties delegated to them. The Project Manager will be the City Engineer unless the City designates a separate Project Manager. When a Project Manager is used for a project, the Project Manager has full authority to act as the City Engineer unless the designation specifically states otherwise.

**Shop Drawings** - Drawings prepared by the fabricator or supplier showing the layout and details of components fabricated in a shop for inclusion in the permanent facility (e.g., structural steel, reinforcing steel, railings).



**Site** - The area upon or in which the Contractor's operations are carried on and such other areas adjacent thereto as may be designated by the Engineer.

**Specifications** - The term "specifications" refers to the terms, provisions, and requirements contained herein. Where reference specifications, such as those of "ASTM", "AASHTO", etc. have been referred to, the applicable portions of such standard specifications shall become a part of these Contract Documents.

**State** - State of California.

**State Standard Specifications** - Standard Specifications issued by the State of California Department of Transportation, dated 2015, and as amended Bid in the supplemental conditions.

**Subcontractor** - The term "Subcontractor", as employed herein, includes only those having a direct contract with the Contractor and it includes one who furnishes material worked to a special design according to the plans or specifications of this work, but does not include one who merely furnishes material not so worked and would be considered a supplier only.

**Supplementary & Special Conditions Provisions** - Additions, revisions, special directions, and requirements peculiar to a project and not otherwise thoroughly set forth in General and/or Specifications.

**Time Limits** - All time limits stated in the Contract Documents are of the essence of the Contract.

**Work** - All the work specified, indicated, shown or contemplated in the Contract Documents to construct the improvements, including all alterations, amendments or extensions thereto made by Change Order or other written orders of the Engineer.

**Working Days** - A Working day is defined as any day, except Saturdays, Sundays and legal holidays of the City.

**Working Drawings** - Drawings furnished by the Contractor showing the layout and details of temporary construction procedures and methods of construction, and data for construction equipment which are to be employed in the construction of the permanent facility (e.g., form drawings, erection drawings, load test pile procedures, pile hammer data, etc.).

**Written Notice** - "Written Notice" shall be deemed to have been duly served when delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by certified U.S. mail to the last business address known to the party who gives the notice as specified in the Contract.

Whenever in the Specifications or upon the drawings the words "directed", "required", "permitted", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the direction, requirement, permission, order, designation or prescription of the Engineer is intended, and similarly the words "approved", "acceptable", "satisfactory", or words of like import, shall mean approved or acceptable to, or satisfactory to the Engineer, unless otherwise expressly stated.

## SECTION 2 SCOPE OF WORK

### 2.01. INTENT OF CONTRACT DOCUMENTS

The intent of the Contract Documents is to prescribe the details for the construction and completion of the Work, which the Contractor undertakes to perform in accordance with the terms of the Contract. These General Conditions are meant to replace Division I of the State Standard Specifications for all City public works contracts which incorporate these General Conditions by reference.

Where the Specifications and Plans describe portions of the Work in general terms, but not in complete detail, it is understood that only the best general practice is to prevail and that only materials and workmanship of the first quality are to be used. Unless otherwise specified, the Contractor shall furnish all labor, materials, tools, equipment and incidentals and do all the Work involved in performing the Contract in a satisfactory and workmanlike manner.

The technical provisions are presented in sections for convenience. However, this presentation does not necessarily delineate trades or limits of responsibility. All sections of the Specifications and Plans are interdependent and applicable to the Project as a whole.

The Contract Documents are complementary, and what is called for in any one shall be as binding as if called for in all. Anything shown on the Drawings and not mentioned in the Specifications or mentioned in the Specifications and not shown on the Drawings shall have the same effect as if shown or mentioned respectively in both. Any work shown on one Drawing shall be construed to be shown in all Drawings and the Contractor will coordinate the Work and the Drawings.

If any portion of the Contract Documents shall be in conflict with any other portion, the various documents comprising the Contract Documents shall govern in the following **order of precedence**: Change Orders; Addenda; Shop Drawings, Drawings, Supplementary and Special Conditions; Designation of Subcontractors; Construction Contract; General Conditions; City of West Sacramento Standard Specifications; State of California Department of Transportation (Caltrans) Standard Specifications 2015.

Detail Drawings take precedence over General Drawings. As between schedules and other information given on Drawings, the Schedules shall govern. If an item is shown on any Drawing and not specifically included in Technical Specifications specific to this project, the Drawing shall govern. Any conflict or inconsistency between or in the drawings shall be submitted to the Engineer for clarification as soon as the Contractor becomes aware of such inconsistency.

### 2.02. CONTRACTOR'S UNDERSTANDING

It is understood and agreed that the Contractor has, by careful examination, satisfied itself as to the nature and location of the Work, the conformation of the ground, the character, quality and quantity of the materials to be encountered, the character of equipment and facilities needed preliminary to and during the prosecution of the Work, the general and local conditions, and all other matters which can in any way affect the Work under this Contract. No verbal agreement or conversation with any officer, agent or employee of the City, either before or after

the execution of this Contract, shall affect or modify any of the terms or obligations contained herein.

### 2.03. CHANGES IN THE WORK

(a) The City may, at any time, by written order, make changes in the Work as deemed necessary by the Engineer. Such changes include, but are not limited to:

- (1) In the Specifications or Plans;
- (2) In the sequence, method or manner of performance of the Work;
- (3) In the owner-furnished facilities, equipment, materials, services or site; and
- (4) Directing acceleration of the Work.

(b) If such changes cause an increase or decrease in the Contractor's cost of, or time required for, performance of the Contract, an equitable adjustment will be made and the Contract modified in writing accordingly.

#### (1) Change Orders

A change pursuant to this section will be in the form of a Change Order, which will set forth the work to be done or the method by which the change and cost adjustment, if any, will be determined, and the time of completion of the work.

Upon receipt of a 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 a Change Order. A Change Order executed by the Contractor and approved by the Engineer is an executed Change Order as that term is used throughout this section.

#### (2) Change Order Protests

A Change Order may be issued to the Contractor at any time. Should the Contractor disagree with any terms or conditions set forth in a Change Order, which he has not executed, he shall submit a written protest to the Engineer within fifteen (15) days after the receipt of such Change Order. The protest shall state the points of disagreement and, if possible, the quantities and cost involved.

If a written protest is not submitted, payment will be made as set forth in the Change Order. Such payment shall constitute full compensation for all work included therein or required thereby. Such unprotested Change Orders shall be considered as executed Change Orders.

Where the protest concerning a Change Order relates to compensation, the compensation payable for all work specified or required by said Change Order to which such protest relates will be determined in the same manner as provided in Section 2.04 of this section. The Contractor shall keep full and complete records of the cost of such work and shall permit the Engineer to have such access thereto as may be necessary to assist in the determination of the compensation payable for such work. Where the protest concerning a Change Order relates to the adjustment of time and for completion of the Work, the time to be allowed therefor will be determined as provided in this section.

The consent of the Contractor's sureties shall not be required as to any change or Extra Work, and the liability of the Contractor's Bonds shall be increased or decreased accordingly without notice to the sureties.

## **2.04. PROCEDURES AND ALLOWABLE COSTS ON CHANGES AND ADDITIONS TO WORK**

### **(a) Forms of Payment**

If the change in, or addition to, the Work will result in an increase in the contract sum, the City shall have the right to require the performance thereof. The compensation to be paid for any such work shall, in the City's sole discretion, be determined in one or more of the following ways:

- (1) By extension of agreed unit prices, if unit prices are required by the City's Bid form and provided with Contractor 's bid;
- (2) By revision of unit prices;
- (3) By proposal and Acceptance of an agreed upon lump sum; and
- (4) On a force account basis.

Until one of the above methods is agreed on, or if the Work is to be paid for on a time and materials basis, the Contractor shall keep full and complete records of the cost of such work in the form and manner prescribed by the Engineer and shall permit the Engineer to have access to such records as may be necessary to assist in the determination of the compensation payable for such work.

### **(b) Lump Sum Payment**

The City, in its sole and absolute discretion, may request a lump sum proposal by Contractor to perform the change in, or addition to, the Work performed. Such lump sum proposal shall be submitted by the Contractor within ten (10) days of the City's request therefor. Request for a lump sum proposal by City shall not be deemed an election by City to have the Work performed on a lump sum basis. Costs of preparing the proposal shall not be compensable.

#### **(1) Contents of Lump Sum Proposal**

(2) The Contractor's proposal shall be itemized and segregated by labor and materials for the various components of the change (no aggregate labor total will be acceptable). The proposal shall be accompanied by signed proposals of any Subcontractors, which will perform any portion of the change, and of any persons who will furnish materials or equipment for incorporation therein. The proposal shall also include the Contractor's estimate of the time required to perform said changes or additional work.

#### **(3) Computation of Labor Costs**

The portion of the proposal relating to labor, whether by the Contractor's forces or the forces of any of its Subcontractors, may include the projected wages of the reasonably anticipated Site labor, including foremen, who will be directly involved in the change in the Work.

These projected wages shall not include charges for assistant superintendents, superintendents, office personnel, timekeepers and maintenance mechanics.

Labor costs may also include Contractor's overhead and profit which shall be computed by adding to the labor costs either up to fifteen percent (15%) of the projected wages, but not payroll costs, or the labor surcharge set forth in the California Department of Transportation publication entitled Labor Surcharge And Equipment Rental Rates, which is in effect on the date upon which the Work is accomplished and which is a part of the Contract. The method of computing the overhead and profit shall be solely within the discretion of the City.

The labor surcharge, if used, shall constitute full compensation for all payments imposed by State and Federal laws and for all other payments made to, or on behalf of, the workmen, other than actual wages as defined above. No time or charges will be allowed except when the workers are actually engaged in the proper, efficient and diligent performance or completion of the extra work as authorized. Overtime shall not be worked without prior approval of the Engineer.

(4) Computation of Equipment and Materials Costs

The portion of the proposal relating to materials may include the reasonably anticipated direct costs to the Contractor or to any of its Subcontractors of materials to be purchased for incorporation in the change in the Work. This portion of the proposal may also include transportation and applicable sales or use taxes. Up to fifteen percent (15%) of these direct costs may be included as overhead and profit for the Contractor or any such Subcontractor (such overhead and profit to include all small tools).

This portion of the proposal may further include the Contractor's and any of its Subcontractors' reasonably anticipated costs for the rental and operation of prime construction and automotive equipment furnished and used in connection with the change in the Work. The equipment rental and operation rates used shall be the latest edition of the Department of Transportation, Division of Construction, Equipment Rental Rates. These costs shall not include charges for listed equipment or major tools with a new cost of five hundred dollars (\$500.00) or less. No time charges shall be allowed except for equipment actually used for the proper and efficient performance or completion of the authorized change in the Work.

(5) Subcontractors

The lump sum proposal may include up to five percent (5%) of the amount, which the Contractor will pay to any of its Subcontractors for the change in the Work as allowable overhead and profit to the Contractor.

(6) Failure to Submit Lump Sum Proposal

In the event that the Contractor fails to submit its proposal within the designated period, the Engineer may direct the Contractor to proceed with the change or addition to the Work and the Contractor shall so proceed. The Engineer shall unilaterally determine the reasonable costs and time to perform the work in question, which determination shall be final and binding upon the Contractor.

(7) Failure to Agree on Lump Sum Amount

In the event that the parties are unable to agree as to the reasonable costs and time to perform the change in or addition to the Work based upon the Contractor's proposal and

the Engineer and City do not elect to have the change in the Work performed on a time and material basis, the Engineer and City shall make a unilateral determination of the reasonable cost and time to perform the change in the Work, based upon their own estimates, the Contractor's submission or combination thereof. In such instances, a Change Order shall be issued for the amount of costs and time determined by the Engineer and the City and shall become binding upon the Contractor unless the Contractor submits its protest in writing to the City within thirty (30) days of the issuance of the Change Order. The City has the right to direct the Contractor in writing to perform the change in the Work, which is the subject of the Change Order. Failure of the parties to reach agreement regarding the costs and time of performing the change in the Work and/or any pending protest shall not relieve the Contractor from performing the change in the Work promptly and expeditiously.

(c) Payment by Unit Prices

If any of the items included in the lump sum proposal are covered by unit prices contained in the contract document, the City may, if it requires the change in the Work to be performed on a lump sum basis, elect to use these unit prices in lieu of the similar items included in the lump sum proposal in which event an appropriate deduction will be made in the lump sum amount prior to the application of any allowed overhead and profit percentages. No overhead and profit shall be applied to any unit prices.

(d) Payment on a Force Account Basis

If the City elects to have the change or addition to the Work performed on a force account basis, the Work shall be performed, whether by the Contractor's forces or the forces of any of its Subcontractors or Sub-Subcontractors, and payment shall be made subject to the following provision. The Contractor will be paid the direct costs of the labor, equipment and materials used in performing the force account work determined as hereinafter provided.

(1) For labor, the Contractor will be paid the cost of labor for the workers (including foremen when authorized by the Engineer or Project Manager) used in the actual and direct performance of the work. The cost of labor, whether the employer is the Contractor or any or any Subcontractor of any tier, shall be actual wages, including basic hourly wage, health and welfare payments and pension payments incurred in performing the force account work, plus any travel and subsistence payments for the workers performing such work and made necessary thereby. To the actual wages shall be added a labor surcharge as set forth in the State Department of Transportation publication entitled "Labor Surcharge and Equipment Rental Rates", as in effect on the date the work is performed. The labor surcharge shall be deemed to encompass the City's entire liability to reimburse the Contractor for workers compensation insurance payments, social security payments, Medicare payments, federal unemployment insurance payments, state unemployment insurance payments and state training taxes, made necessary by the force account work.

(2) For equipment, the Contractor will be paid for the use of equipment at the rental rates listed for that equipment in the State Department of Transportation publication entitled "Labor Surcharge and Equipment Rental Rates", which is in effect on the date the work is performed, regardless of ownership or any rental agreement entered into by Contractor for such equipment. The rental rate paid in accord with said publication shall be deemed to include the cost of fuel, oil, lubrication, supplies, small tools, attachments, repairs and maintenance, depreciation, storage and insurance for said equipment. Rental time will not be paid when equipment is inoperable due to breakdowns, repairs or maintenance. Payment for loading, transporting and unloading time will be in accordance with the State Standard Specifications

applicable to loading, transporting and unloading equipment for force account work, as applicable as of the date the equipment is loaded, transported or unloaded.

(3) For materials used in the work, the City will pay for materials furnished by the Contractor and necessarily used in the force account work. Prior to markups as set forth below, the amount paid shall be the price paid by the actual purchaser to the actual supplier plus any necessary actual costs of handling the materials.

Contractor may add fifteen percent (15%) to the total labor, equipment and material charges as the total overhead and profit to the entity or entities actually performing the force account work. If the entity or entities actually performing the work are Subcontractors or Sub-Subcontractors, the Contractor shall be allowed five percent (5%) of the total charge of the performing entity or entities (including mark-up) as Contractor's mark-up. No other mark-ups shall be allowed hereunder.

The Contractor shall submit to the City daily work and material tickets, to include the identification number assigned to the change in the Work, the location and description of the change in the Work, the classification of labor employed (and names and social security numbers), hours expended, the material used, the equipment rented (not tools) and such other evidence of cost as the City may require. The City may require authentication of all time and material tickets and invoices by persons designated by the City for such purpose. The failure of the Contractor to secure any required authentication shall, if the City elects to treat it as such, constitute a waiver by the Contractor of any claim for the cost of that portion of the Change in the Work covered by a non-authenticated ticket or invoice; provided, however, that the authentication of any such ticket or invoice by the City shall not constitute an acknowledgment by the City that the items thereon were reasonably required for the Change in the Work.

(e) Limitations on Changes

The Contractor shall not be entitled to any amount for indirect costs, damages or expenses of any nature, including, but not limited to, so-called "impact" costs, labor inefficiency, wage, material or other escalations beyond the prices upon which the proposal is based and to which the parties have agreed pursuant to the provisions of this section, and which the Contractor, its Subcontractors and Sub-Subcontractors or any other person may incur as a result of delays, interferences, suspensions, changes in sequence or the like, for whatever cause, whether reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable, arising from the performance of any and all changes in the work performed pursuant to this section. It is understood and agreed that the Contractor's sole and exclusive remedy in such event shall be recovery of its direct costs as compensable hereunder and an extension of the time of the Contract, but only in accordance with the provisions of the Contract Documents.

It is expressly agreed that Contractor shall not be entitled to claim damages for anticipated profits on any portion of the Work that may be deleted.

The amount of any adjustment for work deleted shall be estimated at the time deletion of work is ordered and the estimated adjustment will be deducted for the subsequent monthly pay estimates. The City reserves its rights under Section 3.20 to audit Contractor's as-Bid profit in connection with any deductive change, to arrive at a final adjustment. Contractor's as-Bid profit shall be reduced pro rata according to the proportion of the original contract value less as-Bid profit, represented by the work deleted.

The City reserves the right to contract with any person or firm other than the Contractor for any or all Extra Work.

## **2.05. UNILATERAL CHANGE IN OR ADDITION TO THE WORK**

Notwithstanding the above, the City, directly or through the Engineer, may direct the Contractor in writing to perform changes in or additions to the scope of the Contract. The Contractor shall perform such work and the parties shall proceed pursuant to the provisions of Section 2.04.

## **2.06. DIFFERING SITE CONDITIONS**

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

(a) Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25110.02 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; or

(b) Subsurface or latent physical conditions at the Site differing from those indicated in the Contract Documents; or

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

The Engineer shall thereupon promptly investigate the conditions. If the Engineer finds that they do involve hazardous waste, or do materially differ and cause an decrease or increase in the Contractor's cost or time of performance, the Engineer will issue a change order as appropriate. Any increase or decrease of cost resulting from such changes shall be adjusted in the manner provided in Section 2.04 for adjustments as to extra and/or additional work and changes. In the event that a dispute arises between the City and the Contractor, whether the conditions materially differ, or involve hazardous waste, or cause and decrease or increase the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided by the Contract, but shall proceed with all work to be performed under the Contract, the procedures applicable to claims for extra costs shall then apply.

## **2.07. CLAIMS FOR EXTRA COSTS**

### **(a) Notice of Potential Claims**

(1) It is hereby mutually agreed that the Contractor shall not be entitled to the payment of any additional compensation for any cause, including any act, or failure to act, by the Engineer, or the happening of any event, thing or occurrence, unless the Contractor provides the Engineer with written notice of the potential claims as hereinafter specified. Compliance with this section, however, shall not be a prerequisite as to matters within the scope of the protest provisions in Section 2.03.

The written notice of potential claims shall set forth the reasons for which the Contractor believes additional compensation will or may be due, the nature of the costs involved, and, insofar as possible, the amount of the potential claim. The notice as above required shall be given to the Engineer prior to the time that the Contractor commences



performance of the Work giving rise to the potential claim for additional compensation, if based on an act or failure to act by the Engineer, or in all other cases within ten (10) days after the happening of the event, thing or occurrence giving rise to the potential claim.

(b) Construction Dispute

(1) The Contractor may submit a dispute to the Engineer concerning any matter for which a protest under Section 2.03, or a notice of potential claim, is filed. Such disputes, or potential claims, shall be submitted to the Engineer within sixty (60) days following the submission of said protest or notice, unless, due to the nature of the dispute or the uncompleted state of the Work, it is impracticable to determine the amount or the extent of the claim within such period. In such cases, disputes shall be submitted at the earliest practicable time in which such a determination can be made. In any event, all disputes shall be filed on or before the date of the final release by the Contractor as provided for in Section 7.09.

(2) All disputes shall be in writing and shall set forth clearly and in detail, for each item of additional compensation requested, the reasons for the dispute, reference to applicable provisions of the Specifications, the nature and the amount of the cost involved, the computations used in determining such costs, all pertinent factual data and all the documents necessary to substantiate the dispute. The Contractor shall maintain complete and accurate records of the cost or any portion of the Work for which additional compensation is claimed, and shall provide the Engineer with copies thereof, as required. The Engineer shall provide a written decision to the dispute or potential claim as soon as practicable but not later than 30 days following receipt thereof.

(c) Resolution of Construction Claims

(1) To the extent that the Contractor disputes the Engineer's Written Decision issued pursuant to Section 4.07(b)(2), or to the extent the Engineer fails to issue a timely written decision, the Contractor may file a written claim, as defined by Public Contract Code section 9204(c)(1), with the City including reasonable documentation to support the claim. Upon receipt of the claim, the City shall conduct a reasonable review of the claim, and within a period not to exceed 45 days, the City shall provide the Contractor with a written statement identifying what portion of the claim is disputed and what portion is undisputed. The time in which the City must provide a written statement may be extended by mutual agreement of the parties as specified by Public Contract Code section 9204(d)(1)(C). The City shall pay any undisputed portion of the claim within 60 days after issuance of its written statement.

(2) Claims submitted by the Contractor shall be accompanied by a notarized certificate containing the following language:

Under the penalty of law for perjury or falsification and with specific reference to the California False Claims Act, Government Code section 12650, et. seq., the undersigned,

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Company)

hereby certifies that the claim for the additional compensation and time, if any, made herein for the work on this contract is a true statement of the actual costs incurred and time sought, and is fully documented and supported under the contract between parties.

Dated: \_\_\_\_\_

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

Subscribed and sworn before me this \_\_\_\_ day

of \_\_\_\_\_

\_\_\_\_\_

Notary Public

My commission expires \_\_\_\_\_

Failure to submit the notarized certificate will be sufficient cause for denying the claim.

Any claim for overhead type expenses or costs, in addition to being certified as stated above, shall be supported by an audit report of any independent Certified Public Accountant. Any such overhead claim shall also be subject to audit by the City at its discretion.

Any costs or expenses incurred by the City in reviewing or auditing any claims that are not supported by the Contractor's cost accounting or other records shall be deemed to be damages incurred by the City within the meaning of the California False Claims Act.

(3) Meet And Confer Regarding Unresolved Claims. If the Contractor disputes the City's written statement issued pursuant to Section 4.07(c)(1) or if the City fails to issue a timely written response, the Contractor 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 City shall schedule a meet and confer conference within 30 days for settlement of the dispute. The meet and confer conference shall be attended by senior executives of the parties who have authority to settle the controversy. Within 10 business days following the conclusion of the meet and confer conference, the City shall provide the Contractor with a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. The City shall pay any undisputed portion of the claim within 60 days after it issues its written statement.

(4) Mediation. If the Contractor disputes, in writing, any portion of the City's written statement as issued under Section 4.07(c)(3), the disputed items shall be submitted to nonbinding mediation according to the provisions of Public Contract Code section 9204(d)(2), and any costs of mediation shall be allocated as set forth in that section. Upon receipt of a claim, the City and the Contractor may agree to waive, in writing, mediation.

(5) Failure to Respond or Pay. If the City fails to timely respond to a claim from the Contractor or otherwise fails to meet the time requirements of Public Contract Code section 9204, the claim shall be deemed rejected in its entirety. Additionally, amounts not timely paid in the manner required by Public Contract Code section 9204 shall bear interest at 7 percent per annum.

(6) Subcontractor Claims. If a Subcontractor or a lower tier Subcontractor lacks legal standing to assert a claim against the City because privity of contract does not exist, the Contractor may present to the City a claim on behalf of the Subcontractor or lower tier Subcontractor pursuant to Public Contract Code section 9204(d)(5).

## **2.08. CIVIL ACTION PROCEDURES**

(a) Alternative Dispute Resolution of Claims of \$375,000.00 or Less.

(1) Claims Less Than \$375,000.00. Notwithstanding any other provision herein but after compliance with the provisions of Public Contract Code section 9204 as set forth in Section 4.07, claims of \$375,000.00 or less shall be resolved pursuant to the alternative dispute resolution procedures set forth in Public Contract Code section 20104 *et seq.* "Claim" for this purpose means a separate demand by the Contractor for a time extension, payment of money or damages arising from work done by or on behalf of the Contractor pursuant to the Contract, for which payment is expressly provided, or the Contractor is otherwise entitled to, or an amount the payment of which is disputed by the City.

(2) Submission of Claims Less than \$375,000.00. The Contractor shall submit its claim of \$375,000.00 or less to the City in writing, within the time frames established under paragraph 4.07, but no later than before the final payment is made. The City shall respond within the time provided by statute. If the Contractor disagrees with the response or the City fails to respond within the time permitted, the Contractor shall notify the City of the disagreement in writing within fifteen (15) days from the date of the response or expiration of the time permitted to respond and demand a meet-and-confer conference. The City shall schedule a meet-and-confer conference within thirty (30) days of the demand. The meet and confer conference shall be attended by senior executives of the parties who have authority to settle the controversy. If not resolved at the meet-and-confer conference, the Contractor may initiate a civil action as set forth in Public Contract Code section 20104 *et seq.*, including but not limited to compliance with applicable Government Code provisions.

(3) Time Limits Not Extended. Nothing in subdivision (a) of Public Contract Code section 20104.2 shall extend the time limit or supersede the notice requirements provided in this Contract for filing claims by the Contractor.

(b) Alternative Dispute Resolution of Claims in Excess of \$375,000.00.

As a condition precedent to the initiation of litigation, disputes in excess of a total value of \$375,000.00 shall first be submitted to the claims procedures set forth in Sections 4.06 and 4.07.

## **2.09. GUARANTEE**

(a) In addition to warranties, representations and guarantees stated elsewhere in the Contract Documents, the Contractor unconditionally guarantees all materials and workmanship furnished hereunder, and agrees to replace the same at its sole cost and expense, and to the satisfaction of the Engineer, any and all materials which may be defective or improperly installed.

(b) The Contractor shall repair or replace to the satisfaction of the Engineer any or all such work that may prove defective in workmanship or materials, ordinary wear and tear excepted, together with any other work, which may be damaged or displaced in so doing.

(c) In the event of failure to comply with the above stated conditions within a reasonable time, the City is authorized to have the defect repaired and made good at the expense of the Contractor who will pay the costs and charges therefore immediately upon demand, including any reasonable management and administrative costs, and engineering, legal and other consultant fees incurred to enforce this section.

(d) The signing of the Contract by the Contractor shall constitute execution of the above guarantees. Except as otherwise provided in this Contract, the guarantees and warranties shall remain in effect for a period of one (1) year after final Acceptance of the Work by the City.

## SECTION 3 CONTROL OF WORK

### 3.01. AUTHORITY OF ENGINEER

(a) The Engineer is the representative of the City and has full authority to interpret the Contract Documents, to conduct the construction review and inspection of the Contractor's performance, and to decide questions, which arise during the course of the Work and the Engineer's decisions on these matters, shall be final and conclusive. The Engineer has the authority to reject all work and materials, which do not conform to the Contract Documents, and has the authority to stop the Work whenever such stoppage may be necessary to insure the proper execution of the Contract. The Engineer's failure to stop the Work shall not obligate the City to accept defective or otherwise unacceptable work or otherwise affect the Engineer's or City's authority to reject work for any reason set forth in the Contract Documents.

(b) If at any time the Contractor's work force, tools, plant or equipment appear to the Engineer to be insufficient or inappropriate to secure the required quality of work or the proper rate of progress, the Engineer may order the Contractor to increase their efficiency, improve their character, to augment their number or to substitute other personnel, new or additional tools, plant or equipment, as the case may be, and the Contractor shall comply with such order. Neither the failure of the Engineer to demand such increase of efficiency, number, or improvement, nor the compliance by the Contractor with the demand, shall relieve the Contractor of its obligation to provide quality work at the rate of progress necessary to complete the Work within the specified time.

(c) The Engineer may authorize minor variations in the work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Time. These may be accomplished by a Field Order. Contractor shall comply promptly with all Field Orders. If the Engineer and Contractor are unable to agree on entitlement or on the amount or extent, if any, of any adjustment in the Contract Price or Contract time, or cost, as a result of a Field Order, a claim may be made therefor pursuant to [Section 2.07](#).

(d) Any order given by the Engineer, not otherwise required by the Contract Documents to be in writing shall, on request of the Contractor, be given or confirmed by the Engineer in writing.

(e) Whenever work, methods of procedure, or any other matters are made subject to direction or approval, such direction or approval will be given by the Engineer.

### 3.02. DRAWINGS

(a) Drawings furnished herewith are for bidding purposes. The Engineer will furnish the Contractor, free of charge, copies of full size Drawings which are reasonably necessary for the execution of the Work. The Contractor shall have no claim for excusable delay on account of the failure of the Engineer to deliver such Drawings, unless the Engineer shall have failed to deliver the same within two weeks after receipt of written demand therefore from the Contractor. The Contractor shall keep one copy of said Drawings, in good order, available to the Engineer and the Engineer's representatives, and convenient to the working site.

(b) If the Contractor, in the course of the Work, finds any discrepancy between the Drawings and the physical condition of the locality, or any errors or omissions in the Drawings,

or in the layout as given by points and instructions, it shall be the Contractor's duty to inform the Engineer in writing, and the Engineer will promptly verify the same.

Any work done after such discovery, until authorized, will be done at the Contractor's risk. All Drawings, Specifications, and copies thereof furnished by the Engineer are the property of the Engineer and shall not be reused on other work and, with the exception of the signed Contract sets, are to be returned to the Engineer, on request, at the completion of the Work. All models are the property of the City.

(c) The Drawings shall be supplemented by such Shop Drawings prepared by the fabricator and/or supplier and Working Drawings prepared by the Contractor as are necessary to adequately control the Work. No changes shall be made by the Contractor in any Shop or Working Drawings after they have been reviewed by the Engineer, if the Engineer deems that no further submittals are necessary. The Contractor shall not commence the layout, purchase, fabrication, or construction of any work for which Shop or Working Drawings are required until Engineer has reviewed the specifications and drawings and has indicated in writing no further submittals are required for compliance with the Contract Documents.

(d) Shop and Working Drawings for any structure shall include, but not be limited to, detail design calculations, fabrication and installation drawings, lists, graphs, operating instructions, etc., which shall be reviewed and accepted by the Engineer before any such work is performed.

(e) Shop and Working Drawings will be required for cribs, cofferdams, falsework, centering and form work and for other temporary work and methods of construction the Contractor proposes to use. Such Drawings shall be subject to the review and Acceptance of the Engineer insofar as the details affect the character of the finished work, but details of design will be left to the Contractor who shall be responsible for the successful construction of the Work.

(f) Contractor agrees that Shop and/or Working Drawings processed by the Engineer are not Change Orders; that the purpose of these Drawings submitted by the Contractor is to demonstrate to the Engineer that the Contractor understands the design concept, that the Contractor demonstrates its understanding by indicating which equipment and material the Contractor intends to furnish and by detailing the fabrication methods it intends to use. It is expressly understood, however, that favorable review of the Contractor's Shop and Working Drawings shall not relieve the Contractor of any responsibility for accuracy of dimensions and details, or for mutual agreements of dimensions and details. It is mutually agreed that the Contractor shall be responsible for agreement and conformity of its Drawings with the Specifications. Contractor further agrees that if deviations, discrepancies or conflicts between Shop and/or Working Drawings and Specifications are discovered either prior to or after the Drawings are processed by the Engineer, the Specifications shall control and shall be followed.

(g) Unless otherwise stated, the Engineer shall have thirty (30) days from the date of receipt of Shop and/or Working Drawings for review.

(h) Full compensation for furnishing all Shop and/or Working Drawings shall be considered as included in the prices paid for the Contract items of work to which such drawings relate and no additional compensation will be allowed therefore. Any cost related to the Engineer's review of any particular set of Shop and/or Working Drawings more than twice, due

to incompleteness or unacceptability, shall be borne by the Contractor, and the City reserves the right to withhold such costs from payments due the Contractor.

(i) All reasonable effort has been made to locate and delineate all known structures and facilities on the plans. Except as otherwise provided herein, the City of West Sacramento shall assume no responsibility for the completeness or accuracy of its delineation of underground utilities nor the existence of other buried objects which may be encountered, or which are not shown on the plans.

(j) The Contractor shall keep and maintain a clean set of plans for the project and shall record in red ink all changes, revisions, etc. made during the course of construction. These plans shall include all changes, revisions, etc. from the original plan complete with the exact sizes, locations, dimensions, elevations, etc. These plans shall be kept and maintained in a neat, clean and legible condition and shall be available for inspection at all times by the Engineer. The Contractor shall deliver these completed plans to the Engineer and the Engineer shall approve these plans prior to final Acceptance of the project by the City.

### **3.03. CONSTRUCTION STAKING AND SURVEYS**

The City will provide one set of construction stakes and benchmarks as it deems necessary to establish lines and grades required for the completion of the site work specified in the Contract. The Contractor shall notify the Engineer a minimum of seven (7) days in advance of the time work is to begin on any portion of the project that may require construction staking to be provided by the City. The Contractor shall make all other surveys necessary for the completion of the Work.

Alternatively, the Engineer may provide the Contractor with drawings showing benchmarks and reference points as it deems necessary to establish lines and grades required for the completion of the site work specified in the Contract Documents. The Contractor shall make or furnish all surveys and set all construction stakes necessary for the completion of the work.

Stakes and marks set by the City or Engineer shall be carefully preserved by the Contractor. The Contractor shall be charged for the cost of replacing or restoring the stakes and marks, which are destroyed or damaged by Contractor's operation. This charge will be deducted from any monies due or to become due to the Contractor under the Contract.

### **3.04. PERMITS AND REGULATIONS**

Permits and licenses, of a temporary nature, necessary for the prosecution of the Work shall be secured and paid for by the Contractor. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the City unless otherwise specified.

The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the Work as shown on the plans and described in the Specifications. Contractor shall promptly notify the Engineer in writing of any specification at variance therewith. In such instances, any necessary changes shall be adjusted as provided in the Contract for changes in the Work. If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules, and regulations and without such notice to the Engineer, Contractor shall bear all costs arising therefrom.

### **3.05. CONFORMITY WITH CONTRACT DOCUMENTS AND ALLOWABLE DEVIATIONS**

Work and materials shall conform to the lines, grades, cross sections, dimensions and material requirements, including tolerances, shown on Contract Documents. Although measurement, sampling, and testing may be considered evidence as to such conformity, the Engineer shall be the sole judge as to whether the Work or materials deviate from the Contract Documents. The Engineer's decision as to any allowable deviations therefrom shall be final and conclusive.

### **3.06. COORDINATION AND INTERPRETATION OF CONTRACT DOCUMENTS**

(a) Should it appear that the Work to be done or any of the matters relative thereto are not sufficiently detailed or explained in the Specifications and Plans, the Contractor shall apply to the Engineer for such further explanations as may be necessary and shall conform to them as part of the Contract. In the event of any doubt or question arising respecting the true meaning of the Specifications and Plans, reference shall be made to the Engineer, whose decision thereon shall be final and conclusive.

(b) Any reference made in the Specifications and Plans to any specification, standard, method, or publication of any scientific or technical society or other organization shall, in the absence of a specific designation to the contrary, be understood to refer to the specification, standard, method, or publication in effect as of the date that the Work is advertised for Bids.

### **3.07. SUBCONTRACTORS**

(a) The attention of the Contractor is directed to the provisions of California Public Contract Code sections 4100-4113 regarding subcontracting and said provisions are by this reference incorporated herein and made a part hereof.

(b) Each subcontract shall contain a suitable provision for the suspension or termination thereof should the Work be suspended or terminated or should the Subcontractor neglect or fail to conform to every provision of the Contract Documents insofar as such provisions are relevant. The Contractor shall be fully responsible to the City for the acts or omissions of the Contractor's Subcontractors and of the persons either directly or indirectly employed by the Contractor. Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and the City. If a legal action, including arbitration and litigation, against the City is initiated by a Subcontractor or Supplier, the Contractor shall reimburse the City for the amount of legal, engineering and all other expenses incurred by the City in defending itself in said action.

(c) The City and the Engineer reserve the right to approve all Subcontractors.

Such approval shall be a consideration to the awarding of the Contract and unless notification to the contrary is given to the Contractor prior to the signing of the Contract, the list of Subcontractors which is submitted with the Contractor's proposal will be deemed to be acceptable. Contractor shall not, without the written consent of the City, subcontract the whole of the Work.

### **3.08. COOPERATION OF CONTRACTORS**

(a) Should construction be under way by other forces or by other contractors within or adjacent to the limits of the Work specified or should work of any other nature be under way



by other forces within or adjacent to said limits, the Contractor shall cooperate with all such other contractors or other forces to the end that any delay or hindrance to their work will be avoided. The right is reserved to perform other or additional work at or near the site (including material sources) at any time, by the use of other forces.

(b) When two or more contractors are employed on related or adjacent work, each shall conduct its operation in such a manner as not to cause any unnecessary delay or hindrance to the other. Each Contractor shall be responsible to the other for all damage to work, to persons or property caused to the other by its operations, and for loss caused the other due to unnecessary delays or failure to finish the work within the time specified for completion.

### **3.09. SUPERINTENDENCE**

(a) The Contractor shall designate in writing, before starting work, an individual as authorized representative who shall have the authority to represent and act for the Contractor. This authorized representative shall be present at the Site of the Work at all times while work is actually in progress on the Contract. When the Work is not in progress and during periods when the Work is suspended, arrangements acceptable to the Engineer shall be made for any emergency work, which may be required.

(b) The Contractor is solely responsible, at all times, for the superintendence of the Work and for its safety and progress.

(c) Whenever the Contractor or its authorized representative is not present on any particular part of the Work where it may be desired to give direction, orders will be given by the Engineer, which shall be received and obeyed by the superintendent or foreman who may have charge of the particular work in reference to which the orders are given.

(d) Any order given by the Engineer, not otherwise required by the Specifications to be in writing, will on request of the Contractor, be given or confirmed by the Engineer in writing.

### **3.10. INSPECTION OF WORK**

(a) Unless otherwise provided, all equipment, materials, and work shall be subject to inspection and testing by the Engineer. The Engineer will observe the progress and quality of the Work and determine, in general, if the Work is proceeding in accordance with the intent of the Contract Documents. The Engineer shall not be required to make comprehensive or continuous inspections to check the quality of the Work. The Engineer shall not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work. Visits and observations made by the Engineer shall not relieve the Contractor of Contractor's obligation to conduct comprehensive inspections of the Work and to furnish proper materials, labor, equipment and tools, and perform acceptable work, and to provide adequate safety precautions, in conformance with the intent of the Contract.

(b) Whenever the Contractor varies the period during which work is carried on each day, the Contractor shall give due notice to the Engineer so that proper inspection may be provided. Any work done in the absence of the Engineer shall be subject to rejection. Proper facilities for safe access for inspection to all parts of the Work shall at all times be maintained for the necessary use of the Engineer and other agents of the City, and agents of the federal, state, or local governments at all reasonable hours for inspection by such agencies to ascertain compliance with laws and regulations.

(c) One or more inspectors may be assigned to observe the Work by the Engineer and to act in matters of construction under this Contract. It is understood that inspectors shall have the power to issue instructions and make decisions within the limitations of the authority of the Engineer. Such inspection shall not relieve the Contractor of the Contractor's obligation to conduct comprehensive inspections of the Work, to furnish proper materials, labor, equipment and tools, and perform acceptable work, and to provide adequate safety precautions in conformance with the intent of the Contract.

(d) The Engineer and the Engineer's representatives shall at all times have access to the Work wherever it is in preparation or progress, and the Contractor shall provide safe and convenient facilities for such access and for inspection. If the Specifications, the Engineer's instructions, laws, ordinances, or any public authority require any material, equipment or work to be specifically tested or approved, the Contractor shall give the Engineer timely notice of its readiness for inspection, and if the inspection is by an authority other than the City, of the time fixed for inspection. Inspections by the Engineer will be made promptly and, where practicable, at the source of supply.

(e) Work performed without inspection may be required to be removed and replaced under proper inspection. In such instances, the entire cost of removal and replacing, including the cost of City-furnished materials used in the Work, shall be borne by the Contractor, regardless of whether or not the Work exposed is found to be defective. Examination of questioned work, other than that installed without inspection, may be ordered by the Engineer and, if so ordered, the Work must be uncovered by the Contractor. If such work is found to be in accordance with the Contract Documents, the City will pay the cost of re-examination and replacement. If such work is found to be not in accordance with the Contract Documents, the Contractor shall pay such cost, unless the Contractor can show that the defect in the Work was caused by another Contractor, and in that event the City will pay such costs.

(f) The inspection of the Work shall not relieve the Contractor of the Contractor's obligation to fulfill the Contract as herein prescribed, or in any way alter the standard of performance provided by the Contractor, and defective work shall be made good and unusable materials may be rejected, notwithstanding that such work and materials have been previously overlooked by the Engineer and accepted or estimated for payment. If the Work or any part thereof shall be found defective, the Contractor shall, within ten (10) calendar days, make good such defect in a manner satisfactory to the Engineer. If the Contractor fails to make ordered repairs of defective work or to remove the condemned materials from the Work within ten (10) calendar days after written direction by the Engineer, the City may make the ordered repairs, or remove the condemned materials, and deduct the cost thereof from any monies due the Contractor.

(g) The Contractor shall furnish promptly, without additional charge, all facilities, labor and materials reasonably needed by the Engineer for performing all inspection and tests. Contractor shall be charged with any additional cost of inspection when material and workmanship are not ready at the time specified by the Contractor for its inspection.

(h) Where any part of the Work is being done under an encroachment permit or building permit, or is subject to federal, state, county or city codes, laws, ordinances, rules or regulations, representatives of the government agency shall have full access to the Work and shall be allowed to make any inspection or tests in accordance with such permits, codes, laws, ordinances, rules, or regulations. If advance notice of the readiness of the Work for inspection by the governing agency is required, the Contractor shall furnish such notice to the appropriate agency.

(i) The Engineer may inspect the production of material, or the manufacture of products at the source of supply. Plant inspection, however, will not be undertaken until the Engineer is assured of the cooperation and assistance of both the Contractor and the material producer. The Engineer or the Engineer's authorized representative shall have free entry at all times to such parts of the plant as concerns the manufacture or production of the materials. Adequate facilities shall be furnished free of charge to make the necessary inspection. The City assumes no obligation to inspect materials at the source of supply.

### **3.11. TESTS**

The Contractor shall perform, at the Contractor's own expense, all tests specified or required by the Specifications. The Engineer may perform such tests as the Engineer deems necessary to determine the quality of work or compliance with Contract Documents. The Contractor shall furnish promptly without additional charge all facilities, labor, and material reasonably required for performing safe and convenient tests as may be required by the Engineer. All tests by the Engineer will be performed in such a manner as will not unnecessarily delay the Work. The Contractor shall not be required to reimburse the City for tests performed by the City or Engineer. If samples of materials are submitted which fail to pass the specified tests, the Contractor shall pay for all subsequent tests.

### **3.12. REMOVAL OF REJECTED AND UNAUTHORIZED WORK AND MATERIALS**

(a) All work or materials, which have been rejected, shall be remedied, or removed and replaced by the Contractor in an acceptable manner and no compensation shall be allowed the Contractor for such removal, replacement, or remedial work.

(b) Any work done beyond the lines and grades shown on the plans or established by the Engineer or any Extra Work done without written authority will be considered as unauthorized work and will not be paid for. Upon order of the Engineer, unauthorized work shall be remedied, removed, or replaced at the Contractor's expense.

(c) Upon failure of the Contractor to comply with any order of the Engineer made under this section, the City may cause rejected or unauthorized work to be remedied, removed, or replaced, and may deduct the costs therefore from any monies due or to become due the Contractor.

### **3.13. DEDUCTIONS FOR UNCORRECTED WORK**

If the Engineer deems it inexpedient to correct work damaged or not done in accordance with the Contract, an equitable deduction from the Contract price shall be made therefore, and such sum may be withheld by the City from Contractor's payment.

### **3.14. EQUIPMENT AND PLANTS**

(a) Only equipment and plants suitable to produce the quality of work and materials required will be permitted to operate on the Project.

(b) Plants will be designed and constructed in accordance with general practice for such equipment and shall be of sufficient capacity to insure the production of sufficient material to carry the Work to completion within the time limit.

(c) The Contractor shall provide adequate and suitable equipment and plants to meet the above requirements, and when ordered by the Engineer, shall remove unsuitable

equipment from the Work and discontinue the operation of unsatisfactory plants. Contractor shall, upon request of the Engineer, submit one or more lists identifying, by make, model number, Contractor 's identification number and empty gross weight, each piece of operable equipment used for the Work. Contractor shall, upon request of the Engineer, submit documentation establishing that any measuring device used for the Work has been tested and properly approved under California Test 109.

(d) In the case of termination of this Contract before its completion for any cause whatsoever, the Contractor, if notified to do so by the City, shall promptly remove any part or all of its equipment and supplies from the property of the City. If the Contractor fails to do so, the City shall have the right to remove such equipment and supplies at the expense of the Contractor.

### **3.15. CHARACTER OF WORKER**

If any Subcontractor, or person employed by the Contractor or any Subcontractor fails or refuses to carry out the directions of the Engineer or appears to the Engineer to be incompetent or to act in a disorderly or improper manner, said person shall be removed from the Project immediately on the requisition of the Engineer. That person shall not again be employed on the Work. Such discharge shall not be the basis for any claim for compensation or damages against the City, or any of its officers or agents.

### **3.16. SEPARATE CONTRACTS**

(a) The City reserves the right to let other contracts in connection with this Work. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate Contractor's work with the other Contractor 's work.

(b) If any part of the Contractor's work depends on proper execution or results upon the Work of any other Contractor , the Contractor shall inspect and promptly report to the Engineer any defects in such work that render it unsuitable for such proper execution and results. The Contractor's failure to inspect and report shall constitute an Acceptance of the other Contractor 's work as fit and proper for the reception of the Contractor's work, except as to defects which may develop in the other Contractor 's work after the execution of the Contractor's work.

(c) To insure the proper execution of Contractor's subsequent work, the Contractor shall measure work already in place and shall at once report to the Engineer any discrepancy between the executed work and the Drawings.

### **3.17. ASSIGNMENT**

The Contractor shall not assign the Contract or sublet it as a whole or in part without the written consent of the City, nor shall the Contractor assign any monies due, or to become due to the Contractor hereafter without the prior written consent of the City.

### **3.18. USE OF COMPLETED PORTIONS, RIGHT TO OPERATE UNSATISFACTORY EQUIPMENT OR FACILITIES**

(a) The City may, at any time, and from time to time, during the performance of the Work, enter the Work Site for the purpose of installing any necessary work by City labor or other contracts, and for other purpose in connection with the installation of facilities. In doing so, the

City shall endeavor not to interfere with the Contractor and the Contractor shall not interfere with other work being done by or on behalf of the City.

(b) If, prior to completion and final Acceptance of all the Work, the City takes possession of any structure or facility (whether completed or otherwise) comprising a portion of the Work with the intent to retain possession thereof (as distinguished from temporary possession contemplating the return to the Contractor), then, while the City is in possession of the same, the Contractor shall be relieved of liability for loss or damage to such structure other than that resulting from the Contractor's fault or negligence. Such taking of possession by the City shall not relieve the Contractor from any provisions of this Contract regarding such structure, other than to the extent specified in the preceding sentence, nor shall such taking constitute a final Acceptance of such structure or facility.

(c) If, following installation of any equipment or facilities furnished by the Contractor, defects requiring correction by the Contractor are found, the City shall have the right to operate such unsatisfactory equipment or facilities and make reasonable use thereof until the equipment or facilities can be shut down for correction of defects without injury to the City.

### **3.19. LANDS FOR WORK, RIGHT-OF-WAY CONSTRUCTION ROADS**

(a) The City will provide the lands, easements, right-of-way, and/or encroachment permits necessary or other rights to enter and work on lands necessary for the performance of the Work. Other permits and licenses are addressed by Section 3.04. Should the Contractor find it advantageous to use any additional land for any purpose whatever, the Contractor shall provide for the use of such land at its expense. The Engineer shall be furnished with a copy of written agreements or otherwise be notified in writing of additional working space which is acquired. Nothing herein contained and nothing marked on the Plans shall be interpreted as giving the Contractor exclusive occupancy of the territory provided by the City. When two or more contracts are being executed at one time on the same or adjacent land in such a manner that work on one contract may interfere with that on another, the Engineer shall decide which Contractor shall cease work, and which shall continue, or whether the work on both contracts shall progress at the same time and in what manner, and the decision of the Engineer shall be final and binding. When the territory of one contract is the necessary or convenient means of access for the performance of another contract, such privilege of access or any other reasonable privilege may be granted by the Engineer to the Contractor so desiring, to the extent, amount, in the manner, and at the time permitted. No such decision as to the method or time of conducting the Work or the use of territory shall be the basis of any claim for delay or damage.

(b) Lands, easements or rights-of-way to be furnished by the City for construction operations will be specifically shown on the Plans.

(c) The Contractor shall construct and maintain all roads necessary to reach the various parts of the Work and for the transportation thereto of construction material and personnel. The cost of constructing and maintaining such roads shall be borne by the Contractor.

### **3.20. CITY'S RIGHT TO AUDIT AND PRESERVATION OF RECORDS**

(a) The Contractor shall maintain books, records and accounts of all costs in accordance with generally accepted accounting principles and practices. The City and its

authorized representatives shall have the right to audit the books, records and accounts of the Contractor under any of the following conditions:

(1) The Contract is terminated for any reason in accordance with the provisions of the Contract Documents in order to arrive at equitable termination costs;

(2) In the event of a disagreement between the Contractor and the City over the amount due the Contractor under the terms of the Contract;

(3) To check or substantiate any amounts invoiced or paid which are required to reflect the costs of the Contractor, or the Contractor's efficiency or effectiveness under this Contract or in connection with extras, changes, claims, additions, backcharges, or others, as may be provided for in this Contract;

(4) If it becomes necessary to determine the City's rights and the Contractor's obligations under the Contract or to ascertain facts relative to any claim against the Contractor which may result in a charge against the City;

(5) To determine any difference in cost occasioned by a permissible substitution;

(6) And/or for any other reason in the City's sole judgment.

(b) Contractor shall provide the City (or its representatives), unlimited, reasonable access during working hours to the Contractor's books and records. The City's audit rights shall be liberally construed in the City's favor.

(c) The Contractor, from the effective date of final payment or termination hereunder, shall preserve and make available to the City for a period of three (3) years thereafter, at all reasonable times at the office of the Contractor (but without any charge to the City), all its books, records, documents, photographs, micro-photographs, and other evidence bearing on the costs and expenses of the Contractor under this Contract and relating to the Work hereunder.

(d) The City will make all payments required of it under this Contract subject to audit, under circumstances stated above, which audit may be performed at the City's option, either during the Contract time period or during the record retention time period. Regardless of authorization, approval or acceptance, signatures or letters which are given by the City and are part of the City's control systems or are requested by the Contractor, the payments made under this Contract shall not constitute a waiver or agreement by the City that it accepts as correct the billings, invoices or other charges on which the payments are based. If the City's audit produces a claim against the Contractor, the City may pursue all its legal remedies even though it has made all or part of the payments required by this Contract.

(e) If any audit by the City or its representative discloses an underpayment by the City pursuant to the terms of the Contract Documents, the City shall have the duty to pay any amount found by the audit to be owed to the Contractor. If such audit discloses an overpayment, the Contractor shall have the obligation to reimburse the City for the amount of the overpayment. The City's right to claim reimbursement from the Contractor of any overpayment shall not be terminated or waived until three years after the completion of the City's audit or upon the termination of audit rights under subparagraph 3.20(f), whichever date is later. The obligation of the Contractor to make reimbursements hereunder shall not terminate except as provided by law.

(f) The City's right to audit and the preservation of records shall terminate at the end of three (3) years after the date final payment is made or termination of the Contract. The Contractor shall include this "Right to Audit and Preservation of Records" clause in all subcontracts issued by it and it shall require the same to be inserted by all lower tier Subcontractors in their subcontracts, for any portion of the work. Should Contractor fail to include this clause in any such contract or lower tier contract, or otherwise fail to insure the City's rights hereunder, Contractor shall be liable to the City for all costs, expenses and attorney's fees which the City may have to incur obtaining or attempting to obtain an audit or inspection of or the restoration of records which otherwise would have been available to the City from said persons under this clause. Such audit may be conducted by the City or its authorized representative.

## SECTION 4 CONTROL OF MATERIALS

### 4.01. MATERIALS

(a) Unless otherwise specifically stated in the Specifications, the Contractor shall furnish all materials necessary for the execution and completion of the Work. Unless otherwise specified, all materials shall be new and shall be manufactured, handled, and installed in a workmanlike manner to insure completion of the Work in accordance with the Contract Documents. The Contractor shall, upon request of the Engineer, furnish satisfactory evidence as to the kind and quality of materials.

(b) Where materials are to be furnished by the City, the type, size, quantity and location at which they are available will be stated in the Contract Documents.

(c) Manufacturers' warranties, guarantees, instruction sheets and parts listed, which are furnished with certain articles or materials incorporated in the Work, shall be delivered to the Engineer before Acceptance of the Contract.

### 4.02. STORAGE OF MATERIALS

Articles or materials to be incorporated in the Work shall be stored in such a manner as to insure the preservation of their quality and fitness for the Work, and to facilitate inspection.

### 4.03. TRADE NAMES AND ALTERNATIVES

Whenever a material, article, system or sub-system is specified or described by using the name and/or model of a proprietary product or trademark or the name of the manufacturer or vendor, the specified item shall establish the type, function, and quality required. It shall be understood that the words "or approved equivalent" are implied whether or not they follow the proprietary enumeration.

The City reserves the right to determine when proprietary items have no equivalency, and when uniformity of operations, interchangeability of parts, standard parts inventory, etc., are in the City's best interest.

Requests for review of equivalency will be considered upon submission of sufficient information as described herein, to allow complete review. Such requests shall not be accepted from anyone other than the Contractor. Such submission must be made prior to purchase, fabrication, manufacture or use of the equivalent items under consideration.

(a) **Contractor's Risk.** If the Contractor includes in its Bid or later proposes any material, product or equipment that the Contractor considers equivalent to that specified, the Contractor assumes all risk of any sort associated with Acceptance or rejection of proposed equivalent items. The Contractor shall have no right to make claim based upon Contractor's Bid that includes a proposed equivalent item(s) of work which resulted in a lower Bid amount for said item(s) or lower total bid.

(b) **Submission Requirements.** Each submission for equivalency review shall include:



(1) Justification for use of the proposed equivalent item(s), including evidence, as applicable, that Contract specified material, product or equipment is unobtainable or unobtainable within an acceptable time for contract completion;

(2) A description of the difference between specified item(s) and proposed equivalent item(s) and the comparative advantages and disadvantages of each;

(3) All relevant data addressing each specified parameter to show equivalency;

(4) A prediction of any effects the proposed change will have on operation and maintenance costs where applicable.

(c) Equivalency. An item will be considered equivalent to the item specified if it is equal to or better in:

(1) Design and strength in all sub-parts, quality, reliability and durability, operation, maintenance and serviceability, as applicable; and

(2) Specified parameters in performance in all respects for the specific function(s) indicated in the contract.

(d) Supplemental Requirements. Any tests required by the City to establish quality and performance standards shall be promptly conducted by or through the Contractor at no additional cost to the City. In addition, the Contractor shall:

(1) Submit any additional data requested by the Engineer for the equivalency review; and

(2) Satisfactorily accomplish all changes, including any Engineering associated with use of equivalent items, at no additional cost to the City.

(e) Equivalency Determinations. The Engineer shall be the sole judge as to equivalency determinations. The Engineer's decision shall be final. The Contractor shall have no right of appeal to any decision rejecting the equivalency of any item.

(f) Procedure.

(1) Data substantiating a request for a substitution of "an equal" item shall be submitted prior to the Award of the Contract pursuant to Section 3400 of the latest edition of the Public Contract Code.

(2) After the Bid opening, the apparent three low bidders shall have seven (7) calendar days to provide complete substantiating data for all product, material or system substitution requests. After this seven (7)-day period, the City may award the Contract to the apparent low bidder. In no event will product, material or system substitution requests submitted after the Award of Contract be considered. Failure to submit such substantiating data will result in the automatic rejection of the proposed substitution request. The City will have thirty (30) days to review the first ten (10) proposed substitution requests. For each additional five (5) product, material or system substitution requests over and above the initial ten (10), the City will have ten (10) additional days to review the proposed substitution requests.

(3) Each substitution request may include one alternate substitution. All alternate substitutions shall be submitted concurrently with substitution requests. Upon review by the City, proposed substitutions shall be returned to the Bidder marked either "accepted" or "rejected". The City shall only review alternative substitution requests if the primary substitution request is rejected. If a substitution request, and its alternative, is returned "rejected", no further substitution requests for that product, material or system will be allowed and the Bidder will provide the specified product, material or system.

(4) If, after all substitution requests have been processed, substitution requests by the apparent low Bidder are rejected by the City, the apparent low Bidder may elect not to execute the Contract. Under no circumstances, will bidders be allowed to alter their Bid Price as originally submitted. This election shall be made in writing no later than five (5) days following the receipt of the reviewed substitution requests. An election by the Bidder not to execute the Contract will result in the forfeiture of the bidder's Bid bond. If the apparent low Bidder elects not to continue, and the second low Bidder is awarded the Contract, the second low Bidder may then elect not to execute the Contract for the contract price shown on its Bid Form. Subsequent bidders shall have five (5) days following the receipt of the reviewed substitution requests and the Notice of Award in which to make their election. This process shall continue until one Bidder decides to continue with the Award of Contract process.

(5) The City may award the Contract at any time after the time for submitting substitution requests expires pursuant to subpart (2), above. In the event the Contract is awarded prior to acceptance/rejection of substitution requests, all outstanding substitution requests shall be reviewed by the City as provided above. If the apparent low Bidder elects not to execute the Contract, the Award of Contract to the apparent low Bidder shall be rescinded and the Contract awarded to the next apparent low bidder. All bidders electing not to execute the Contract expressly agree that the City shall incur no liability for such rescissions. As provided herein, "apparent low bidder" means the lowest responsive and responsible bidder.

#### **4.04. CERTIFICATES OF COMPLIANCE**

(a) A Certificate of Compliance shall be furnished prior to the use of any materials for which the Technical Specifications require that such a certificate be furnished. In addition, when so authorized in the Specifications, the Engineer may permit the use of certain materials or assemblies prior to sampling and testing if accompanied by a Certificate of Compliance. The Certificate of Compliance shall be signed by the manufacturer of the material or the manufacturer of assembled materials and shall state that the materials involved comply in all respects with the requirements of the Contract. A Certificate of Compliance shall be furnished with each lot of material delivered to the Work and the lot so certified shall be clearly identified in the Certificate.

(b) All materials used on the basis of a Certificate of Compliance may be sampled and tested at any time. The fact that material is used on the basis of a Certificate of Compliance shall not relieve the Contractor of responsibility for incorporating material in the Work which conforms to the requirements of the Contract Documents and any such material not conforming to such requirements will be subject to rejection whether in place or not.

(c) The City reserves the right to refuse to permit the use of material on the basis of a Certificate of Compliance.

(d) The form of the Certificate of Compliance and its disposition shall be as directed by the Engineer.

## SECTION 5

### LEGAL RELATIONS AND RESPONSIBILITY

#### 5.01. COMPLIANCE WITH LAWS – PERMITS, REGULATIONS, TAXES

The Contractor is an independent Contractor and shall, at the Contractor's sole cost and expense, comply with all laws, rules, ordinances and regulations of all governing bodies having jurisdiction over the Work, obtain all necessary permits and licenses therefore, pay all manufacturers' taxes, sales taxes, use taxes, processing taxes, and all federal and state taxes, insurance and contributions for social security and unemployment which are measured by wages, salaries or any remuneration paid to Contractor's employees, whether levied under existing or subsequently enacted laws, rules or regulations. The Contractor shall also pay all property tax assessments on materials or equipment used until Acceptance by the City. If any discrepancy or inconsistency is discovered in the Plans or Specifications, or in this Contract in relation to any such law, rule, ordinance, regulation, order or decree, the Contractor shall forthwith report the same to the Engineer in writing. The Contractor shall also protect, defend and indemnify the City, the Engineer, and all of the City's officers, agents, and servants against any claim or liability arising from or based upon the violation of any such law, rule, ordinance, regulation, order or decree, whether by the Contractor or its employees. Particular attention is called to the following:

(a) Without limitation, materials furnished and performance by Contractor hereunder shall comply with Safety Orders of the Division of Industrial Safety, State of California, Federal Safety regulations of the Bureau of Labor, Department of Labor; and any other applicable Federal regulations.

(b) The Contractor, upon request shall furnish evidence satisfactory to the City and Engineer that any or all of the foregoing obligations have been or are being fulfilled. The Contractor warrants to the City that it is licensed by all applicable governmental bodies to perform this Contract and will remain so licensed throughout the progress of the Work, and that Contractor has, and will have, throughout the progress of the Work, the necessary experience, skill and financial resources to enable the Contractor to perform this Contract.

(c) Contractor is required to insure that material safety data sheets (MSDSs) for any material requiring a material safety data sheet pursuant to any federal or state law are available in a readily accessible place on the Project premises. Contractor is also required to insure:

(1) The proper labeling of any substance brought onto the Project premise by Contractor or any Subcontractors and

(2) That the person(s) working with the material, or within the general area of the material, are appropriately informed about the hazards of the substance and follow proper handling and protection procedures.

(d) Contractor is required to comply with the provisions of California Health and Safety Code section 25249.5, *et seq.* (Prop. 65), which requires the posting and giving of notice to persons who may be exposed to any chemical known to the State of California to cause cancer.

## 5.02. PREVAILING WAGE

(a) The Contractor shall forfeit as penalty to the City the amount specified by law for each calendar day or portion thereof for each worker (whether employed by the Contractor or any Subcontractor) paid less than the stipulated prevailing rates for any work done under the Contract in violation of the provisions of the Labor Code and in particular, Section 1775 which is incorporated herein by reference. Copies of the current schedules for prevailing wages are on file in the City's office, and the contents of those schedules are included herein as if set forth in full.

(b) The City will not recognize any claims for additional compensation because of the payment of the wages set forth in these General Conditions. The possibility of wage increases is one of the elements to be considered by the Contractor in determining its proposal, and will not under any circumstances, other than delays caused by the City, the Engineer, or the City's agents, be considered as the basis of a claim against the City.

(c) The Contractor agrees to follow the instructions of the City's labor compliance officer until notified otherwise in writing by the City.

(d) The Director of the Department of Industrial Relations of the State of California has determined the general prevailing rate of wages of per diem wages in the locality in which the work is to be performed for each craft or type of worker needed to execute the Contract. Copies of the applicable prevailing wage rate determinations are made available to the Contractor and Subcontractor at the Pre-Job Conference Meeting. The Contractor shall post a copy of this document at the prevailing wages at each job site, along with a CMU work place poster, printed on 8 1/2" X 11" paper or larger, in accordance with California Code of Regulations, Title 8, section 16451(d).

## 5.03. PREVAILING WAGE RECORDS

(a) The Work is subject to monitoring and enforcement of prevailing wage requirements by the Department of Industrial Relations ("DIR") and the following provisions will apply:

(1) Contractor and Subcontractors shall maintain and furnish to the DIR, a certified copy of each weekly payroll (but no less often than monthly), with a statement of compliance signed under penalty of perjury. Such certified payroll reports in PDF form shall be transmitted electronically to the DIR after first registering at <http://www.dir.ca.gov/Public-Works/Certified-Payroll-Reporting.html>. The provisions of Labor Code section 1776 are incorporated herein by reference.

(2) The CITY and the DIR shall review, including by way of job site inspections, and, if appropriate, audit payroll records to verify compliance with the public works requirements of the Labor Code. The DIR will notify the Contractor or Subcontractor(s), as appropriate) of any noncompliance, in order for all such Contractor or Subcontractor(s) to correct the noncompliance.

(3) The City shall withhold payments when payroll records are delinquent or inadequate.

(4) The City shall withhold payments equal to the amount of underpayment and applicable penalties when, after investigation, it is established that underpayment has occurred.

(5) The City shall cooperate with the DIR and DLSE in any investigation of suspected violations of prevailing wage requirements.

(6) As directed by the Labor Commissioner, the City shall withhold Contract payments equal to the payments due or estimated to be due to the Contractor or Subcontractors whose payroll records are delinquent or inadequate, plus any additional amount that the Labor Commissioner has reasonable cause to believe may be needed to cover a back wage and penalty assessment against such Contractor or Subcontractors. The Contractor shall be required to withhold payments to a Subcontractor whose payroll records are delinquent or inadequate until the Labor Commissioner provides notice that the Subcontractor has cured such delinquency or deficiency.

(7) These payroll records shall be made available to the City's representatives. These records shall be maintained during the course of the Work. The Contractor and all Subcontractors shall make the certified payroll records available for inspection by City representatives upon request and shall permit such representatives to interview employees during the work hours on the job site.

(8) The Contractor shall be held entirely responsible for the prompt resolution of all non-compliances with the prevailing wage laws, including those pertaining to all Subcontractors and any lower tier Subcontractors.

(9) The Project will not be accepted as complete by the City nor final payment made until all items of non-compliance are corrected or until appropriate provision is made by depository agreement to assure the ultimate resolution and payment of any back wages that may be found due.

(b) A pre-construction conference shall be conducted before commencement of the Work with the Contractor and Subcontractors at which time the prevailing wage requirements will be reviewed and agreed to by all parties.

#### **5.04. LABOR DISCRIMINATION**

Attention is directed to Section 1735 of the Labor Code, which reads as follows: "A Contractor shall not discriminate in the employment of persons upon public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code. Every Contractor for public works who violates this section is subject to all the penalties imposed for a violation of this chapter."

#### **5.05. EIGHT-HOUR DAY LIMITATION**

(a) In accordance with the provisions of the Labor Code, and in particular, Sections 1810 to 1815 thereof, inclusive, eight hours labor shall constitute a day's work, and no worker, in the employ of said Contractor, or any Subcontractor, doing or contracting to do any part of the work contemplated by this Contract, shall be required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of those provisions; provided that subject to Labor Code section 1815, a worker may perform work in excess of either eight (8) hours per day or forty (40) hours during any one week upon compensation for all hours worked in excess of eight (8) hours per day or forty (40) hours during any one week at not less than one and one-half times the basic rate of pay.

(b) The Contractor and each Subcontractor shall also keep an accurate record showing the names and actual hours worked of all workers employed by them in connection with the Work. This record shall be open at all reasonable hours to the inspection of the City, State and Federal officers and agents. It is hereby further agreed that, the Contractor shall forfeit as a penalty to the City the sum of twenty-five dollars (\$25.00) for each worker employed in the performance of this Contract by the Contractor or by any of its Subcontractors for each calendar day during which such worker is required or permitted to labor more than eight (8) hours in and one calendar day and forty (40) hours in any one calendar week in violation of Sections 1810 through 1815.

#### **5.06. COMPLIANCE WITH STATE REQUIREMENTS FOR EMPLOYMENT OF APPRENTICES**

The Contractor's attention is directed to Section 1777.5 of the Labor Code. Provisions of said section pertaining to employment of registered apprentices are hereby incorporated by reference into these Specifications. As applicable, the Contractor or any Subcontractor employed by the Contractor in the performance of the Work shall take such actions as necessary to comply with the provisions of Section 1777.5.

#### **5.07. UNDERGROUND UTILITIES**

(a) In accordance with Government Code section 4215, the Contractor shall be compensated for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, and removing or relocating existing main or trunkline utility facilities which are not indicated in the Contract Plans and Specifications with reasonable accuracy, and for the equipment on the Project necessarily idled during such work, provided that the Contractor shall first notify the Engineer before commencing work on locating, repairing damage to, removing or relocating such utilities. Contractor shall not be assessed liquidated damages for delays in completing the Work when such delays are due to the failure of either the City or the owner of the utility to provide for removal or relocation of such utility facilities.

(b) The Contractor shall take all precautions necessary to protect the existing utilities within the project area. Any utilities damaged due to the Contractor's negligence shall be repaired or restored to their original condition at the Contractor's sole expense. Existing utilities shall be kept in service during the life of the Contract unless relocation, reconstruction, abandonment, or outage is specifically authorized by the Engineer.

(c) The Contractor shall provide and maintain such temporary supports as may be necessary to preserve the functions of the various utility systems. No wires, conduits and/or pipes shall be removed until all services therein have been made inoperable.

(d) The Contractor shall notify the Engineer and appropriate Regional Notification Center for operators of subsurface installations at least two (2) working days, but not more than fourteen (14) calendar days, prior to performing excavation or other work close to any underground pipeline, conduit, duct, wire and other structures. The Contractor shall provide updated information to the Notification Center as required and on a periodic basis. The Regional Notification Center includes but is not limited to the Underground Service Alert-Northern California (USA) at 1-800-642-2444.

(e) The Contractor is advised that the State of California does not participate in USA. The Contractor is required to notify Caltrans Permits Branch (916) 322-1297 for the location of State facilities.

(f) The Contractor shall not proceed with work until utility facilities involved have been located, disconnected, or otherwise adjusted by utility representatives.

(g) The City Utility Maintenance Division will make repairs to all water service laterals and water mains damaged by the Contractor during the course of construction unless directed otherwise by the Engineer. Except as otherwise provided in this section, the Contractor shall be required to pay all labor, material and equipment costs incurred by the City Utilities Maintenance Division for the repairs made to damaged water service laterals and water mains. The City will bill the Contractor for the repairs and the bills will be paid by the Contractor prior to either the next monthly progress payment or prior to the final payment, whichever comes first. The Contractor shall provide to the Engineer proof of payment of the repair bills prior to the issuance of either the monthly progress payment or final payment. The current labor and equipment rates for the City Utility Maintenance Division will be made available to the Contractor at the preconstruction conference. The City shall have the right to deduct the total amount of any unpaid City repair bill from the money due or to become due the Contractor.

#### **5.08. WATER POLLUTION**

The Contractor shall exercise every reasonable precaution to protect streams, lakes, reservoirs, and canals from pollution with fuels, oils, bitumens, calcium chloride, and other harmful materials and shall conduct and schedule Contractor's operations so as to avoid or minimize muddying and silting of said streams, lakes, reservoirs, and canals. Care shall be exercised to preserve vegetation beyond the limits of construction. The Contractor shall comply with Section 5650 of the California Fish and Game Code and all other applicable statutes and regulations relating to the prevention and abatement of water pollution.

#### **5.09. PAYMENT OF TAXES**

The Contract prices paid for the Work shall include full compensation for all taxes, which the Contractor is required to pay, whether imposed by federal, state, or local governments.

#### **5.10. PERMITS AND LICENSES**

The Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incident to the lawful prosecution of the work. All permits and licenses shall be obtained in sufficient time to prevent delays to the Work. The Contractor shall, at a minimum, possess and maintain the licenses and permits set forth in the Contract Provisions.

#### **5.11. PATENTS**

The Contractor shall assume all costs arising from the use of patented materials, equipment, devices, or processes used on or incorporated into the Work, and agrees to indemnify, defend and save harmless the City, the Engineer, and their duly authorized representatives, from all suits at law, or actions of every nature for, or on account of, the use of any patented materials, equipment, devices, or processes.

#### **5.12. PUBLIC CONVENIENCE**

This section defines the Contractor's responsibility with regard to convenience of the public and public traffic in connection with its operations.

(a) The Contractor shall so conduct its operations as to offer the least possible obstruction and inconvenience to the public. The Contractor shall have under construction no

greater length or amount of work than can be properly prosecuted with due regard to the rights of the public.

(b) Unless otherwise provided in the Contract Documents, all public traffic shall be permitted to pass through the Work with as little inconvenience and delay as possible. In order to expedite the passage of public traffic through or around the work, the Contractor shall install as appropriate signs, lights, flares, barricades, and other facilities for the sole convenience and direction of public traffic. Also, where directed by the Engineer, the Contractor shall provide and station competent flagpersons whose sole duties shall consist of directing the movement of public traffic through or around the Work. The cost of furnishing and installing such signs, lights, flares, barricades, and other facilities, and the cost of providing and stationing such flagpersons, all for the convenience and direction of public traffic, will be considered as included in the Contract price and no additional compensation will be allowed.

(c) Spillage resulting from hauling operations along or across any publicly traveled way shall be removed immediately by the Contractor at its expense.

(d) Construction operations shall be conducted in such a manner as to cause as little inconvenience as possible to abutting property owners.

(e) Convenient access to driveways, houses and buildings along the line of the work shall be maintained and temporary approaches to crossings or intersecting highways shall be provided and kept in good condition. When the abutting property owner's access across the right-of-way line is to be eliminated, or to be replaced under the Contract by other access facilities, the existing access shall not be closed until the replacement access facilities are usable.

(f) Water shall be supplied if ordered by the Engineer for the alleviation or prevention of dust nuisance as provided in the Contract Documents. Any water obtained from a fire hydrant within the City of West Sacramento shall be subject to a fire hydrant permit issued by the Engineering Division of the City of West Sacramento.

(g) Flagpersons and guards, while assigned to traffic control, shall perform their duties and shall be provided with the necessary equipment in accordance with the current "Instructions to Flagmen" of the California Department of Transportation. The equipment shall be furnished and kept clean and in good repair by the Contractor at its expense.

(h) All traffic control shall be in accordance with California Manual on Uniform Traffic Control Devices (California MUTCD), Part 6 and this Section 5.12.

(1) Traffic Control Plans. Traffic Control Plans shall be developed for the project to assure that adequate consideration is given to the safety and convenience of motorists, pedestrians, and workers during construction. The Traffic Control Plans shall include, but not be limited to, signing, pavement markings, construction scheduling, permanent barricades, methods and devices for delineation and channelization, placement and maintenance of devices, roadway lighting, traffic regulations, surveillance and inspection. The Traffic Control Plans shall be approved by the Engineer a minimum of two (2) working days prior to start of any work. Non-compliance with any stipulation of this section will be justification for the City to stop work.

(2) Traffic Control Devices and Procedures. Traffic control devices and procedures shall conform to the California Manual on Uniform Traffic Control Devices (California



MUTCD), Part 6 and this Section 5.12. Non-compliance with any stipulation of this section will be justification for the City to stop work.

(3) Elimination of On-Street Parking. The Contractor shall place notification for the elimination of on-street parking, if required, at least forty-eight (48) hours, but not more than seventy-two (72) hours prior to the start of work. The notification shall include the Contractor's phone number, the City of West Sacramento Community Development Department phone number (916) 617-4645, and the phrase "VEHICLES WILL BE TOWED PURSUANT TO CVC SECTION 22651 (L)". This notice shall be affixed to a Type II barricade that is placed in the lane of the road (max. 200 ft. spacing) used for on-street parking. No other location or method of placement is acceptable. The notification shall be in a form approved by the Engineer. Non-compliance with any stipulation of this section will be justification for the City to stop work.

(4) Lane Closures. All lane closures shall be included in the Traffic Control Plans, and shall both conform to Section 5.12(h)(2) above, and be approved by the Engineer. Total road closures will not be allowed for the Project.

(5) Measurement and Payment. Unless specifically shown as an item of work on the proposal form, all traffic control shall be considered included in other items of work and no additional compensation will be made for labor, materials or equipment needed.

### **5.13. CONTINUOUS OPERABILITY OF FACILITIES**

Absent written permission by the Engineer, the continuous operation of all existing facilities is required and shall in no way be affected by the Work.

### **5.14. SAFETY**

#### **(a) General**

(1) The Contractor shall be solely and completely responsible for the conditions of the job Site, including safety of all persons and property during performance of the Work. This requirement shall apply continuously and not be limited to normal working hours. Safety provisions shall conform to all applicable federal, state, and local laws, ordinances, and codes, and to the rules and regulations established by the California Division of Industrial Safety, and to other rules of law applicable to the Work.

(2) The services of the Engineer in conducting construction review of the Contractor's performance is not intended to include review of the adequacy of the Contractor's work methods, equipment, bracing or scaffolding or safety measures, in, on, or near the construction site, and shall not be construed as supervision of the actual construction nor make the Engineer or the City responsible for providing a safe place for the performance of work by the Contractor, Subcontractors, or suppliers; or for access, visits, use work, travel or occupancy by any person.

(3) The Contractor shall carefully instruct all personnel working in potentially hazardous work areas as to potential dangers and shall provide such necessary safety equipment and instruction as is necessary to prevent injury to personnel and damage to property. Special care shall be exercised relative to electrical work, work involving excavation and in sump pump work.

(4) All work and materials shall be in strict accordance with all applicable State, Federal and local laws, rules, regulations, and codes.

(5) Nothing in this Contract is to be construed to permit work not conforming to governing law. When Contract Documents differ from governing law, the Contractor shall furnish and install the higher standards called for without extra charge. All equipment furnished shall be grounded and provided with guards and protection as required by safety codes. Where vapor-tight or explosion-proof electrical installation is required by law, this shall be provided.

(6) The Contractor shall submit a safety plan and/or narrative description to the Engineer prior to commencement of the Work. This safety plan and/or narrative description shall describe all first aid, safety clothing, etc. to be used at the Project Site.

(b) Shoring and Trench Safety Plan

(1) Attention is directed to Section 832 of the Civil Code of the State of California relating to lateral and subjacent support, and the Contractor shall comply with this law.

(2) In accordance with Section 6705 of the State Labor Code, the Contractor shall submit to the City specific plans to show details of provisions for worker protection from caving ground. Not less than thirty (30) days before beginning excavation for any trench or trenches five feet or more in depth required under this Contract, the Contractor shall furnish to the Engineer Working Drawings of its trench safety plan. The trench safety plan Working Drawings shall be detailed plans showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground. If such plan varies from the shoring system standards established by the Construction Safety Orders of the California Division of Industrial Safety or the Federal Safety and Health Regulations for Construction of the Occupational Safety and Health Administration, Department of Labor, the plan shall be prepared by a registered civil or structural engineer. In no event shall the Contractor use a shoring, sloping, or protective system less effective than that required by said Construction Safety Orders, or less effective than that required by said Federal Safety Standards. Submission of this plan in no way relieves the Contractor from the requirement to maintain safety in all operations performed by the Contractor or its Subcontractors.

#### **5.15. BLASTING**

Except for exceptional circumstances, blasting shall be prohibited. Accordingly, Bids should be prepared on the basis that no blasting will be permitted. Should blasting be required and expressly approved by the City, the City will issue a Change Order for blasting work.

#### **5.16. INTOXICATING LIQUORS AND NARCOTICS**

The Contractor shall not sell, permit or suffer the introduction or use of intoxicating liquors or narcotics upon or about the Site.

#### **5.17. PROTECTION OF PERSONS AND PROPERTY**

(a) The Contractor shall take whatever precautions are necessary to prevent damage to all existing improvements, including above ground and underground utilities, trees, shrubbery that is not specifically shown to be removed, fences, signs, mailboxes, survey markers and monuments, buildings, structures, the City's property, adjacent property, and any other improvements or facilities within or adjacent to the work. If such improvements or property

are injured or damaged by reason of the Contractor's operations, they shall be replaced or restored, at the Contractor's expense, to a condition at least as good as the condition they were in prior to the start of the Contractor's operations.

(b) The Contractor shall adopt all practical means to minimize interference to traffic and public inconvenience, discomfort or damage. The Contractor shall protect against injury to any pipes, conduits or other structures crossing the trenching or encountered in the Work and shall be responsible for any injury done to such pipes or structures, or damage to property resulting therefrom. The Contractor shall support or replace any such structures without delay and without any additional compensation to the entire satisfaction of the Engineer. All obstructions to traffic shall be guarded by barriers illuminated at night. The Contractor shall be responsible for all damage to persons and property directly or indirectly caused by its operations and, under all circumstances, Contractor must comply with the laws and regulations of the State of California relative to safety of persons and property and the interruption of traffic and the convenience of the public within the respective jurisdictions.

(c) The Contractor is cautioned that it must replace all improvements in rights-of-way and within the public streets to a condition at least equal to what existed prior to the Contractor's entry onto the job.

(d) Type and time of construction required at any road subject to interference by the work will be determined by those authorities responsible for maintenance of said road. It shall be the responsibility of the Contractor to determine the nature and extent of all such requirements, including provision of temporary detours as required; however, the construction right-of-way obtained by the City at affected roadways will be adequate for provision of all required detours. As required at any road crossing, the Contractor shall provide all necessary flagpersons, guardrails, barricades, signals, warning signs and lighting to provide for the safety of existing roads and detours. Immediately after the need for temporary detours ceases, or when directed, the Contractor shall remove such detours and perform all necessary cleanup work, including replacement of fences, and removal of pavement. Included shall be all necessary replacement of existing roadway appurtenances, grading work, soil stabilization and dust control measures, as required and directed.

(e) The Contractor shall examine all bridges, culverts, and other structures over which it will move its materials and equipment, and before using them, Contractor shall properly strengthen such structures where necessary. The Contractor shall be responsible for any and all injury or damage to such structures caused by reason of its operations.

#### **5.18. RESPONSIBILITY FOR REPAIR OF FACILITIES**

All public or private facilities, including but not limited to, gravel surfacing at existing canals, structures, telephone cables, roadways, curbs, gutters, parking lots, private drives, levees and embankments for creeks, ponds and reservoirs disturbed during construction of the work shall be repaired and/or replaced by the Contractor to match facilities existing prior to construction. In addition, the Contractor shall be responsible for any settlement damage to such facilities or adjoining areas for a period of one year after Acceptance of such required facilities.

#### **5.19. CITY'S REPAIR**

In the event the Contractor refuses or neglects to make good any loss or damage for which it is responsible under this Contract, the City may itself or by the employment of others, make good any such loss or damage, and the cost and expense of doing so, including any reasonable engineering, legal and other consultant fees, and any costs of administrative and

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managerial services, shall be charged to the Contractor. Such costs and expenses may be deducted by the City from claims for payment made by the Contractor for work completed or remaining to be completed.

#### **5.20. ANTITRUST CLAIM ASSIGNMENT**

In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to this contract, the Contractor and all Subcontractors shall offer and agree to assign to the 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. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or subcontract. This assignment shall be made and become effective at the time the City tenders final payment to the Contractor, without further acknowledgement by the parties.

#### **5.21. WAIVER OF RIGHT TO RESCIND FOR MATERIAL BREACH**

The Contractor agrees that it can be adequately compensated by money damages for any breach of this Contract which may be committed by the City and hereby agrees that no default, act, or omission of the City or the Engineer, shall constitute a material breach of the Contract entitling the Contractor to cancel or rescind the provisions of this Contract or (unless the City shall so consent or direct in writing) to suspend or abandon performance of all or any part of the Work. The Contractor hereby waives any and all rights and remedies to which it might otherwise be or become entitled, save only its right to money damages.

#### **5.22. CONTRACTOR'S LICENSE NOTICE**

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO:

REGISTRAR CONTRACTORS' STATE LICENSE BOARD  
9821 BUSINESS PARK DRIVE  
SACRAMENTO, CALIFORNIA 95827

MAILING ADDRESS:  
P.O. BOX 26000  
SACRAMENTO, CALIFORNIA 95826

#### **5.23. HISTORICAL, SCIENTIFIC AND ARCHEOLOGICAL DISCOVERIES**

All articles of historical or scientific value, including but not limited to coins, fossils, and articles of antiquity which may be uncovered by the Contractor during the progress of work, shall become City property. Such findings shall be reported immediately to the Engineer who will determine the method of removal, where necessary, and the final disposition thereof.

#### **5.24. INSURANCE**

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by the Contractor, its agents, representatives, employees or Subcontractors. The cost of such insurance shall be included in the Contractor's bid.

(a) Neither the Contractor nor any Subcontractors shall commence any work until all required insurance has been obtained at their own expense. Such insurance must have the approval of the City as to limit, form, and amount, and shall be placed with insurers with a current A. M. Best's rating of no less than A-VII.

(b) Any insurance bearing on adequacy of performance shall be maintained after completion of the project for the full guarantee period.

(c) Prior to execution of the Contract, the Contractor shall furnish the City with original endorsements effecting coverage for all policies required by the Contract. The endorsements shall be signed by a person authorized by the insurer to bind coverage on its behalf. The endorsements are to be on forms provided or approved by the City. The City may require the Contractor or any Subcontractor to furnish complete certified copies of all insurance policies affecting the coverage required by the Contract.

(d) All of the Contractor's policies shall contain an endorsement providing that written notice shall be given to the City at least sixty (60) calendar days prior to termination, cancellation, or reduction of coverage in the policy.

(e) Any policy or policies of insurance that the Contractor elects to carry as insurance against loss or damage to its construction equipment and tools shall include a provision therein providing a waiver of the insurer's right to subrogation against the City and the Engineer.

(f) The requirements as to the types, limits, and the City's approval of insurance coverage to be maintained by the Contractor are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Contractor under the Contract.

(g) In addition to any other remedy the City may have, if the Contractor or any of the Subcontractors fails to maintain the insurance coverage as required in this section, the City may obtain such insurance coverage as is not being maintained, in form and amount substantially the same as required herein, and the City may deduct the cost of such insurance from any amounts due or which may become due the Contractor under this Contract.

(h) The Contractor and all Subcontractors shall, at their expense, maintain in effect at all times during the performance of work under the Contract not less than the following coverage and limits of insurance, which shall be maintained with insurers and under forms of policy satisfactory to the City. The maintenance by the Contractor and all Subcontractors of the following coverage and limits of insurance is a material element of this Contract. The failure of the Contractor or any Subcontractor to maintain or renew coverage or to provide evidence of renewal may be treated by the City as a material breach of this contract.

(1) Workers' Compensation and Employer's Liability Insurance

(i) Workers' Compensation

The Contractor and all Subcontractors shall maintain insurance to protect the Contractor or Subcontractor from all claims under Workers' Compensation and Employer's Liability Acts, including Longshoremen's and Harbor Workers' Act. Such coverage shall be maintained, in type and amount, in strict compliance with all applicable State and Federal statutes and regulations. The Contractor shall execute a certificate in compliance with Labor Code section 1861, on the form provided in the Contract Documents.

(ii) Claims Against City

If an injury occurs to any employee of the Contractor or any of the Subcontractors for which the employee or its dependents, in the event of its death, may be entitled to compensation from the City under the provisions of the said Acts, or for which compensation is claimed from the City, there will be retained out of the sums due the Contractor under this Contract, an amount sufficient to cover such compensation as fixed by said Acts, until such compensation is paid or it is determined that no compensation is due. If the City is required to pay such compensation, the amount so paid will be deducted and retained from such sums due, or to become due, the Contractor.

(2) Commercial General and Automobile Liability Insurance

The Contractor shall maintain in effect at all times during the performance of the work hereunder not less than the following coverage's and limits of Commercial General and Automobile Liability insurance:

(i) Form and Amount

The insurance shall include, but shall not be limited to, protection against claims arising from death, bodily injury, personal injury, or damage to property resulting from actions, failures to act, operations or equipment of the insured, or by its employees, agents or consultants, or by anyone directly or indirectly employed by the insured. The amount of insurance coverage shall not be less than \$1,000,000.00 per occurrence with an aggregate no less than two (2) times the required per occurrence limit applying to bodily injury, personal injury, and property damage, or any combination of the three. Any deductibles must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles as respects the entity, its officers, officials, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration expenses, and defense expenses. The commercial general and automobile liability insurance coverage shall also include the following:

(ii) Additional Requirements

Provision or endorsement naming the City, the Engineer and its consultants, and each of their officers, employees, and agents, each as additional insured's with respect to any potential liability arising out of the performance of any work under the Contract, and providing that such insurance is primary insurance as respects the interest of the City and Engineer, and its consultants, and each of their officers, employees, and agents and that any other insurance, risk pool membership, or other liability protection maintained by the City or maintained by the Engineer is excess to the insurance required hereunder, and will not be called upon to contribute to any loss unless and until all limits available under the Contractor 's and Subcontractor's insurance policy/policies have been paid. The additional insured coverage under the Contractor's policy shall be "primary and non-contributory" and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

(iii) "Cross Liability" or "Severability of Interest" clause.

(iv) Broad Form Property Damage, Personal Injury, Contractual Liability, Protective Liability, and Completed Operations coverage's, and elimination of any exclusion regarding loss or damage to property caused by explosion or resulting from collapse

of buildings or structures or damage to property underground, commonly referred to by insurers as the "XCU" hazards.

(v) Provision or endorsement stating that such insurance, subject to all of its other terms and conditions, applies to the liability assumed by the Contractor under the Contract, including, without limitation, that set forth in Section 4.02, Indemnity and Litigation Costs.

(vi) Provision or endorsement stating that any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its officers, officials, employees, or volunteers.

(vii) The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(3) Builder's Risk or Installation Floater "All-Risk" Insurance. Before commencement of the Work, the Contractor shall submit written evidence that it has obtained for the period of the Contract, Builder's Risk "All-Risk" Completed Value Insurance and/or Inland Marine "All-Risk" Installation Floater Insurance, as may be applicable, upon the entire project which is the subject of this Contract, including completed work and work in progress. The policy or policies of insurance shall name the Contractor, City, and Engineer as insured's as their respective interests may appear, and shall include an insurer's waiver of subrogation rights in favor of each. Such insurance may have a deductible clause, but the amount of the deductible shall be subject to the approval of the City, except that the deductible on earthquake coverage may be in accordance with the underwriter's requirements.

## 5.25. INDEMNITY AND LITIGATION COST

(a) Promptly upon execution of the Contract, the Contractor specifically obligates itself and hereby agrees to protect, hold free and harmless, defend and indemnify the City, the Engineer and its consultants, and each of their officers, employees and agents, from any and all liability, penalties, costs, losses, damages, expenses, causes of action, claims or judgments, including attorney's fees, which arise out of or are in any way connected with the Contractor's, or its Subcontractors' or suppliers', performance of work under this Contract or failure to comply with any of the obligations contained in the Contract. This indemnity shall imply no reciprocal right of the Contractor in any action on the contract pursuant to California Civil Code section 1717 or section 1717.5. To the fullest extent legally permissible, this indemnity, defense and hold harmless agreement by the Contractor shall apply to any and all acts or omissions, whether active or passive, on the part of the Contractor or its agents, employees, representatives, or Subcontractor's agents, employees and representatives, resulting in claim or liability, irrespective of whether or not any acts or omissions of the parties to be indemnified hereunder may also have been a contributing factor to the liability, except such loss or damage which was caused by the active negligence, the sole negligence, or the willful misconduct of the City. The Contractor's obligations under this Section shall apply to claims arising from the Contractor's mistake, error, or neglect in preparing its Bid for this project. The Contractor's obligations under this Section shall apply to claims arising from the Contractor's mistake, error, or neglect in preparing its Bid for this project.

(b) In any and all claims against the City, the Engineer and each of their consultants, officers, employees and agents by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be

liable, the indemnification obligation under this section shall not be limited in way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under Workers' Compensation statutes, disability benefit statutes or other employee benefit statutes.

## 5.26. PROTECTION OF WORK

(a) The Contractor shall be responsible for the care of all the Work until its completion and final acceptance. The Contractor shall, at its own expense, replace damaged or lost material and repair damaged parts of the Work or the same may be done at the Contractor's expense by the City and the Contractor and its sureties shall be liable therefor. The Contractor shall make its own provisions for properly storing and protecting all material and equipment against theft, injury, or damage from any and all causes. Damaged material and equipment shall not be used in the Work. The Contractor shall take all risks from floods and casualties except as provided by law, and shall make no charge for the restoration of such portions of the work as may be destroyed or damaged by flood or other casualties or because of danger from flood or other casualties or for delays from such causes. The Contractor may, however, be allowed a reasonable extension of time on account of such delays, subject to the conditions herein before specified. The Contractor shall not be responsible for the cost, in excess of 5% of the contracted amount, of repairing or restoring damage to the Work, if the damage was proximately caused by an earthquake in excess of a magnitude of 3.5 on the Richter Scale or by tidal wave's; provided that the Work damaged was built in accordance with accepted and applicable building standards, and the plans and specifications of the City.

(b) Contractor shall effectively secure and protect adjacent property and structures, livestock, crops and other vegetation. If applicable, the Contractor shall open fences on or crossing the right-of-way and install temporary gates of sound construction thereon so as to prevent the escape of livestock. Adjacent fence posts shall be adequately braced to prevent the sagging or slackening of the wire. Before such fences are opened, the Contractor shall notify the owner or tenant of the property and, where practicable, the opening of the fence shall be in accordance with the wishes of said owner or tenant. The Contractor shall be responsible that no loss or inconvenience shall accrue to the owner or tenant by virtue of their fences having been opened or the gate not having been either shut or attended at all times. Where special types of fences are encountered, the Contractor shall install temporary gates made of similar materials and of suitable quality to serve the purposes of the original fences. In all cases where the Contractor removes fences to obtain workroom, the Contractor shall provide and install temporary fencing as required, and on completion of construction shall restore the original fence to the satisfaction of the Engineer. All costs of providing, maintaining and restoring gates and fencing shall be home by the Contractor. The Contractor shall provide and maintain all passageways, guard fences, lights and other facilities for protection required by public authority or local conditions.

(c) The Contractor shall use extreme care during construction to prevent damage from dust to crops and adjacent property. The Contractor, at its own expense, shall provide adequate dust control for the right-of-way and take other preventative measures as directed by the Engineer.

(d) The Contractor shall be responsible for all damage to any property resulting from trespass by the Contractor or its employees in the course of their employment, whether such trespass was committed with or without the consent or knowledge of the Contractor.



(e) The Contractor shall see that the Site is kept drained and free of all ground water and any other water, which may impede the progress or execution of the Work.

(f) The Contractor shall be responsible for any damage caused by drainage or water runoff from construction areas and from construction plant areas.

(g) In an emergency affecting the safety of life, the Work, or adjoining property, the Contractor, without special instruction or authorization from the Engineer, is hereby permitted to act at its discretion to prevent such threatened loss or injury, and the Contractor shall so act without appeal if so instructed or authorized. Any compensation claimed by the Contractor on account of emergency work shall be determined as specified In Section 2.07. Should the Engineer deem an emergency condition to exist, the Contractor shall immediately do those things and take those steps ordered by the Engineer. The decision of the Engineer in this respect shall be final and conclusive. Any claims for compensation made by the Contractor on account of emergency work shall be determined as specified in Section 2.07.

(h) Except as provided by Government Code section 4215, the Contractor shall be responsible for the removal, relocation and protection of all public and private utilities, including irrigation facilities in the nature of utilities, located on the site of the construction project if and to the extent that the same are identified in the Contract Documents, and the Contractor shall not be entitled to any extension of time or claim for damages for extra compensation in connection therewith. If and to the extent that such utilities or facilities are not identified in the Contract Documents, as between the Contractor and the City, the City will be responsible for the cost of their removal, relocation or protection, as the case may be, but the Contractor shall perform any such work in conformance with applicable provisions of Sections 2.06 and 2.07, if so directed by the Engineer. In such situations the Contractor shall not be responsible for delay in completion of the project caused by the failure of the City or the owner of the utility to provide for such removal or relocation. If the Contractor, while performing the Contract, discovers utility or irrigation facilities not identified by the City in the Contract Documents, the Contractor shall immediately notify the Engineer in writing.

(i) Subject to the provisions of this section, where the Work to be performed under the Contract crosses or otherwise interferes with existing streams, watercourses, canals, farm ditches, pipelines, drainage channels, or water supplies, the Contractor shall provide for such watercourse or pipelines and shall perform such construction during the progress of the Work so that no damage will result to either public or private interests, and the Contractor shall be liable for all damage that may result from failure to so provide during the progress of the Work.

## **5.27. ACCIDENTS**

(a) The Contractor shall provide and maintain, in accordance with Labor Code section 6708 and OSHA requirements, adequate emergency first-aid treatment for its employees and anyone else who may be injured in connection with the Work.

(b) The Contractor shall promptly report in writing to the Engineer all accidents whatsoever arising out of or in connection with, the performance of the Work, whether on or adjacent to the site, which caused death, personal injury, or property damage, giving full details and statements of witnesses. In addition, if death or serious injury or serious damage are caused, the accident shall be reported immediately by telephone or messenger to the City and the Engineer.

(c) If any claim is made by anyone against the Contractor or any Subcontractor on account of any accident, the Contractor shall promptly report the facts in writing to the Engineer, giving full details of the claim.

**5.28. NO PERSONAL LIABILITY**

Neither the City, the Engineer, nor any of their other officers, agents, or employees shall be personally responsible for any liability arising under the Contract, except such obligations as are specifically set forth herein.

## SECTION 6

### PROGRESS AND COMPLETION OF WORK

#### 6.01. PROGRESS SCHEDULE

The Contractor shall submit within ten (10) days after execution of the Contract a detailed work schedule(s) which shall detail the actions of the Contractor and Subcontractors working at the Site. This schedule(s) shall both show the dates at which the Contractor will start and complete and conform to the completion time specified in the Contract. The controlling operation, defined as the least float path, if any, shall be identified.

The Contractor shall review, revise and resubmit the progress schedule at least once a month to reflect progress. In any event, Contractor shall submit, at any time during the contract period, a current schedule to the Engineer at the Engineer's request.

No progress payments will be made for any work performed until a satisfactory schedule has been submitted and approved by the Engineer. An updated schedule shall be required from the Contractor if the project falls ten (10) working days behind schedule.

If the Work falls behind the accepted schedule, the Contractor shall promptly take whatever actions are necessary to put the project back on schedule. For delays or portions of delays for which the Contractor is responsible, no payment will be made or time extension allowed for increase in work force, equipment, and working hours needed to put the project on schedule.

#### 6.02. COMMENCEMENT AND PROGRESS OF THE WORK AND TIME OF COMPLETION

##### (a) Commencement

The Contractor shall begin the Work after receiving a Notice to Proceed within the period of time set forth in the Contract Provisions. Thereafter, Contractor shall diligently prosecute the Work to completion as specified in the Contract Documents. The Engineer shall have the right to specify the locations where Contractor shall start and proceed with the Work.

A preconstruction conference will be convened after the Contractor has delivered the necessary bonds, insurance certificates and signed agreement in proper form as required in the invitation to bid, Bid proposal and general conditions of these specifications. Prior to any work, the Contractor shall provide the Engineer with a list of key personnel assigned to the project and the telephone numbers where they may be reached at any time. The list shall be made available in sufficient copies and presented at the preconstruction conference.

Notwithstanding any other provisions of the Contract, the City shall not be obligated to accept or pay for any work furnished by the Contractor prior to the issuance of the Notice to Proceed whether or not the City has knowledge of the furnishing of such work. The Contractor shall not commence with work on this project until its Contract bonds and evidence of insurance comply with all Contract requirements and a Notice to Proceed has been issued.

The Contractor shall notify the Engineer in writing two (2) working days (48 hours) prior to commencement of work on the Project or scheduling work for a Saturday, Sunday, or City Holiday. Failure to provide said notification will void the City's obligation to provide inspection. Any work done in the absence of the City's Inspector shall be subject to rejection.

(b) Completion

All work under this Contract shall be completed within the period of time set forth in the Contract Provisions. The Contract shall be deemed completed when the Engineer has certified the completion of the Project as provided in Section 9.07 of these General Conditions.

**6.03. SUSPENSION OF WORK**

(a) The Engineer may at any time, by notice in writing to the Contractor, suspend any part of the Work for such period of time as may be necessary to prevent improper execution of the Work on the project by the Contractor, its Subcontractors or agents, and the Contractor shall have no claim for damages or additional compensation on account of any such suspension.

(b) The City may at any time suspend any part or all of the Work upon ten (10) days written notice to the Contractor, who shall thereupon discontinue all work suspended except for all operations to prevent loss or damage to work already executed as may be directed by the Engineer. Work shall be resumed by the Contractor after such suspension on written notice from the City.

(c) In the event of any suspension of the Work in whole or in part under subsection (B) above, the Contractor shall be entitled to an extension of time wherein to complete the Work to the extent of the delay caused to the Contractor thereby.

(d) In the event the entire work shall be suspended by order of the City, as herein above provided, and shall remain so suspended for a period of sixty (60) consecutive days, through no fault of the Contractor, and notice to resume the Work shall not have been served on the Contractor as herein above provided, Contractor may, at its option, by written notice to the City, terminate the Contract in the same manner as if the termination had been initiated by the City, and the City shall have no claim for damages because of such termination of the Contract.

**6.04. DELAY IN THE WORK – TIME EXTENSIONS**

The Contractor shall at all times employ such force, plant, materials, and tools as will be sufficient, in the opinion of the Engineer, to prosecute the Work at not less than the rates fixed under the terms of the Contract and to complete the Work thereof within the time limits fixed therein. If the Contractor refuses or fails to prosecute the Work, or any separable part thereof, with such diligence as will ensure the completion within the time specified in the Contract, or any extension thereof, or fails to complete said work within such time, the City may exercise the termination provisions set forth in Section 6.05, below.

(a) Excusable Delays. Excusable delays shall be delays in the controlling operation of the Contractor's work due to strikes, lockouts by others, fire, unusual delay in transportation, unavoidable casualties, adverse weather conditions which could not have been reasonably anticipated, or any other act(s) of God beyond the Contractor's control, or by delay authorized by the City, or by any cause which the City shall decide to justify the delay. Except as provided in Section 6.04(f), below, in the event of an excusable delay, the time of completion shall be extended for such reasonable time as the City may decide. The Contractor's right to an extension of time for an excusable delay is expressly subject to Contractor's giving written notice of such claim within ten (10) days following the date the Contractor knew or should have known of the delay. Failure to give such notice shall be construed as a waiver of such right. It is understood and agreed that extensions of time shall be the Contractor's sole and exclusive remedy for excusable delays.

(b) Compensable delays. Compensable delays shall be delays in the controlling operating of the Contractor's work due to acts or neglect of the City, its employees or those under it by contract or otherwise, or by changes ordered in the work. In the event of a compensable delay, the time of completion shall be extended for such reasonable time as the City may decide. In addition, the Contractor may recover its direct costs as provided in Section 6.05. The Contractor's remedies for compensable delays are expressly subject to Contractor's giving ten (10) days written notice of such claim from the date the Contractor knew or should have known of the delay. It is understood and agreed that the Contractor's sole and exclusive remedies for compensable delays shall be an extension of the time and recovery of its direct costs as compensable hereunder, but only in accordance with the provisions of the Contract Documents.

(c) Contractor and City understand and agree that the Contract time for the completion of this project is a very important part of the contract. Extensions of time will only be granted as provided above when events actually cause the Contractor to be delayed in the performance of that schedule activity which is the controlling operation as of the time of the delay. When acts or omissions occur which could cause delay, Contractor will take all reasonable means in order to be able to continue to work as scheduled without any delay, or as short a delay as possible. Additionally, if inclement weather causes accumulation of standing water on the work site or other conditions which might cause delay, Contractor shall take all measures reasonably necessary to permit work to continue as quickly as possible.

(d) If adverse weather conditions are the basis for a claim for additional time, such claim shall be documented by date substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction. Adverse weather conditions shall be considered only as those conditions that exceed the average annual number of rain days and rain quantities as established by the Annual Local Climatological Summary and NOAA National Technical Memorandum NWS WR-65 (Revised) as published by the United States Government, National Weather Service, National Climate Center, Asheville, North Carolina.

(e) The Engineer shall be responsible for determining when adverse weather conditions result in non-workable days. It shall be the Contractor's duty to stay informed of such determinations by the Engineer. The Contractor may object to such adverse weather determinations by filing with the Engineer a written notice of objection. The notice of objection shall state the basis of the objection and provide supporting documentation, which substantiates that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction. All such notices of objection shall be filed within three (3) days of the day in dispute. It is hereby agreed that the Contractor's failure to submit a written notice of objection within three (3) days of the Engineer's adverse weather determination shall constitute a waiver by the Contractor of all its rights to further protest, judicial or otherwise.

(f) The Engineer will, within a reasonable period of time, issue a ruling on the Contractor's notice of objection. All such rulings by the Engineer shall be final, unless the Contractor files a written protest within fifteen (15) days of the Engineer's ruling. This protest shall clearly state the basis of the dispute. Such protest will be forwarded promptly to the City, which will issue a decision on each such protest. The City decision will be final. Pending the City decision, the Contractor shall proceed with its work in accordance with the Engineer's ruling and/or instructions. It is hereby agreed that the Contractor's failure to file a protest within fifteen days (15) of the Engineer's ruling shall constitute a waiver by the Contractor of all its rights to further protest, judicial or otherwise.

(g) The number of days that are anticipated to be non-workable due to adverse weather conditions shall be as set forth in Section 4.0 of the Special Conditions. Days deemed non-workable by the Engineer in excess of such anticipated number shall be considered excusable delays.

(h) Unexcused delays shall be delays in the Contractor's work due to acts or neglect of the Contractor, its employees, Subcontractors or those under it by contract or otherwise. In the event of an unexcused delay, the Contractor expressly agrees that it shall not be entitled to either an extension of time or recovery of its costs.

(i) A request for an extension of time, or the granting of an extension of time, shall not constitute a basis for any claim against the City for additional compensation or damages unless caused by the City or another Contractor employed by the City.

#### **6.05. DAMAGES FOR DELAY**

In the event of compensable delay, the City shall only be liable for idle equipment, idle workers and the necessary costs of transporting equipment. The City shall be liable to the extent that the compensable delay is concurrent with excusable delays or Contractor caused delays to the controlling operation. The allowable costs shall be as for force account work under Section 2.04 with the following exceptions:

(a) The Delay Factor in the Labor Surcharge and Equipment Rental Rules applies to each equipment rental rate;

(b) The daily number of payable hours shall equal the normal working hours during the delay, not to exceed eight (8) hours per day; and

(c) No markups will be added.

#### **6.06. TERMINATION FOR CONVENIENCE**

If at any time before completion of the Work, the City determines that it is either impossible or against the interests of the City to complete the Work, or if the Work is stopped by an injunction of a court of competent jurisdiction or by order of any competent authority, the City may, upon ten (10) days written notice to the Contractor, discontinue the Work and terminate the Contract. Upon service of such notice of termination, the Contractor shall discontinue the Work in such manner, sequence, and at such times as described below. The Contractor shall have no claim for damages for such discontinuance or termination, nor any claim for anticipated profits on the Work thus dispensed with, nor any other actually performed up to the time of discontinuance, including any Extra Work ordered by the Engineer to be done, nor for any claim for liquidated damages.

Termination of the Contract for convenience and the total compensation payable to the Contractor in the event of termination shall be governed by the following:

(a) The Engineer will issue the Contractor a written notice signed by the Engineer, specifying that the Contract is to be terminated. Upon receipt of said written notice and, except as otherwise directed in writing by the Engineer, the Contractor shall:

(1) Stop all Work under the Contract except that specifically directed to be completed prior to Acceptance.

- termination.
- (2) Perform Work the Engineer deems necessary to secure the project for termination.
  - (3) Remove equipment from the site of the Work.
  - (4) Take such action as is necessary to protect materials from damage.
  - (5) Notify all Subcontractors and suppliers that the Contract is being terminated and that their contracts or orders are not to be further performed unless otherwise authorized in writing by the Engineer.
  - (6) Provide the Engineer with an inventory list of all material previously produced, purchased or ordered from suppliers for use in the Work and not yet used in the Work, including its storage location, and such other information as the Engineer may request.
  - (7) Dispose of material not yet used in the Work as directed by the Engineer.  
  
It shall be the Contractor's responsibility to provide the City with good title to all materials purchased by the City hereunder, including material for which partial payment has been made and with bills of sale or other documents of title for such materials.
  - (8) Subject to the prior written approval of the Engineer, settle all outstanding liabilities and all claims arising out of subcontracts or orders for material terminated hereunder. To the extent directed by the Engineer, the Contractor shall assign to the City all the right, title and interest of the Contractor under subcontracts or orders for materials terminated hereunder.
  - (9) Furnish the Engineer with the documentation required to be furnished by the Contractor under the provisions of the Contract including, on projects as to which Federal funds are involved, all documentation required under the Federal requirements included in the Contract.
  - (10) Take such other actions as the Engineer may direct.

(b) Termination of the Contract shall not relieve the Contractor of responsibility for damage to materials except as follows:

- (1) The Contractor's responsibility for damage to materials for which partial payment has been made and for materials furnished by the City for use in the Work and unused shall terminate when the Engineer certifies that such materials have been stored in the manner and at the locations he or she has directed.
- (2) The Contractor's responsibility for damage to materials purchased by the City subsequent to the issuance of the notice that the Contract is to be terminated shall terminate when title and delivery of such materials has been taken by the City.
- (3) When the Engineer determines that the Contractor has completed the Work under the Contract directed to be completed prior to termination and such other Work as may have been ordered to secure the project for termination, he or she will recommend that the Engineer formally accept the Contract, and immediately upon and after such Acceptance by the Engineer, the Contractor will not be required to perform any further Work thereon and shall be relieved of his or her Contractual responsibilities for injury to persons or damage to property which occurs after the formal Acceptance of the project by the Engineer.

(c) The total compensation to be paid to the Contractor shall be determined by the Engineer on the basis of the following:

(1) The reasonable cost to the Contractor, without profit, for all Work performed under the Contract, including mobilization, demobilization and Work done to secure the project for termination. Reasonable cost will include a reasonable allowance for project Overhead and general administrative Overhead not to exceed a total of seven (7%) percent of Direct Costs of such Work.

(2) A reasonable allowance for profit on the cost of the Work performed as determined under Section 2.04(a) above, provided the Contractor establishes to the satisfaction of the Engineer that it is reasonably probable that he or she would have made a profit had the Contract been completed and provided further, that the profit allowed shall in no event exceed four (4%) percent of said cost.

(3) The reasonable cost to the Contractor of handling material returned to the vendor, delivered to the City or otherwise disposed of as directed by the Engineer.

(4) A reasonable allowance for the Contractor's administrative costs in determining the amount payable due to termination of the Contract.

All records of the Contractor and the Subcontractors, necessary to determine compensation in accordance with this section shall be open to inspection or audit by representatives of the City at all times after issuance of the notice that the Contract is to be terminated and for a period of three (3) years, and such records shall be retained for that period.

After Termination of the Work by the Engineer, the Engineer may make payments on the basis of interim estimates pending issuance of the Final Statement, when in his or her opinion the amount thus paid, together with all amounts previously paid or allowed, will not result in total compensation in excess of that to which the Contractor will be entitled.

All payments, including payment upon the Final Statement, shall be subject to deduction for prior payments and amounts, if any, to be kept or retained under the provisions of the Contract.

(d) The provisions of this section shall be included in all subcontracts.

#### **6.07. TERMINATION FOR DEFAULT**

(a) In the event of any default by the Contractor as described below, the City may, after giving ten (10) days' written notice to the Contractor, terminate the Contractor's right to proceed with the Work or any part of the Work in the City's sole discretion. Events of default include:

(1) Failure or refusal to prosecute the Work, or any separable part thereof, with such diligence as will ensure the completion within the time specified in the Contract, or any extension thereof, or failure to complete said work within such time.

(2) Filing of bankruptcy by the Contractor, or the making of a general assignment for the benefit of its creditors, or appointment of a receiver on account of Contractor's insolvency without discharge of the receiver within ten (10) days after its appointment.



(3) Failure to make prompt payments to Subcontractors or suppliers.

(4) Persistent disregard of laws, ordinances, or the instructions of the Engineer, or other substantial violation of any provision of the Contract.

(b) In the event the right of the Contractor to proceed with the Work, or any portion thereof, has been terminated because of the default of the Contractor and the Contractor has been given ten (10) days' notice to cure such fault and has not done so, the City may take over the Work and prosecute the same to completion by contract or any other method the City deems expedient, and may take possession of and utilize in completing the Work such materials, appliances, equipment and plant as may be on the site of the Work and necessary therefore. In such event, the Contractor and its sureties shall be liable for all damages including costs of managerial and administrative services, engineering, legal and other consultant fees, and liquidated damages sustained or incurred by the City.

(c) Upon termination, the Contractor shall not be entitled to receive any further payment until the Work is finished. If upon completion of the Work the total cost to the City, including engineering, legal and other consultant fees, costs of managerial and administrative services, construction costs, and liquidated damages shall be less than the amount which would have been paid if the Work had been completed by the Contractor in accordance with the terms of the Contract, then the difference shall be paid to the Contractor in the same manner as the final payment under the Contract. If the total cost incurred by the City on account of termination of the Contract and subsequent completion of the Work by the City by whatever method the City may deem expedient shall exceed said amount which the Contractor would otherwise have been paid, the Contractor and its sureties shall be liable to the City for the full amount of such excess expense.

(d) The rights and remedies of the City provided in this section are in addition to any of the rights and remedies provided by the law or under this Contract.

#### **6.08. FAILURE TO TIMELY COMPLETE THE WORK – LIQUIDATED DAMAGES**

(a) Liquidated Damages

(1) It is agreed by the parties to this Contract that time is of the essence. In the event all the Work is not completed before or upon the expiration of the time limit as set in the Bid, Contract and/or Progress Schedule, or within any time extensions that may have been granted, damage will be sustained by the City; and that it may be impracticable to determine the actual amount of damage by reason of such delay. Accordingly, it is agreed that the Contractor shall pay to the City as damages the amount set forth for each and every day's delay in finishing the Work in excess of the number of days specified. Liquidated damages shall be paid at a rate of one thousand dollars (\$1,000.00) per day unless otherwise stated in the Contract Documents. The parties expressly agree that the liquidated damage clause found in the Contract Documents is reasonable under the circumstances existing at the time the Contract was made. The City shall have the right to deduct the amount of liquidated damages from any money due or to become due the Contractor.

(2) In addition, the City shall have the right to charge to the Contractor and to deduct from the final or progress payments for the Work the actual cost to the City of legal, engineering, inspection, superintendence, and other expenses, which are directly chargeable to the Contract and which accrue during the period of such delay, except that the cost of final inspection and preparation of the final estimate shall not be included in the charges.

(b) Exclusions

Notwithstanding the provisions of Section 2.06(a), the Contractor shall not be liable for liquidated damages or delays caused by the removal or relocation of utilities when such removal or relocation is the responsibility of the City or the owner of the utility under Government Code section 4215.

**6.09. CLEAN-UP**

During the progress of the Work, the Contractor shall maintain the Site and related structures and equipment in a clean, orderly condition and free from unsightly accumulation of rubbish. All waste materials shall be removed daily from the Site and disposed of by the Contractor by any proper means at its own expense unless designated otherwise on the plans. No waste materials shall be placed in the public street right-of-way. Unless otherwise specified, all existing piping, materials and/or equipment removed pursuant to this Contract shall become the Contractor's property.

Upon completion of the Work and before the final estimate is submitted, the Contractor shall, at its own cost and expense, remove from the vicinity of the Work all plants, buildings, rubbish, unused work materials, concrete forms, and temporary bridging and other like materials, belonging to the Contractor or used under the Contractor's direction during the construction, and in the event of the Contractor's failure to do so, the same may be removed by the City after ten (10) calendar days' notice to the Contractor. Such removal shall be at the expense of the Contractor.

The Contractor shall use care in the removal of materials and equipment so as not to cause damage to existing facilities and structures. Contractor shall assume liability for all such damage. Where the construction has crossed yards or driveways, restoration shall be by the Contractor to the complete satisfaction of the Engineer, at the Contractor's expense.

The Contractor shall make its own arrangements for the disposal of waste materials. If the Contractor elects to dispose of such materials on private property, Contractor shall obtain written permission from all property owners involved.

## SECTION 7 MEASUREMENT AND PAYMENT

### 7.01. MEASUREMENT OF QUANTITIES

(a) Where the Contract provides for payment on a lump sum price basis, no measurement of quantity will be made. Where the Contract provides for payment on a unit price basis, the quantities of work performed will be computed by the Engineer on the basis of measurements taken by the Engineer, and these measurements shall be final and conclusive.

(b) All quantities of work computed under the Contract shall be based upon measurements by the Engineer according to United States Measurements and Weights.

(c) Methods of measurement are specified herein and in the Technical Specifications.

(d) Mobilization shall be measured and payment issued according to Section 11 of the State Standard Specifications.

### 7.02. SCOPE OF PAYMENT

(a) The Contractor shall accept the compensation provided in the Contract as full payment for furnishing all labor, materials, tools, equipment, and incidentals necessary to the completed work and for performing all work contemplated and embraced under the Contract; also for loss or damage arising from the nature of the work, or from the action of the elements, or from any unforeseen difficulties which may be encountered during the prosecution of the Work until the Acceptance by the City and for all risks of every description connected with the prosecution of the Work, also for all expenses incurred in consequence of the suspension or discontinuance of the work as provided in the Contract; and for completing the Work according to the Specifications and Plans. Neither the payment of any estimate nor of any retained percentage shall relieve the Contractor of any obligation to make good any defective work or material.

(b) No compensation will be made in any case for loss of anticipated profits. Increased or decreased work involving supplemental agreements will be paid for as provided in such agreements.

(c) The Work includes the preparatory work and operations needed for mobilization and demobilization of the Project. The Work, however, does not include establishing the Engineer's field facility(s) of utility work and connections needed for these facilities.

### 7.03. PROGRESS ESTIMATE

For each calendar month of Contract work, the Engineer will prepare a progress estimate of all work performed under the Contract. Within the first ten (10) days of each succeeding calendar month, the Engineer will prepare in writing an estimate which in the Engineer's opinion is a fair approximation of the value of all work done under the Contract, including any amounts due the Contractor for Extra Work and Change Orders. In arriving at the value of the Work done, the Engineer will give consideration to the value of labor and materials which have been incorporated into the permanent work by the Contractor during the preceding

month. Consideration will not be given to preparatory work done or for materials or equipment on hand.

In order to assist the Engineer, the Contractor shall furnish the Engineer with copies of invoices for all such items delivered to the job site.

#### **7.04. PROGRESS PAYMENTS**

(a) The City will pay the Contractor ninety-five percent (95%) of the amount of each progress estimate within thirty (30) days after receipt of an undisputed and properly submitted progress estimate from the Contractor, unless the City has made a finding prebid pursuant to Public Contract Code section 7201(b)(4) justifying a larger retention. If the City fails to pay an undisputed progress estimate within the allotted thirty (30) days, the City shall pay interest to the Contractor equivalent to the legal rate set forth in subdivision (A) of section 685.010 of the Code of Civil Procedure. Five percent (5%) of the amount of each estimate shall be retained by the City until final completion and Acceptance of all work under the Contract.

(b) Upon receipt of a payment request, the City shall act in accordance with both of the following:

(1) Each payment request shall be reviewed by the City as soon as practicable after receipt for the purpose of determining that the progress estimate is a proper payment request.

(2) Any payment request determined not to be a proper payment request suitable for payment shall be returned to the Contractor as soon as practicable, but not later than seven (7) days, after receipt. A request returned pursuant to this section shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

(c) The number of days available to the City to make a payment without incurring interest pursuant to this section shall be reduced by the number of days by which the City exceeds the seven-day return requirement set forth in paragraph (2) of subdivision (b).

(d) The Contractor may, in accordance with the provisions of Public Contracts Code section 22300, substitute securities for any monies which the City may withhold to insure performance under the Contract.

(e) When, in the judgment of the Engineer, the Work is not proceeding in accordance with the provisions of the Contract, or when in the Engineer's judgment the total amount of the Work done since the last estimate amounts to less than one thousand dollars (\$1,000.00), no pay estimate will be prepared and no progress payment will be made.

(f) No progress estimate or payment shall be considered to be an approval or Acceptance of any work, materials or equipment. Estimated amounts and values of work done and materials and equipment furnished will be conformed with actual amounts and values as they become available in subsequent progress estimates, progress payments and the final estimate and payment. All estimates and payments will be subject to correction in subsequent progress estimates and payments and the final estimate and payment.

(g) It is mutually agreed between the parties to the Contract that no payments made under the Contract, including progress payments and the final payment shall be evidence of the

performance of the Contract, either wholly or in part, and no payment shall construed to be an Acceptance of any defective or incomplete work or improper materials.

#### **7.05. PROMPT PROGRESS PAYMENT TO SUBCONTRACTORS**

A prime Contractor or Subcontractor shall pay any Subcontractor not later than seven (7) days of receipt of each progress payment in accordance with the provisions in Section 7108.5 of the California Business and Professions Code concerning prompt payment to Subcontractors. The seven (7) days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30 days may take place only for good cause and with the City's prior written approval. Any violation of Section 7108.5 shall subject the violating Contractor or Subcontractor to the penalties, sanctions and other remedies of that section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or Subcontractor in the event of a dispute involving late payment or nonpayment by the prime Contractor, deficient subcontract performance, or noncompliance by a Subcontractor. This provision applies to both DBE and non-DBE Subcontractors.

#### **7.06. LIENS AND STOP NOTICES**

The Contractor agrees to keep the Work, the site of the Work and all monies held by the City free and clear of all liens and stop notices related to labor and materials furnished in connection with the Work, if permitted by law. Furthermore, the Contractor waives any right it may have to file any type of lien or stop notice in connection with the Work. Notwithstanding anything to the contrary contained in the Contract Documents, if any such lien or stop notice is filed or there is evidence to believe that lien or stop notice may be filed at any time during the progress of the Work or within the duration of this Contract, the City may refuse to make any payment otherwise due the Contractor or may withhold any payment due the Contractor a sum sufficient in the opinion of the City to pay all obligations and expenses necessary to satisfy such lien or stop notice. The City may withhold such payment unless or until the Contractor, within ten days after demand therefor by the City, shall furnish satisfactory evidence that the indebtedness and any lien or stop notice in respect thereof has been satisfied, discharged and released of record, or that the Contractor has legally caused such lien or stop notice to be released of record pending the resolution of any dispute between the Contractor and any person or persons filing such lien or stop notice. If the Contractor shall fail to furnish such satisfactory evidence within ten days of the demand therefor, the City may discharge such indebtedness and deduct the amount thereof, together with any and all losses, costs and damages suffered or incurred by the City from any sum payable to the Contractor under the Contract Documents, including but not limited to final payment and retained percentage. This section shall be specifically included in all Subcontracts and purchase orders entered into by the Contractor.

#### **7.07. FINAL ACCEPTANCE AND DATE OF COMPLETION**

Whenever the Contractor shall deem all Work under this Contract to have been completed in accordance therewith, the Contractor shall so notify the Engineer in writing, and the Engineer shall promptly ascertain whether the Work has been satisfactorily completed and, if not, shall advise the Contractor in detail and in writing of any additional work required. When all the provisions of the Contract have been fully complied with, to the satisfaction of the Engineer, the Engineer shall proceed with all reasonable diligence to determine accurately the total value of all Work performed by the Contractor at the prices set forth in the Contract or fixed by Change Orders, and the total value of all extra work, all in accordance with the Contract. The Engineer will then certify to said final estimate and to the completion of the Work, and will

file copies thereof with the City and the Contractor, and shall cause of Notice of Completion to be filed with the Yolo County Clerk-Recorder . The date of completion shall be the date of filing of the Notice of Completion. All guarantees, warranties, and securities securing said guarantees and warranties, shall commence on said date.

#### **7.08. RIGHT TO WITHHOLD PAYMENTS**

(a) In addition to all other rights and remedies of the City hereunder and by virtue of the law, the City may withhold or nullify the whole or any part of any partial or final payment to such extent as may reasonably be necessary to protect the City from loss on account of:

- (1) Defective work not remedied, irrespective of when any such work be found to be defective;
- (2) Claims or liens filed or reasonable evidence indicating probable filing of claims or liens including, but not limited to claims under Sections 1775, 1776, or 1777.7 of the Labor Code;
- (3) Failure of the Contractor to make payments properly for labor, materials, equipment, or other facilities, or to Subcontractors and/or suppliers;
- (4) A reasonable doubt that the Work can be completed for the balance then unearned;
- (5) A reasonable doubt that the Contractor will complete the Work within the agreed time limits;
- (6) Costs to the City resulting from failure of the Contractor to complete the Work within the proper time; or
- (7) Damage to work or property.

(b) Whenever the City shall, in accordance herewith, withhold any monies otherwise due the Contractor, written notice of the amount withheld and the reasons therefor will be given the Contractor. After the Contractor has corrected the enumerated deficiencies, the City will promptly pay to the Contractor the amount so withheld. When monies are withheld to protect the City against claims or liens of mechanics, material men, Subcontractors, etc., the City may at its discretion permit the Contractor to deliver a surety bond in terms and amount satisfactory to the City, indemnifying the City against any loss or expense, and upon Acceptance thereof by the City, the City shall release to the Contractor monies so withheld.

#### **7.09. FINAL PAYMENT**

Within ten (10) days after the date of completion, the City will file in the Office of the County Recorder, a Notice of Completion of the Work herein agreed to be done by the Contractor. Within sixty (60) days of completion defined in Public Contract Code section 7107, the difference between said final estimate and all payments theretofore made to the Contractor shall be due and payable to the Contractor, subject to any requirements concerning the furnishings of a maintenance bond, and excepting only such sum or sums as may be withheld or deducted in accordance with the provisions of this Contract. All prior certifications upon which partial Payments may have been made, being merely estimates, shall be subject to correction in the final certificate.

#### **7.10. FINAL RELEASE**

Final payment to the Contractor in accordance with the final estimate is contingent upon the Contractor furnishing the City with a signed written release of all claims against the City arising by virtue of the Contract. Disputed Contract claims in stated amounts may be specifically excluded by the Contractor from the operation of the release. The release shall be in substantially the form specified in California Civil Code section 8138.

**PART 4 SUPPLEMENTAL CONDITIONS  
(SPECIAL PROVISIONS)**



## SUPPLEMENTAL CONDITIONS (SPECIAL PROVISIONS)

Except as modified by these Supplemental Conditions, the work shall be performed in accordance with Part 3 General Conditions. The numbering of these Supplemental Conditions coincides to the numbering in the General Conditions. The existence of a section in these Supplemental Conditions means that a corresponding section in the General Conditions is modified in some respect. Under these contract documents, Supplemental Conditions and Special Provisions have the same meaning.

The following Supplemental Conditions , if any, shall be used in conjunction with the City of West Sacramento Standard Specifications current edition including Standard Details and all revisions, and the current State of California Department of Transportation (Caltrans) Standard Specifications, in that order.

The following provisions apply to use of or reference to the Caltrans Standard Specifications:

1. None of the "General Provisions" of the Caltrans Standard Specifications, i.e., Sections 1 through 9, applies to these Contract Documents with the exception of any specific provisions, if any, which are expressly stated to apply to these Contract Documents. The City's "General Conditions" shall govern.
2. If there is a conflict or inconsistency between any provision in the Caltrans Standard Specifications and a provision of these Contract Documents, the provision in the Contract Documents will govern.
3. Any reference to the "Engineer" in the Caltrans Standard Specifications is deemed to mean "City", "Owner" or "Architect/Engineer" or Owner's designated representative.
4. Any reference to the "State" in the Caltrans Standard Specifications is deemed to mean "City" or "Owner."

City Standard Specifications are available online at:

<http://cityofwestsacramento.org/city/depts/comdev/engineering/specs/default.asp>

Bound hardcopies may be purchased from City Hall at:

1110 West Capitol Avenue, 2<sup>nd</sup> Floor  
West Sacramento, California 95691  
or by calling (916) 617-4645 for purchase by mail.

State Standard Specifications are available online at:

<http://www.dot.ca.gov/hq/esc/oe/standards.php>

## **PART 5 TECHNICAL SPECIFICATIONS**

The work shall be performed in accordance with the latest edition of the City of West Sacramento Standard Specifications – Division IV: Standard Construction Specifications and Caltrans Standard Specifications 2015, except as modified by these Technical Specifications. Section numbering of these Technical Specifications does not conform to the City’s Standard Specifications.

Contractor shall provide submittals (shop drawings) for all materials to be installed or used on the project.

[Technical Specifications]

**PART 7 CONTRACT DRAWINGS  
(BOUND SEPARATELY)**



MEETING DATE: November 15, 2023

ITEM # 4

**SUBJECT:**

**CONSIDERATION OF AWARD OF CONTRACT TO PAINE CONSTRUCTION INC. FOR  
CONSTRUCTION SERVICES FOR THE FIRE STATION 44 FACILITY REPAIRS PROJECT  
(CIP 51042)**

**INITIATED OR REQUESTED BY:**

Council     Staff  
  
 Other

**REPORT COORDINATED OR PREPARED BY:**

Timothy Spinelli, Senior Project Manager  
Capital Projects Department

**ATTACHMENT**    Yes     No             Information     Direction             Action

**OBJECTIVE**

The objective of this report is to provide the City Council with sufficient information to award a contract to Paine Construction Inc. for the Fire Station 44 Facility Repairs Project (CIP 51042).

**RECOMMENDED ACTION**

Staff respectfully recommends that the City Council:

- 1) Find that the construction contract with Paine Construction Inc. for the Fire Station 44 Facility Repairs Project (CIP 51042) is exempt from review under California Environmental Quality Act (CEQA) pursuant to the Categorical Exemptions under California Code of Regulations, Title 14, Division 6 Chapter 3 ("CEQA Guidelines"), Sections 15301, 15303, and 15304 and find that the determination represents the independent judgement of the City;
- 2) Award a construction contract to the lowest responsive, responsible bidder, Paine Construction Inc. in the amount of \$138,000;
- 3) Authorize the City Manager, or his designee, to execute a contract with Paine Construction Inc. in the amount not to exceed \$138,000;
- 4) Authorize the City Manager, or his designee, to execute non-substantive changes or modification to the contract with Paine Construction Inc. with the approval from the City Attorney; and
- 5) Authorize the City Manager, or his designee, to execute contract amendments, up to 15% (\$20,700) of the value of the contract.

**BACKGROUND**

Fire Station 44, located at 902 Fremont Street, has been in service for over 80 years. Although many repairs have been done over the years, critical features have exceeded their life cycle. The building requires a new composite roof, sheathing, gutters, repairs to skylights and flashing, exterior painting, and wooden perimeter fencing. Upgraded lighting and opening skylights will increase the energy efficiency of the site and improve the working environment for fire station staff.

**ANALYSIS**

The Capital Projects Department conducted a competitive bid to select a contractor to perform construction repairs for the Fire Station 44 Facility Repairs Project. On September 22, 2023, the project was advertised in the local newspaper and the bid package was also posted on the City website and through OpenGov.com (formerly ProcureNow). At the close of the bid period, City staff received eight bids, that were opened October 17, 2023. The bid results were as follows:

Ranking	Contractor	Bid Amount
1	Paine Construction Inc.	\$138,000.00
2	Treehenge Construction Inc.	\$142,403.00
3	Pride Industries One, Inc.	\$146,861.76
4	American River Construction, Inc.	\$154,000.00
5	Kaler General Contractors, Inc.	\$171,969.00
6	West Coast Fire and Water	\$185,990.00
7	Pro-Ex Construction, Inc.	\$187,610.00

After examining the Contractor's licenses, work experience, qualifications, and proposal submitted in each of the bid packages, staff determined that Paine Construction Inc. is the lowest-cost, responsive, responsible bidder, with a total bid of \$138,000. On this basis, staff recommends awarding the construction contract to Paine Construction Inc.

Environmental Considerations

The Fire Station 44 Facility Repairs Project involves alteration to existing facilities; therefore; it is exempt from review under California Environmental Quality Act (CEQA) pursuant to the Class 1 (existing facilities), Class 3 (new construction of small structures), and Class 4 (minor alternation to land) categorical exemptions.

Commission Recommendation

Not applicable.

Strategic Plan Integration

The Fire Station 44 Facility Repairs Project addresses the Core Services & Infrastructure priorities of the City Council's Strategic Plan by providing necessary repairs to the facility and improving its useful life.

Alternatives

The Council's primary alternatives are summarized below.

- 1) Approve the recommended actions as described in this report.
- 2) Alter the recommended actions.
- 3) Defer or cancel the project.

Staff recommends the Council proceed with Alternative 1 and approve the recommendations described in this report. These repairs are necessary to maintain the facility.

Coordination and Review

This report was prepared by the Capital Projects Department and has been coordinated with and reviewed by the Fire Department and the Finance Department.

Budget/Cost Impact

The Fire Station Facility Repairs Project (CIP 51042) is included in the City's current Capital Improvement Program (CIP). There is sufficient funding available in the project budgets, therefore, no additional funds are required or requested at this time.

**ATTACHMENT**

1. Paine Construction Inc, Contract

## CONSTRUCTION CONTRACT

THIS CONTRACT made on **November 15<sup>th</sup> 2023**, by and between the CITY OF WEST SACRAMENTO (“City”), and **Paine Construction Inc.**, hereinafter “Contractor”. The City and Contractor may be collectively referred to as the “parties”.

The parties have mutually covenanted and agreed as follows:

### 1. THE CONTRACT DOCUMENTS:

The complete Contract consists of the following documents (“Contract Documents”):

Construction Contract (See Part 2)  
Payment Bond to accompany Contract (See Part 2)  
Performance Bond to accompany Contract (See Part 2)  
Contractor’s Certification Regarding Workers’ Compensation (See Part 2)  
General Conditions (See Part 3)  
Supplemental Conditions (Special Provisions) (See Part 4)  
Drawings  
Technical Specifications (See Part 4)  
Change Orders  
City of West Sacramento Standard Specifications 2002, with Amendments #1 & #2  
State of California Department of Transportation (Caltrans) Standard Specifications 2015  
Contractor’s Emergency Invoice (Accepted Bid)

### 2. THE WORK:

The Contractor agrees to furnish all tools, equipment, apparatus, facilities, labor, transportation, and material necessary to perform and complete in a good and workmanlike manner, the Flamingo Motel Gate Installation Project “Project” as called for, and in the manner designated in, and in strict conformity with, the Contract Documents. It is understood and agreed that the tools, equipment, apparatus, facilities, labor, transportation, and material shall be furnished and the work performed and completed as required in the Drawings and Specifications under the sole direction and control of the Contractor, and subject to inspection and approval of the City, or its representatives. The City hereby designates as its representative for the purpose of this Contract the following named person: Tim Spinelli

### 3. CONTRACT PRICE:

The City agrees to pay and the Contractor agrees to accept, in full payment for the work above agreed to be done, the sum of \$138,000 for the Project subject to additions and deductions as provided in the Contract Documents.

### 4. COMPLETION DATE:

The Project shall be commenced on the date specified in the Notice to Proceed. The total project will be completed within one sixty (60) calendar days, as defined in the General Conditions, after the date stated in the Notice to Proceed.

**5. NOTICE AND SERVICE THEREOF:**

Any notice from one party to the other under the Contract shall be in writing and shall be dated and signed by the party giving such notice or by a duly authorized representative of such party. Any such notice shall not be effective for any purpose whatsoever unless served in the following manner, namely:

(a) If the notice is given to the City, by personal delivery thereof to the Director of Capital Projects, or by depositing the same in the United States mail, enclosed in a sealed envelope, postage prepaid, and certified; addressed to the City at:

City of West Sacramento  
Ariana Adame, Director of Capital Projects  
1110 West Capitol Avenue, 1<sup>st</sup> Floor  
West Sacramento, CA 95691

(b) If the notice is given to the Contractor, by personal delivery thereof to said Contractor or to its duly authorized representative at the site of the project, or by depositing the same in the United States mail, enclosed in a sealed envelope, postage prepaid, and certified; addressed to the Contractor at:

Business	Paine Construction Inc.
Attention	Mark Zaychenko
Street Address	7212 8 <sup>th</sup> Street
City, State, Zip Code	Rio Linda, CA 95673

(c) If the notice is given to the surety or any other person, by personal delivery to such surety or other person, or by depositing the same in the United States mail, enclosed in a sealed envelope, addressed to such surety or other person, as the case may be, at the address of such surety or person last communicated by it to the party giving the notice, postage prepaid and certified.

**6. LIQUIDATED DAMAGES:**

Liquidated damages as provided for in the General Conditions of the Contract shall be in the sum of One Thousand Dollars (\$1000.00) for each and every day as defined therein for each different scope of work as defined by the Base Bid and each change order except as otherwise specified in the Supplemental Conditions.

**7. PREVAILING WAGE:**

Copies of the prevailing rate of per diem wages as determined by the Director of the Department of Industrial Relations in accordance with Labor Code section 1773.2 are on file at the City, and copies are available for inspection at that office to any interested party on request. Bidders shall be responsible for verifying with the Director of the Department of Industrial Relations that all such copies of the prevailing rate provided by the City are current and accurate. The requirement to pay the wage rate so specified is further detailed in the General Conditions.



**8. CONTRACTOR REGISTRATION**

By the execution of this Contract, Contractor hereby certifies that it is registered with the California Department of Industrial Relations as required pursuant to Labor Code section 1725.5 (Contractor registration).

IN WITNESS WHEREOF, four (4) identical counterparts of this Contract, each of which shall for all purposes be deemed an original, have been duly executed by the above-named parties, on the date noted on the first page of this Contract.

\_\_\_\_\_

Date

\_\_\_\_\_

Mark Zaychenko, Corporate Secretary

\_\_\_\_\_

Date

\_\_\_\_\_

Aaron Laurel, City Manager

Approved as to form:

\_\_\_\_\_

Jeffrey Mitchell, City Attorney

Attest:

\_\_\_\_\_

Jennifer Cusmir, City Clerk

## PAYMENT BOND

The CITY OF WEST SACRAMENTO, hereinafter “City,” has awarded to Paine Construction Inc., hereinafter “Contractor,” a Contract for the work described as follows:

### FIRE STATION 44 FACILITY REPAIRS

WHEREAS, the Contractor is required by the Contract and by the provisions of Third Division, Part 4, Title 15, Chapter 7 of the Civil Code to furnish a bond in connection with the Contract, as hereinafter set forth.

NOW, THEREFORE, we, Paine Construction Inc., the undersigned Contractor, as Principal, and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_ duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the \_\_\_\_\_ in the sum of \$120,000, said sum being not less than one hundred (100) percent of the total Contract amount payable by the City, under the terms of the Contract, for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, THAT, if the Contractor, its heirs, executors, administrators, successors, and assigns or Subcontractors shall fail to pay for any materials, provisions, provender or other supplies or teams, implements or machinery used in, upon, for or about the performance of the work contracted to be done, or shall fail to pay for any work or labor thereon of any kind, or shall fail to pay any persons named in Civil Code section 9100, or shall fail to pay for amounts due under the Unemployment Insurance Code with respect to such work or labor thereon of any kind, or shall fail to pay for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Contractor and Subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work or labor, and provided that the claimant shall have complied with the provisions of that code, the Surety or Sureties hereon will pay for the same in an amount not exceeding the sum specified in the Contract; otherwise, the above obligation shall be void. In case suit is brought upon this bond, the Surety will pay reasonable attorneys' fees to the prevailing party to be fixed by the court.

This bond shall insure to the benefit of any and all persons, companies and corporations entitled to file claims under Section 9100 of the Civil Code, so as to give a right of action to them or to their assigns in any suit brought upon this bond.

It is further stipulated that the Surety of this bond shall not be exonerated or released from the obligation of the bond by any change, extension of time for performance, addition, alteration, or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement described above or pertaining or relating to the furnishing of labor, materials, or equipment therefor, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement described above, nor by any rescission or attempted rescission of the Contract, agreement, or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by

any person other than the claimant seeking to recover on the bond, and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the City and original Contractor or on the party of the obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 8400 and 8402 of the California Civil Code and has not been paid the full amount of its claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration, or modification.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Contractor as Principal)

(Seal) By \_\_\_\_\_

(Seal) By \_\_\_\_\_

NOTE: If Contractor is a Partnership, all partners should execute Bond.

IMPORTANT: Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in California.

## PERFORMANCE BOND

The CITY OF WEST SACRAMENTO, hereinafter “City,” entered into a Contract dated November 1<sup>st</sup>, 2023 with Paine Construction Inc. hereinafter “Contractor,” for the work described as follows:

### FIRE STATION FACILITY REPAIRS PROJECT

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

WHEREAS, the Contract is by reference made a part hereof.

NOW, THEREFORE, we, \_\_\_\_\_, the undersigned Contractor, as Principal, and \_\_\_\_\_ (corporate surety), a corporation organized and existing under the laws of the State of \_\_\_\_\_, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the City in the penal sum of [WRITTEN NUMBER] [(NUMBER)], lawful money of the United States, said sum being not less than one hundred percent (100%) of the total Contract amount, for the payment of which sum be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, THAT, if the above-bounded Contractor, its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and perform the covenants, conditions, and agreements in said Contract and any alterations thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City, its officers and agents, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and virtue.

As a condition precedent to the satisfactory completion of said Contract, the above obligation in said amount shall hold good for a period of one (1) year after the completion and Acceptance of said work, during which time if the above-bounded Contractor, its heirs, executors, administrators, successors or assigns shall fail to make full, complete, and satisfactory repair and replacements or totally protect the City from loss or damage made evident during said period of one (1) year from the date of Acceptance of said work, and resulting from or caused by defective materials or faulty workmanship in the prosecution of the work done, the above obligation in said sum shall remain in full force and effect. However, anything in this paragraph to the contrary notwithstanding, the obligation of the Surety hereunder shall continue so long as any obligation of the Contractor remains.

And the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall, in any way, affect its obligations on this bond and it does hereby waive notice of any such change, extension of

time, alteration, or addition to the terms of the Contract or to the work or the specifications. Said Surety hereby waives the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

In the event suit is brought upon this bond by the City and judgment is recovered, the Surety shall pay all costs incurred by the City in such suit, including reasonable attorneys' fees to be fixed by the Court.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Contractor as Principal)

(Seal)

By \_\_\_\_\_

(Seal)

By \_\_\_\_\_

NOTE: If Contractor is a Partnership, all parties must execute the Bond.

IMPORTANT: Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in California.

**CONTRACTOR'S CERTIFICATE REGARDING WORKER'S COMPENSATION**

TO: Ariana Adame, Director of Capital Projects  
City of West Sacramento  
1110 West Capitol Avenue, 1st Floor  
West Sacramento, CA 95691

I am aware of the provisions of Section 3700 of the Labor Code of the State of California 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 of this Contract.

Paine Construction Inc  
(Contractor)

By Mark Zaychenko

7212 8th St,  
Rio Linda, CA, 95673  
  
(Business Address)

5008 Marysville Blvd  
Sacramento, CA, 95838  
  
(Place of Residence)

## **PART 2 GENERAL CONDITIONS**

## **PART 2: GENERAL CONDITIONS**

### **SECTION 1**

#### **DEFINITIONS AND TERMS**

##### **1.01. GENERAL**

Wherever the following abbreviations and terms, or pronouns in place of them, are used in these Conditions and other Contract Documents of which these Conditions are a part, the intent and meaning shall be interpreted as provided below.

##### **1.02. ABBREVIATIONS**

The following abbreviations may be used in the Contract Documents:

AA	Aluminum Association
AASHTO	American Association of State Highway/Transportation Officials
ABMA	American Boiler Manufacturer's Association
ACI	American Concrete Institute
AFBMA	Anti-Friction Bearing Manufacturers Association
AGA	American Gas Association
AGC	Associated General Contractors
AGMA	American Gear Manufacturer's Association
AI	The Asphalt Institute
AIA	American Institute of Architects
AIEE	American Institute of Electrical Engineers
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute, Inc.
APA	American Plywood Association
API	American Petroleum Institute
APWA	American Public Works Association
ARA	American Railway Association
AREA	American Railway Engineering Association
ASCE	American Society Civil Engineers
ASHRAE	American Society of Heating, Refrigeration and Air Conditioning Engineers
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
AWG	American Wire Gage
AWPA	American Wood Preservers' Association
AWS	American Welding Society
AWWA	American Water Works Association
BHMA	Builders Hardware Manufacturers Association
CCMTC	California Concrete Masonry Technical Committee
CRSI	Concrete Reinforcement Steel Institute
ETL	Electrical Testing Laboratory
FS	Federal Specification
ICBO	International Conference of Building Officials
IEEE	The Institute of Electrical and Electronics Engineers
IES	Illuminating Engineering Society



IPCEA	Insulated Power Cable Engineers Association
JICS	Joint Industry Conference Standards
MBMA	Metal Building Manufacturer's Association
MSS	Manufacturers Standardization Society of the Valve and Fitting Industry Standards
NBFU	National Board of Fire Underwriters
NBS	National Building Standards
NEC	National Electrical Code
NEMA	National Electrical Manufacturers Association
NFPA	National Fire Protection Association
OSHA	Occupational Safety and Health Act of 1970
PCA	Portland Cement Association
SMACNA	Sheet Metal and Air Conditioning Contractor's National Association
SSPC	Steel Structures Painting Council
SSPWC	Standard Specifications for Public Works Construction
UBC	Uniform Building Code
UL	Underwriter's Laboratory
UMC	Uniform Mechanical Code
UPC	Uniform Plumbing Code
USAS	The United States of America Standard Institute
USBR	United States Bureau of Reclamation
USPHS	United States Public Health Service
WCLIB	West Coast Lumber Inspection Bureau
WIC	Woodwork Institute of California

### 1.03. DEFINITIONS

The intent and meaning of the following, wherever they appear in the Contract Documents, shall be interpreted as follows:

**Acceptance** - The formal Acceptance by the Engineer of the entire Contract, which has been completed in all respects in accordance with the Specifications and any, approved modifications.

**Addenda** - Any written change, clarification or supplement to documents issued for bidding, issued by the City or its Engineer prior to bid.

**As Approved** - The words "as approved", unless otherwise qualified, shall be understood to be followed by the words "by the Engineer".

**As Shown, and As Indicated** - The words "as shown" and "as indicated" shall be understood to be followed by the words "on the Plans".

**Award** - The decision of the City Council to accept the proposal of the lowest responsible Bidder for the Work, subject to the execution and approval of a satisfactory contract therefore and bond to secure the performance thereof and to such other conditions as may be specified or required by law.

**Bid** - The offer of the Bidder for the Work when made out and submitted on the prescribed Bid form, properly signed and guaranteed. A Bid is also known as a Proposal.

**Bid Security** - The cash, cashier's check, certified check, or bidder's bond accompanying the Bid submitted by the bidder, as a guarantee that the Bidder will enter into a Contract with the City for the performance of Work herein described.

**Bidder** - Any individual, firm, partnership or corporation submitting a Bid for the Work contemplated, and acting directly or through a duly authorized representative.

**Bureau** - United States Bureau of Reclamation.

**Calendar Day** - Each day shown on the calendar.

**Change Order** - Written order issued by the Engineer to the Contractor covering changes in the Contract and establishing the bases of compensation and time adjustments for work affected by the changes.

**City** - The City of West Sacramento, also referred to as the Owner.

**City Council or Council** - The City Council of the City of West Sacramento.

**City Standard Details** - The standard details contained in the City Standard Specifications as modified.

**City Standard Specifications** - 2002 edition of the City of West Sacramento Standard Specifications and Details as amended to date of Bid submittal.

**Claim** - A separate demand by the Contractor for (i) a time extension, (ii) payment of money or damages arising from work done by or on behalf of the Contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (iii) an amount the payment of which is disputed by the City.

**Contract** - The written agreement covering the performance of the work and the furnishing of labor, materials, tools and equipment in the construction of the Work. The Contract shall include all Contract Documents and supplemental agreements amending or extending the work contemplated which may be required to complete the Work in a substantial and acceptable manner. Supplemental agreements are written agreements covering alterations, amendments, or extensions to the contract and include Addenda and change orders.

**Contract Documents** - Contract Documents is the collective term for all of the following documents and any other document incorporated therein by reference: Invitation to Bid, Accepted Bid (and all accompanying documents), Designation of Subcontractors, Construction Contract, Payment Bond to Accompany Contract, Performance Bond to Accompany Contract, General Conditions, Supplementary and Special Conditions, (if any), Drawings (and Specifications), Addenda, Change Orders, City of West Sacramento Standard Specifications, State of California Department of Transportation (Caltrans) Standard Specifications 2015, Contractor's Certification Regarding Workers' Compensation.

**Contractor** - The person or persons, firm, partnership or corporation or other entity who has entered into the Contract with the City to perform the Work.

**County** - County of Yolo, California.

**Date of Completion** - Date of filing of the Notice of Completion with the Yolo County Clerk-Recorder's Office.

**Date of Execution of the Contract** - The date on which the Contract is signed by the City's authorized representative.

**Datum** - The Figures given in the Specifications or upon the drawings after the word "Elevation" or an abbreviation of it, shall mean U.S.G.S. datum, unless otherwise noted.

**Days** - Unless otherwise designated, days as used in the Contract Documents shall mean calendar days.

**Elevation** - The figures given on the Plans or in the other Contract Documents after the word "elevation" or abbreviation of it shall mean the distance in feet above the standard datum used by the City.

**Engineer** - The City Engineer, or the person designated by the City as its engineering representative during the course of construction, acting either directly or through properly authorized agents, such agents acting within the scope of the particular duties delegated to them.

**Extra Work** - Work other than that required either expressly or implied by the Contract in its executed form.

**Notice of Completion** - notice of completion is the recorded project completion document filed with the Yolo County Clerk.

**Or Equal** - The term "or equal" shall be understood to indicate that the "equal" product be the equivalent or better than the product named in function, performance, reliability, quality, and general configuration. Determination of equality in reference to the project design requirements will be made by the Engineer.

**Plans or Specification Drawings** - The term "Plans" or "Specification Drawings" refers to the official plans, profiles, cross sections, elevations, details, and other Working Drawings and supplementary drawings, or reproductions thereof, signed by the Engineer, which show the location, character, dimensions, and details of the work to be performed. Plans may either be bound in the same book as the balance of the Contract Documents or bound in separate sets. Regardless of the method of binding, Plans shall be part of the Contract Documents.

**Plant** - All physical, resources, facilities, machinery, equipment, staging, tools, work and storage space other than provided by the Contract, together with subsidiary essentials and necessary maintenance for proper construction and acceptable completion of the project.

**Project** - The entire Work to be completed under the Contract.

**Project Manager** - The person designated by the City as its project management representative during the course of construction, acting either directly or through properly authorized agents, such agents acting within the scope of the particular duties delegated to them. The Project Manager will be the City Engineer unless the City designates a separate Project Manager. When a Project Manager is used for a project, the Project Manager has full authority to act as the City Engineer unless the designation specifically states otherwise.

**Shop Drawings** - Drawings prepared by the fabricator or supplier showing the layout and details of components fabricated in a shop for inclusion in the permanent facility (e.g., structural steel, reinforcing steel, railings).

**Site** - The area upon or in which the Contractor's operations are carried on and such other areas adjacent thereto as may be designated by the Engineer.

**Specifications** - The term "specifications" refers to the terms, provisions, and requirements contained herein. Where reference specifications, such as those of "ASTM", "AASHTO", etc. have been referred to, the applicable portions of such standard specifications shall become a part of these Contract Documents.

**State** - State of California.

**State Standard Specifications** - Standard Specifications issued by the State of California Department of Transportation, dated 2015, and as amended Bid in the supplemental conditions.

**Subcontractor** - The term "Subcontractor", as employed herein, includes only those having a direct contract with the Contractor and it includes one who furnishes material worked to a special design according to the plans or specifications of this work, but does not include one who merely furnishes material not so worked and would be considered a supplier only.

**Supplementary & Special Conditions Provisions** - Additions, revisions, special directions, and requirements peculiar to a project and not otherwise thoroughly set forth in General and/or Specifications.

**Time Limits** - All time limits stated in the Contract Documents are of the essence of the Contract.

**Work** - All the work specified, indicated, shown or contemplated in the Contract Documents to construct the improvements, including all alterations, amendments or extensions thereto made by Change Order or other written orders of the Engineer.

**Working Days** - A Working day is defined as any day, except Saturdays, Sundays and legal holidays of the City.

**Working Drawings** - Drawings furnished by the Contractor showing the layout and details of temporary construction procedures and methods of construction, and data for construction equipment which are to be employed in the construction of the permanent facility (e.g., form drawings, erection drawings, load test pile procedures, pile hammer data, etc.).

**Written Notice** - "Written Notice" shall be deemed to have been duly served when delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by certified U.S. mail to the last business address known to the party who gives the notice as specified in the Contract.

Whenever in the Specifications or upon the drawings the words "directed", "required", "permitted", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the direction, requirement, permission, order, designation or prescription of the Engineer is intended, and similarly the words "approved", "acceptable", "satisfactory", or words of like import, shall mean approved or acceptable to, or satisfactory to the Engineer, unless otherwise expressly stated.

## **SECTION 2**

### **SCOPE OF WORK**

#### **2.01. INTENT OF CONTRACT DOCUMENTS**

The intent of the Contract Documents is to prescribe the details for the construction and completion of the Work, which the Contractor undertakes to perform in accordance with the terms of the Contract. These General Conditions are meant to replace Division I of the State Standard Specifications for all City public works contracts which incorporate these General Conditions by reference.

Where the Specifications and Plans describe portions of the Work in general terms, but not in complete detail, it is understood that only the best general practice is to prevail and that only materials and workmanship of the first quality are to be used. Unless otherwise specified, the Contractor shall furnish all labor, materials, tools, equipment and incidentals and do all the Work involved in performing the Contract in a satisfactory and workmanlike manner.

The technical provisions are presented in sections for convenience. However, this presentation does not necessarily delineate trades or limits of responsibility. All sections of the Specifications and Plans are interdependent and applicable to the Project as a whole.

The Contract Documents are complementary, and what is called for in any one shall be as binding as if called for in all. Anything shown on the Drawings and not mentioned in the Specifications or mentioned in the Specifications and not shown on the Drawings shall have the same effect as if shown or mentioned respectively in both. Any work shown on one Drawing shall be construed to be shown in all Drawings and the Contractor will coordinate the Work and the Drawings.

If any portion of the Contract Documents shall be in conflict with any other portion, the various documents comprising the Contract Documents shall govern in the following order of precedence: Change Orders; Addenda; Shop Drawings, Drawings, Supplementary and Special Conditions; Designation of Subcontractors; Construction Contract; General Conditions; City of West Sacramento Standard Specifications; State of California Department of Transportation (Caltrans) Standard Specifications 2015.

Detail Drawings take precedence over General Drawings. As between schedules and other information given on Drawings, the Schedules shall govern. If an item is shown on any Drawing and not specifically included in Technical Specifications specific to this project, the Drawing shall govern. Any conflict or inconsistency between or in the drawings shall be submitted to the Engineer for clarification as soon as the Contractor becomes aware of such inconsistency.

#### **2.02. CONTRACTOR'S UNDERSTANDING**

It is understood and agreed that the Contractor has, by careful examination, satisfied itself as to the nature and location of the Work, the conformation of the ground, the character, quality and quantity of the materials to be encountered, the character of equipment and facilities needed preliminary to and during the prosecution of the Work, the general and local conditions, and all other matters which can in any way affect the Work under this Contract. No verbal agreement or conversation with any officer, agent or employee of the City, either before or after

the execution of this Contract, shall affect or modify any of the terms or obligations contained herein.

### **2.03. CHANGES IN THE WORK**

(a) The City may, at any time, by written order, make changes in the Work as deemed necessary by the Engineer. Such changes include, but are not limited to:

- (1) In the Specifications or Plans;
- (2) In the sequence, method or manner of performance of the Work;
- (3) In the owner-furnished facilities, equipment, materials, services or site; and
- (4) Directing acceleration of the Work.

(b) If such changes cause an increase or decrease in the Contractor's cost of, or time required for, performance of the Contract, an equitable adjustment will be made and the Contract modified in writing accordingly.

#### **(1) Change Orders**

A change pursuant to this section will be in the form of a Change Order, which will set forth the work to be done or the method by which the change and cost adjustment, if any, will be determined, and the time of completion of the work.

Upon receipt of a 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 a Change Order. A Change Order executed by the Contractor and approved by the Engineer is an executed Change Order as that term is used throughout this section.

#### **(2) Change Order Protests**

A Change Order may be issued to the Contractor at any time. Should the Contractor disagree with any terms or conditions set forth in a Change Order, which he has not executed, he shall submit a written protest to the Engineer within fifteen (15) days after the receipt of such Change Order. The protest shall state the points of disagreement and, if possible, the quantities and cost involved.

If a written protest is not submitted, payment will be made as set forth in the Change Order. Such payment shall constitute full compensation for all work included therein or required thereby. Such unprotested Change Orders shall be considered as executed Change Orders.

Where the protest concerning a Change Order relates to compensation, the compensation payable for all work specified or required by said Change Order to which such protest relates will be determined in the same manner as provided in Section 2.04 of this section. The Contractor shall keep full and complete records of the cost of such work and shall permit the Engineer to have such access thereto as may be necessary to assist in the determination of the compensation payable for such work. Where the protest concerning a

Change Order relates to the adjustment of time and for completion of the Work, the time to be allowed therefor will be determined as provided in this section.

The consent of the Contractor's sureties shall not be required as to any change or Extra Work, and the liability of the Contractor's Bonds shall be increased or decreased accordingly without notice to the sureties.

## **2.04. PROCEDURES AND ALLOWABLE COSTS ON CHANGES AND ADDITIONS TO WORK**

### **(a) Forms of Payment**

If the change in, or addition to, the Work will result in an increase in the contract sum, the City shall have the right to require the performance thereof. The compensation to be paid for any such work shall, in the City's sole discretion, be determined in one or more of the following ways:

- (1) By extension of agreed unit prices, if unit prices are required by the City's Bid form and provided with Contractor's bid;
- (2) By revision of unit prices;
- (3) By proposal and Acceptance of an agreed upon lump sum; and
- (4) On a force account basis.

Until one of the above methods is agreed on, or if the Work is to be paid for on a time and materials basis, the Contractor shall keep full and complete records of the cost of such work in the form and manner prescribed by the Engineer and shall permit the Engineer to have access to such records as may be necessary to assist in the determination of the compensation payable for such work.

### **(b) Lump Sum Payment**

The City, in its sole and absolute discretion, may request a lump sum proposal by Contractor to perform the change in, or addition to, the Work performed. Such lump sum proposal shall be submitted by the Contractor within ten (10) days of the City's request therefor. Request for a lump sum proposal by City shall not be deemed an election by City to have the Work performed on a lump sum basis. Costs of preparing the proposal shall not be compensable.

#### **(1) Contents of Lump Sum Proposal**

(2) The Contractor's proposal shall be itemized and segregated by labor and materials for the various components of the change (no aggregate labor total will be acceptable). The proposal shall be accompanied by signed proposals of any Subcontractors, which will perform any portion of the change, and of any persons who will furnish materials or equipment for incorporation therein. The proposal shall also include the Contractor's estimate of the time required to perform said changes or additional work.

#### **(3) Computation of Labor Costs**

The portion of the proposal relating to labor, whether by the Contractor's forces or the forces of any of its Subcontractors, may include the projected wages of the reasonably anticipated Site labor, including foremen, who will be directly involved in the change in the Work. These projected wages shall not include charges for assistant superintendents, superintendents, office personnel, timekeepers and maintenance mechanics.

Labor costs may also include Contractor's overhead and profit which shall be computed by adding to the labor costs either up to fifteen percent (15%) of the projected wages, but not payroll costs, or the labor surcharge set forth in the California Department of Transportation publication entitled Labor Surcharge And Equipment Rental Rates, which is in effect on the date upon which the Work is accomplished and which is a part of the Contract. The method of computing the overhead and profit shall be solely within the discretion of the City.

The labor surcharge, if used, shall constitute full compensation for all payments imposed by State and Federal laws and for all other payments made to, or on behalf of, the workmen, other than actual wages as defined above. No time or charges will be allowed except when the workers are actually engaged in the proper, efficient and diligent performance or completion of the extra work as authorized. Overtime shall not be worked without prior approval of the Engineer.

#### (4) Computation of Equipment and Materials Costs

The portion of the proposal relating to materials may include the reasonably anticipated direct costs to the Contractor or to any of its Subcontractors of materials to be purchased for incorporation in the change in the Work. This portion of the proposal may also include transportation and applicable sales or use taxes. Up to fifteen percent (15%) of these direct costs may be included as overhead and profit for the Contractor or any such Subcontractor (such overhead and profit to include all small tools).

This portion of the proposal may further include the Contractor's and any of its Subcontractors' reasonably anticipated costs for the rental and operation of prime construction and automotive equipment furnished and used in connection with the change in the Work. The equipment rental and operation rates used shall be the latest edition of the Department of Transportation, Division of Construction, Equipment Rental Rates. These costs shall not include charges for listed equipment or major tools with a new cost of five hundred dollars (\$500.00) or less. No time charges shall be allowed except for equipment actually used for the proper and efficient performance or completion of the authorized change in the Work.

#### (5) Subcontractors

The lump sum proposal may include up to five percent (5%) of the amount, which the Contractor will pay to any of its Subcontractors for the change in the Work as allowable overhead and profit to the Contractor.

#### (6) Failure to Submit Lump Sum Proposal

In the event that the Contractor fails to submit its proposal within the designated period, the Engineer may direct the Contractor to proceed with the change or addition to the Work and the Contractor shall so proceed. The Engineer shall unilaterally determine the reasonable costs and time to perform the work in question, which determination shall be final and binding upon the Contractor.



(7) Failure to Agree on Lump Sum Amount

In the event that the parties are unable to agree as to the reasonable costs and time to perform the change in or addition to the Work based upon the Contractor's proposal and the Engineer and City do not elect to have the change in the Work performed on a time and material basis, the Engineer and City shall make a unilateral determination of the reasonable cost and time to perform the change in the Work, based upon their own estimates, the Contractor's submission or combination thereof. In such instances, a Change Order shall be issued for the amount of costs and time determined by the Engineer and the City and shall become binding upon the Contractor unless the Contractor submits its protest in writing to the City within thirty (30) days of the issuance of the Change Order. The City has the right to direct the Contractor in writing to perform the change in the Work, which is the subject of the Change Order. Failure of the parties to reach agreement regarding the costs and time of performing the change in the Work and/or any pending protest shall not relieve the Contractor from performing the change in the Work promptly and expeditiously.

(c) Payment by Unit Prices

If any of the items included in the lump sum proposal are covered by unit prices contained in the contract document, the City may, if it requires the change in the Work to be performed on a lump sum basis, elect to use these unit prices in lieu of the similar items included in the lump sum proposal in which event an appropriate deduction will be made in the lump sum amount prior to the application of any allowed overhead and profit percentages. No overhead and profit shall be applied to any unit prices.

(d) Payment on a Force Account Basis

If the City elects to have the change or addition to the Work performed on a force account basis, the Work shall be performed, whether by the Contractor's forces or the forces of any of its Subcontractors or Sub-Subcontractors, and payment shall be made subject to the following provision. The Contractor will be paid the direct costs of the labor, equipment and materials used in performing the force account work determined as hereinafter provided.

(1) For labor, the Contractor will be paid the cost of labor for the workers (including foremen when authorized by the Engineer or Project Manager) used in the actual and direct performance of the work. The cost of labor, whether the employer is the Contractor or any or any Subcontractor of any tier, shall be actual wages, including basic hourly wage, health and welfare payments and pension payments incurred in performing the force account work, plus any travel and subsistence payments for the workers performing such work and made necessary thereby. To the actual wages shall be added a labor surcharge as set forth in the State Department of Transportation publication entitled "Labor Surcharge and Equipment Rental Rates", as in effect on the date the work is performed. The labor surcharge shall be deemed to encompass the City's entire liability to reimburse the Contractor for workers compensation insurance payments, social security payments, Medicare payments, federal unemployment insurance payments, state unemployment insurance payments and state training taxes, made necessary by the force account work.

(2) For equipment, the Contractor will be paid for the use of equipment at the rental rates listed for that equipment in the State Department of Transportation publication entitled "Labor Surcharge and Equipment Rental Rates", which is in effect on the date the work is performed, regardless of ownership or any rental agreement entered into by Contractor for such equipment. The rental rate paid in accord with said publication shall be deemed to include

the cost of fuel, oil, lubrication, supplies, small tools, attachments, repairs and maintenance, depreciation, storage and insurance for said equipment. Rental time will not be paid when equipment is inoperable due to breakdowns, repairs or maintenance. Payment for loading, transporting and unloading time will be in accordance with the State Standard Specifications applicable to loading, transporting and unloading equipment for force account work, as applicable as of the date the equipment is loaded, transported or unloaded.

(3) For materials used in the work, the City will pay for materials furnished by the Contractor and necessarily used in the force account work. Prior to markups as set forth below, the amount paid shall be the price paid by the actual purchaser to the actual supplier plus any necessary actual costs of handling the materials.

Contractor may add fifteen percent (15%) to the total labor, equipment and material charges as the total overhead and profit to the entity or entities actually performing the force account work. If the entity or entities actually performing the work are Subcontractors or Sub-Subcontractors, the Contractor shall be allowed five percent (5%) of the total charge of the performing entity or entities (including mark-up) as Contractor's mark-up. No other mark-ups shall be allowed hereunder.

The Contractor shall submit to the City daily work and material tickets, to include the identification number assigned to the change in the Work, the location and description of the change in the Work, the classification of labor employed (and names and social security numbers), hours expended, the material used, the equipment rented (not tools) and such other evidence of cost as the City may require. The City may require authentication of all time and material tickets and invoices by persons designated by the City for such purpose. The failure of the Contractor to secure any required authentication shall, if the City elects to treat it as such, constitute a waiver by the Contractor of any claim for the cost of that portion of the Change in the Work covered by a non-authenticated ticket or invoice; provided, however, that the authentication of any such ticket or invoice by the City shall not constitute an acknowledgment by the City that the items thereon were reasonably required for the Change in the Work.

(e) Limitations on Changes

The Contractor shall not be entitled to any amount for indirect costs, damages or expenses of any nature, including, but not limited to, so-called "impact" costs, labor inefficiency, wage, material or other escalations beyond the prices upon which the proposal is based and to which the parties have agreed pursuant to the provisions of this section, and which the Contractor, its Subcontractors and Sub-Subcontractors or any other person may incur as a result of delays, interferences, suspensions, changes in sequence or the like, for whatever cause, whether reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable, arising from the performance of any and all changes in the work performed pursuant to this section. It is understood and agreed that the Contractor's sole and exclusive remedy in such event shall be recovery of its direct costs as compensable hereunder and an extension of the time of the Contract, but only in accordance with the provisions of the Contract Documents.

It is expressly agreed that Contractor shall not be entitled to claim damages for anticipated profits on any portion of the Work that may be deleted.

The amount of any adjustment for work deleted shall be estimated at the time deletion of work is ordered and the estimated adjustment will be deducted for the subsequent monthly pay estimates. The City reserves its rights under Section 3.20 to audit Contractor's as-Bid profit in

connection with any deductive change, to arrive at a final adjustment. Contractor's as-Bid profit shall be reduced pro rata according to the proportion of the original contract value less as-Bid profit, represented by the work deleted.

The City reserves the right to contract with any person or firm other than the Contractor for any or all Extra Work.

## **2.05. UNILATERAL CHANGE IN OR ADDITION TO THE WORK**

Notwithstanding the above, the City, directly or through the Engineer, may direct the Contractor in writing to perform changes in or additions to the scope of the Contract. The Contractor shall perform such work and the parties shall proceed pursuant to the provisions of Section 2.04.

## **2.06. DIFFERING SITE CONDITIONS**

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

(a) Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25110.02 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; or

(b) Subsurface or latent physical conditions at the Site differing from those indicated in the Contract Documents; or

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

The Engineer shall thereupon promptly investigate the conditions. If the Engineer finds that they do involve hazardous waste, or do materially differ and cause an decrease or increase in the Contractor's cost or time of performance, the Engineer will issue a change order as appropriate. Any increase or decrease of cost resulting from such changes shall be adjusted in the manner provided in Section 2.04 for adjustments as to extra and/or additional work and changes. In the event that a dispute arises between the City and the Contractor, whether the conditions materially differ, or involve hazardous waste, or cause and decrease or increase the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided by the Contract, but shall proceed with all work to be performed under the Contract, the procedures applicable to claims for extra costs shall then apply.

## **2.07. CLAIMS FOR EXTRA COSTS**

(a) Notice of Potential Claims

(1) It is hereby mutually agreed that the Contractor shall not be entitled to the payment of any additional compensation for any cause, including any act, or failure to act, by the Engineer, or the happening of any event, thing or occurrence, unless the Contractor provides the Engineer with written notice of the potential claims as hereinafter specified. Compliance with this section, however, shall not be a prerequisite as to matters within the scope of the protest provisions in Section 2.03.

The written notice of potential claims shall set forth the reasons for which the Contractor believes additional compensation will or may be due, the nature of the costs involved, and, insofar as possible, the amount of the potential claim. The notice as above required shall be given to the Engineer prior to the time that the Contractor commences performance of the Work giving rise to the potential claim for additional compensation, if based on an act or failure to act by the Engineer, or in all other cases within ten (10) days after the happening of the event, thing or occurrence giving rise to the potential claim.

(b) Construction Dispute

(1) The Contractor may submit a dispute to the Engineer concerning any matter for which a protest under Section 2.03, or a notice of potential claim, is filed. Such disputes, or potential claims, shall be submitted to the Engineer within sixty (60) days following the submission of said protest or notice, unless, due to the nature of the dispute or the uncompleted state of the Work, it is impracticable to determine the amount or the extent of the claim within such period. In such cases, disputes shall be submitted at the earliest practicable time in which such a determination can be made. In any event, all disputes shall be filed on or before the date of the final release by the Contractor as provided for in Section 7.09.

(2) All disputes shall be in writing and shall set forth clearly and in detail, for each item of additional compensation requested, the reasons for the dispute, reference to applicable provisions of the Specifications, the nature and the amount of the cost involved, the computations used in determining such costs, all pertinent factual data and all the documents necessary to substantiate the dispute. The Contractor shall maintain complete and accurate records of the cost or any portion of the Work for which additional compensation is claimed, and shall provide the Engineer with copies thereof, as required. The Engineer shall provide a written decision to the dispute or potential claim as soon as practicable but not later than 30 days following receipt thereof.

(c) Resolution of Construction Claims

(1) To the extent that the Contractor disputes the Engineer's Written Decision issued pursuant to Section 4.07(b)(2), or to the extent the Engineer fails to issue a timely written decision, the Contractor may file a written claim, as defined by Public Contract Code section 9204(c)(1), with the City including reasonable documentation to support the claim. Upon receipt of the claim, the City shall conduct a reasonable review of the claim, and within a period not to exceed 45 days, the City shall provide the Contractor with a written statement identifying what portion of the claim is disputed and what portion is undisputed. The time in which the City must provide a written statement may be extended by mutual agreement of the parties as specified by Public Contract Code section 9204(d)(1)(C). The City shall pay any undisputed portion of the claim within 60 days after issuance of its written statement.

(2) Claims submitted by the Contractor shall be accompanied by a notarized certificate containing the following language:

Under the penalty of law for perjury or falsification and with specific reference to the California False Claims Act, Government Code section 12650, et. seq., the undersigned,

\_\_\_\_\_  
(Name)  
\_\_\_\_\_

(Title

\_\_\_\_\_  
(Company

hereby certifies that the claim for the additional compensation and time, if any, made herein for the work on this contract is a true statement of the actual costs incurred and time sought, and is fully documented and supported under the contract between parties.

Dated: \_\_\_\_\_

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

Subscribed and sworn before me this \_\_\_\_ day

of \_\_\_\_\_

\_\_\_\_\_

Notary Public

My commission expires \_\_\_\_\_

Failure to submit the notarized certificate will be sufficient cause for denying the claim.

Any claim for overhead type expenses or costs, in addition to being certified as stated above, shall be supported by an audit report of any independent Certified Public Accountant. Any such overhead claim shall also be subject to audit by the City at its discretion.

Any costs or expenses incurred by the City in reviewing or auditing any claims that are not supported by the Contractor's cost accounting or other records shall be deemed to be damages incurred by the City within the meaning of the California False Claims Act.

(3) Meet And Confer Regarding Unresolved Claims. If the Contractor disputes the City's written statement issued pursuant to Section 4.07(c)(1) or if the City fails to issue a timely written response, the Contractor 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 City shall schedule a meet and confer conference within 30 days for settlement of the dispute. The meet and confer conference shall be attended by senior executives of the parties who have authority to settle the controversy. Within 10 business days following the conclusion of the meet and confer conference, the City shall provide the Contractor with a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. The City shall pay any undisputed portion of the claim within 60 days after it issues its written statement.

(4) Mediation. If the Contractor disputes, in writing, any portion of the City's written statement as issued under Section 4.07(c)(3), the disputed items shall be submitted to nonbinding mediation according to the provisions of Public Contract Code section 9204(d)(2), and any costs of mediation shall be allocated as set forth in that section. Upon receipt of a claim, the City and the Contractor may agree to waive, in writing, mediation.

(5) Failure to Respond or Pay. If the City fails to timely respond to a claim from the Contractor or otherwise fails to meet the time requirements of Public Contract Code section 9204, the claim shall be deemed rejected in its entirety. Additionally, amounts not timely paid in the manner required by Public Contract Code section 9204 shall bear interest at 7 percent per annum.

(6) Subcontractor Claims. If a Subcontractor or a lower tier Subcontractor lacks legal standing to assert a claim against the City because privity of contract does not exist, the Contractor may present to the City a claim on behalf of the Subcontractor or lower tier Subcontractor pursuant to Public Contract Code section 9204(d)(5).

## **2.08. CIVIL ACTION PROCEDURES**

(a) Alternative Dispute Resolution of Claims of \$375,000.00 or Less.

(1) Claims Less Than \$375,000.00. Notwithstanding any other provision herein but after compliance with the provisions of Public Contract Code section 9204 as set forth in Section 4.07, claims of \$375,000.00 or less shall be resolved pursuant to the alternative dispute resolution procedures set forth in Public Contract Code section 20104 *et seq.* "Claim" for this purpose means a separate demand by the Contractor for a time extension, payment of money or damages arising from work done by or on behalf of the Contractor pursuant to the Contract, for which payment is expressly provided, or the Contractor is otherwise entitled to, or an amount the payment of which is disputed by the City.

(2) Submission of Claims Less than \$375,000.00. The Contractor shall submit its claim of \$375,000.00 or less to the City in writing, within the time frames established under paragraph 4.07, but no later than before the final payment is made. The City shall respond within the time provided by statute. If the Contractor disagrees with the response or the City fails to respond within the time permitted, the Contractor shall notify the City of the disagreement in writing within fifteen (15) days from the date of the response or expiration of the time permitted to respond and demand a meet-and-confer conference. The City shall schedule a meet-and-confer conference within thirty (30) days of the demand. The meet and confer conference shall be attended by senior executives of the parties who have authority to settle the controversy. If not resolved at the meet-and-confer conference, the Contractor may initiate a civil action as set forth in Public Contract Code section 20104 *et seq.*, including but not limited to compliance with applicable Government Code provisions.

(3) Time Limits Not Extended. Nothing in subdivision (a) of Public Contract Code section 20104.2 shall extend the time limit or supersede the notice requirements provided in this Contract for filing claims by the Contractor.

(b) Alternative Dispute Resolution of Claims in Excess of \$375,000.00.

As a condition precedent to the initiation of litigation, disputes in excess of a total value of \$375,000.00 shall first be submitted to the claims procedures set forth in Sections 4.06 and 4.07.

## **2.09. GUARANTEE**

(a) In addition to warranties, representations and guarantees stated elsewhere in the Contract Documents, the Contractor unconditionally guarantees all materials and workmanship furnished hereunder, and agrees to replace the same at its sole cost and expense, and to the

satisfaction of the Engineer, any and all materials which may be defective or improperly installed.

(b) The Contractor shall repair or replace to the satisfaction of the Engineer any or all such work that may prove defective in workmanship or materials, ordinary wear and tear excepted, together with any other work, which may be damaged or displaced in so doing.

(c) In the event of failure to comply with the above stated conditions within a reasonable time, the City is authorized to have the defect repaired and made good at the expense of the Contractor who will pay the costs and charges therefore immediately upon demand, including any reasonable management and administrative costs, and engineering, legal and other consultant fees incurred to enforce this section.

(d) The signing of the Contract by the Contractor shall constitute execution of the above guarantees. Except as otherwise provided in this Contract, the guarantees and warranties shall remain in effect for a period of one (1) year after final Acceptance of the Work by the City.

## **SECTION 3**

### **CONTROL OF WORK**

#### **3.01. AUTHORITY OF ENGINEER**

(a) The Engineer is the representative of the City and has full authority to interpret the Contract Documents, to conduct the construction review and inspection of the Contractor's performance, and to decide questions, which arise during the course of the Work and the Engineer's decisions on these matters, shall be final and conclusive. The Engineer has the authority to reject all work and materials, which do not conform to the Contract Documents, and has the authority to stop the Work whenever such stoppage may be necessary to insure the proper execution of the Contract. The Engineer's failure to stop the Work shall not obligate the City to accept defective or otherwise unacceptable work or otherwise affect the Engineer's or City's authority to reject work for any reason set forth in the Contract Documents.

(b) If at any time the Contractor's work force, tools, plant or equipment appear to the Engineer to be insufficient or inappropriate to secure the required quality of work or the proper rate of progress, the Engineer may order the Contractor to increase their efficiency, improve their character, to augment their number or to substitute other personnel, new or additional tools, plant or equipment, as the case may be, and the Contractor shall comply with such order. Neither the failure of the Engineer to demand such increase of efficiency, number, or improvement, nor the compliance by the Contractor with the demand, shall relieve the Contractor of its obligation to provide quality work at the rate of progress necessary to complete the Work within the specified time.

(c) The Engineer may authorize minor variations in the work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Time. These may be accomplished by a Field Order. Contractor shall comply promptly with all Field Orders. If the Engineer and Contractor are unable to agree on entitlement or on the amount or extent, if any, of any adjustment in the Contract Price or Contract time, or cost, as a result of a Field Order, a claim may be made therefor pursuant to Section 2.07.

(d) Any order given by the Engineer, not otherwise required by the Contract Documents to be in writing shall, on request of the Contractor, be given or confirmed by the Engineer in writing.

(e) Whenever work, methods of procedure, or any other matters are made subject to direction or approval, such direction or approval will be given by the Engineer.

#### **3.02. DRAWINGS**

(a) Drawings furnished herewith are for bidding purposes. The Engineer will furnish the Contractor, free of charge, copies of full size Drawings which are reasonably necessary for the execution of the Work. The Contractor shall have no claim for excusable delay on account of the failure of the Engineer to deliver such Drawings, unless the Engineer shall have failed to deliver the same within two weeks after receipt of written demand therefore from the Contractor. The Contractor shall keep one copy of said Drawings, in good order, available to the Engineer and the Engineer's representatives, and convenient to the working site.

(b) If the Contractor, in the course of the Work, finds any discrepancy between the Drawings and the physical condition of the locality, or any errors or omissions in the Drawings,



or in the layout as given by points and instructions, it shall be the Contractor's duty to inform the Engineer in writing, and the Engineer will promptly verify the same.

Any work done after such discovery, until authorized, will be done at the Contractor's risk. All Drawings, Specifications, and copies thereof furnished by the Engineer are the property of the Engineer and shall not be reused on other work and, with the exception of the signed Contract sets, are to be returned to the Engineer, on request, at the completion of the Work. All models are the property of the City.

(c) The Drawings shall be supplemented by such Shop Drawings prepared by the fabricator and/or supplier and Working Drawings prepared by the Contractor as are necessary to adequately control the Work. No changes shall be made by the Contractor in any Shop or Working Drawings after they have been reviewed by the Engineer, if the Engineer deems that no further submittals are necessary. The Contractor shall not commence the layout, purchase, fabrication, or construction of any work for which Shop or Working Drawings are required until Engineer has reviewed the specifications and drawings and has indicated in writing no further submittals are required for compliance with the Contract Documents.

(d) Shop and Working Drawings for any structure shall include, but not be limited to, detail design calculations, fabrication and installation drawings, lists, graphs, operating instructions, etc., which shall be reviewed and accepted by the Engineer before any such work is performed.

(e) Shop and Working Drawings will be required for cribs, cofferdams, falsework, centering and form work and for other temporary work and methods of construction the Contractor proposes to use. Such Drawings shall be subject to the review and Acceptance of the Engineer insofar as the details affect the character of the finished work, but details of design will be left to the Contractor who shall be responsible for the successful construction of the Work.

(f) Contractor agrees that Shop and/or Working Drawings processed by the Engineer are not Change Orders; that the purpose of these Drawings submitted by the Contractor is to demonstrate to the Engineer that the Contractor understands the design concept, that the Contractor demonstrates its understanding by indicating which equipment and material the Contractor intends to furnish and by detailing the fabrication methods it intends to use. It is expressly understood, however, that favorable review of the Contractor's Shop and Working Drawings shall not relieve the Contractor of any responsibility for accuracy of dimensions and details, or for mutual agreements of dimensions and details. It is mutually agreed that the Contractor shall be responsible for agreement and conformity of its Drawings with the Specifications. Contractor further agrees that if deviations, discrepancies or conflicts between Shop and/or Working Drawings and Specifications are discovered either prior to or after the Drawings are processed by the Engineer, the Specifications shall control and shall be followed.

(g) Unless otherwise stated, the Engineer shall have thirty (30) days from the date of receipt of Shop and/or Working Drawings for review.

(h) Full compensation for furnishing all Shop and/or Working Drawings shall be considered as included in the prices paid for the Contract items of work to which such drawings relate and no additional compensation will be allowed therefore. Any cost related to the Engineer's review of any particular set of Shop and/or Working Drawings more than twice, due

to incompleteness or unacceptability, shall be borne by the Contractor, and the City reserves the right to withhold such costs from payments due the Contractor.

(i) All reasonable effort has been made to locate and delineate all known structures and facilities on the plans. Except as otherwise provided herein, the City of West Sacramento shall assume no responsibility for the completeness or accuracy of its delineation of underground utilities nor the existence of other buried objects which may be encountered, or which are not shown on the plans.

(j) The Contractor shall keep and maintain a clean set of plans for the project and shall record in red ink all changes, revisions, etc. made during the course of construction. These plans shall include all changes, revisions, etc. from the original plan complete with the exact sizes, locations, dimensions, elevations, etc. These plans shall be kept and maintained in a neat, clean and legible condition and shall be available for inspection at all times by the Engineer. The Contractor shall deliver these completed plans to the Engineer and the Engineer shall approve these plans prior to final Acceptance of the project by the City.

### **3.03. CONSTRUCTION STAKING AND SURVEYS**

The City will provide one set of construction stakes and benchmarks as it deems necessary to establish lines and grades required for the completion of the site work specified in the Contract. The Contractor shall notify the Engineer a minimum of seven (7) days in advance of the time work is to begin on any portion of the project that may require construction staking to be provided by the City. The Contractor shall make all other surveys necessary for the completion of the Work.

Alternatively, the Engineer may provide the Contractor with drawings showing benchmarks and reference points as it deems necessary to establish lines and grades required for the completion of the site work specified in the Contract Documents. The Contractor shall make or furnish all surveys and set all construction stakes necessary for the completion of the work.

Stakes and marks set by the City or Engineer shall be carefully preserved by the Contractor. The Contractor shall be charged for the cost of replacing or restoring the stakes and marks, which are destroyed or damaged by Contractor's operation. This charge will be deducted from any monies due or to become due to the Contractor under the Contract.

### **3.04. PERMITS AND REGULATIONS**

Permits and licenses, of a temporary nature, necessary for the prosecution of the Work shall be secured and paid for by the Contractor. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the City unless otherwise specified.

The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the Work as shown on the plans and described in the Specifications. Contractor shall promptly notify the Engineer in writing of any specification at variance therewith. In such instances, any necessary changes shall be adjusted as provided in the Contract for changes in the Work. If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules, and regulations and without such notice to the Engineer, Contractor shall bear all costs arising therefrom.

### **3.05. CONFORMITY WITH CONTRACT DOCUMENTS AND ALLOWABLE DEVIATIONS**

Work and materials shall conform to the lines, grades, cross sections, dimensions and material requirements, including tolerances, shown on Contract Documents. Although measurement, sampling, and testing may be considered evidence as to such conformity, the Engineer shall be the sole judge as to whether the Work or materials deviate from the Contract Documents. The Engineer's decision as to any allowable deviations therefrom shall be final and conclusive.

### **3.06. COORDINATION AND INTERPRETATION OF CONTRACT DOCUMENTS**

(a) Should it appear that the Work to be done or any of the matters relative thereto are not sufficiently detailed or explained in the Specifications and Plans, the Contractor shall apply to the Engineer for such further explanations as may be necessary and shall conform to them as part of the Contract. In the event of any doubt or question arising respecting the true meaning of the Specifications and Plans, reference shall be made to the Engineer, whose decision thereon shall be final and conclusive.

(b) Any reference made in the Specifications and Plans to any specification, standard, method, or publication of any scientific or technical society or other organization shall, in the absence of a specific designation to the contrary, be understood to refer to the specification, standard, method, or publication in effect as of the date that the Work is advertised for Bids.

### **3.07. SUBCONTRACTORS**

(a) The attention of the Contractor is directed to the provisions of California Public Contract Code sections 4100-4113 regarding subcontracting and said provisions are by this reference incorporated herein and made a part hereof.

(b) Each subcontract shall contain a suitable provision for the suspension or termination thereof should the Work be suspended or terminated or should the Subcontractor neglect or fail to conform to every provision of the Contract Documents insofar as such provisions are relevant. The Contractor shall be fully responsible to the City for the acts or omissions of the Contractor's Subcontractors and of the persons either directly or indirectly employed by the Contractor. Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and the City. If a legal action, including arbitration and litigation, against the City is initiated by a Subcontractor or Supplier, the Contractor shall reimburse the City for the amount of legal, engineering and all other expenses incurred by the City in defending itself in said action.

(c) The City and the Engineer reserve the right to approve all Subcontractors.

Such approval shall be a consideration to the awarding of the Contract and unless notification to the contrary is given to the Contractor prior to the signing of the Contract, the list of Subcontractors which is submitted with the Contractor's proposal will be deemed to be acceptable. Contractor shall not, without the written consent of the City, subcontract the whole of the Work.

### **3.08. COOPERATION OF CONTRACTORS**

(a) Should construction be under way by other forces or by other contractors within or adjacent to the limits of the Work specified or should work of any other nature be under way by other forces within or adjacent to said limits, the Contractor shall cooperate with all such other contractors or other forces to the end that any delay or hindrance to their work will be avoided. The right is reserved to perform other or additional work at or near the site (including material sources) at any time, by the use of other forces.

(b) When two or more contractors are employed on related or adjacent work, each shall conduct its operation in such a manner as not to cause any unnecessary delay or hindrance to the other. Each Contractor shall be responsible to the other for all damage to work, to persons or property caused to the other by its operations, and for loss caused the other due to unnecessary delays or failure to finish the work within the time specified for completion.

### **3.09. SUPERINTENDENCE**

(a) The Contractor shall designate in writing, before starting work, an individual as authorized representative who shall have the authority to represent and act for the Contractor. This authorized representative shall be present at the Site of the Work at all times while work is actually in progress on the Contract. When the Work is not in progress and during periods when the Work is suspended, arrangements acceptable to the Engineer shall be made for any emergency work, which may be required.

(b) The Contractor is solely responsible, at all times, for the superintendence of the Work and for its safety and progress.

(c) Whenever the Contractor or its authorized representative is not present on any particular part of the Work where it may be desired to give direction, orders will be given by the Engineer, which shall be received and obeyed by the superintendent or foreman who may have charge of the particular work in reference to which the orders are given.

(d) Any order given by the Engineer, not otherwise required by the Specifications to be in writing, will on request of the Contractor, be given or confirmed by the Engineer in writing.

### **3.10. INSPECTION OF WORK**

(a) Unless otherwise provided, all equipment, materials, and work shall be subject to inspection and testing by the Engineer. The Engineer will observe the progress and quality of the Work and determine, in general, if the Work is proceeding in accordance with the intent of the Contract Documents. The Engineer shall not be required to make comprehensive or continuous inspections to check the quality of the Work. The Engineer shall not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work. Visits and observations made by the Engineer shall not relieve the Contractor of Contractor's obligation to conduct comprehensive inspections of the Work and to furnish proper materials, labor, equipment and tools, and perform acceptable work, and to provide adequate safety precautions, in conformance with the intent of the Contract.

(b) Whenever the Contractor varies the period during which work is carried on each day, the Contractor shall give due notice to the Engineer so that proper inspection may be provided. Any work done in the absence of the Engineer shall be subject to rejection. Proper facilities for safe access for inspection to all parts of the Work shall at all times be maintained for the necessary use of the Engineer and other agents of the City, and agents of the federal, state,

or local governments at all reasonable hours for inspection by such agencies to ascertain compliance with laws and regulations.

(c) One or more inspectors may be assigned to observe the Work by the Engineer and to act in matters of construction under this Contract. It is understood that inspectors shall have the power to issue instructions and make decisions within the limitations of the authority of the Engineer. Such inspection shall not relieve the Contractor of the Contractor's obligation to conduct comprehensive inspections of the Work, to furnish proper materials, labor, equipment and tools, and perform acceptable work, and to provide adequate safety precautions in conformance with the intent of the Contract.

(d) The Engineer and the Engineer's representatives shall at all times have access to the Work wherever it is in preparation or progress, and the Contractor shall provide safe and convenient facilities for such access and for inspection. If the Specifications, the Engineer's instructions, laws, ordinances, or any public authority require any material, equipment or work to be specifically tested or approved, the Contractor shall give the Engineer timely notice of its readiness for inspection, and if the inspection is by an authority other than the City, of the time fixed for inspection. Inspections by the Engineer will be made promptly and, where practicable, at the source of supply.

(e) Work performed without inspection may be required to be removed and replaced under proper inspection. In such instances, the entire cost of removal and replacing, including the cost of City-furnished materials used in the Work, shall be borne by the Contractor, regardless of whether or not the Work exposed is found to be defective. Examination of questioned work, other than that installed without inspection, may be ordered by the Engineer and, if so ordered, the Work must be uncovered by the Contractor. If such work is found to be in accordance with the Contract Documents, the City will pay the cost of re-examination and replacement. If such work is found to be not in accordance with the Contract Documents, the Contractor shall pay such cost, unless the Contractor can show that the defect in the Work was caused by another Contractor, and in that event the City will pay such costs.

(f) The inspection of the Work shall not relieve the Contractor of the Contractor's obligation to fulfill the Contract as herein prescribed, or in any way alter the standard of performance provided by the Contractor, and defective work shall be made good and unusable materials may be rejected, notwithstanding that such work and materials have been previously overlooked by the Engineer and accepted or estimated for payment. If the Work or any part thereof shall be found defective, the Contractor shall, within ten (10) calendar days, make good such defect in a manner satisfactory to the Engineer. If the Contractor fails to make ordered repairs of defective work or to remove the condemned materials from the Work within ten (10) calendar days after written direction by the Engineer, the City may make the ordered repairs, or remove the condemned materials, and deduct the cost thereof from any monies due the Contractor.

(g) The Contractor shall furnish promptly, without additional charge, all facilities, labor and materials reasonably needed by the Engineer for performing all inspection and tests. Contractor shall be charged with any additional cost of inspection when material and workmanship are not ready at the time specified by the Contractor for its inspection.

(h) Where any part of the Work is being done under an encroachment permit or building permit, or is subject to federal, state, county or city codes, laws, ordinances, rules or regulations, representatives of the government agency shall have full access to the Work and shall be allowed to make any inspection or tests in accordance with such permits, codes, laws,

ordinances, rules, or regulations. If advance notice of the readiness of the Work for inspection by the governing agency is required, the Contractor shall furnish such notice to the appropriate agency.

(i) The Engineer may inspect the production of material, or the manufacture of products at the source of supply. Plant inspection, however, will not be undertaken until the Engineer is assured of the cooperation and assistance of both the Contractor and the material producer. The Engineer or the Engineer's authorized representative shall have free entry at all times to such parts of the plant as concerns the manufacture or production of the materials. Adequate facilities shall be furnished free of charge to make the necessary inspection. The City assumes no obligation to inspect materials at the source of supply.

### **3.11. TESTS**

The Contractor shall perform, at the Contractor's own expense, all tests specified or required by the Specifications. The Engineer may perform such tests as the Engineer deems necessary to determine the quality of work or compliance with Contract Documents. The Contractor shall furnish promptly without additional charge all facilities, labor, and material reasonably required for performing safe and convenient tests as may be required by the Engineer. All tests by the Engineer will be performed in such a manner as will not unnecessarily delay the Work. The Contractor shall not be required to reimburse the City for tests performed by the City or Engineer. If samples of materials are submitted which fail to pass the specified tests, the Contractor shall pay for all subsequent tests.

### **3.12. REMOVAL OF REJECTED AND UNAUTHORIZED WORK AND MATERIALS**

(a) All work or materials, which have been rejected, shall be remedied, or removed and replaced by the Contractor in an acceptable manner and no compensation shall be allowed the Contractor for such removal, replacement, or remedial work.

(b) Any work done beyond the lines and grades shown on the plans or established by the Engineer or any Extra Work done without written authority will be considered as unauthorized work and will not be paid for. Upon order of the Engineer, unauthorized work shall be remedied, removed, or replaced at the Contractor's expense.

(c) Upon failure of the Contractor to comply with any order of the Engineer made under this section, the City may cause rejected or unauthorized work to be remedied, removed, or replaced, and may deduct the costs therefore from any monies due or to become due the Contractor.

### **3.13. DEDUCTIONS FOR UNCORRECTED WORK**

If the Engineer deems it inexpedient to correct work damaged or not done in accordance with the Contract, an equitable deduction from the Contract price shall be made therefore, and such sum may be withheld by the City from Contractor's payment.

### **3.14. EQUIPMENT AND PLANTS**

(a) Only equipment and plants suitable to produce the quality of work and materials required will be permitted to operate on the Project.

(b) Plants will be designed and constructed in accordance with general practice for such equipment and shall be of sufficient capacity to insure the production of sufficient material to carry the Work to completion within the time limit.

(c) The Contractor shall provide adequate and suitable equipment and plants to meet the above requirements, and when ordered by the Engineer, shall remove unsuitable equipment from the Work and discontinue the operation of unsatisfactory plants. Contractor shall, upon request of the Engineer, submit one or more lists identifying, by make, model number, Contractor 's identification number and empty gross weight, each piece of operable equipment used for the Work. Contractor shall, upon request of the Engineer, submit documentation establishing that any measuring device used for the Work has been tested and properly approved under California Test 109.

(d) In the case of termination of this Contract before its completion for any cause whatsoever, the Contractor, if notified to do so by the City, shall promptly remove any part or all of its equipment and supplies from the property of the City. If the Contractor fails to do so, the City shall have the right to remove such equipment and supplies at the expense of the Contractor.

### **3.15. CHARACTER OF WORKER**

If any Subcontractor, or person employed by the Contractor or any Subcontractor fails or refuses to carry out the directions of the Engineer or appears to the Engineer to be incompetent or to act in a disorderly or improper manner, said person shall be removed from the Project immediately on the requisition of the Engineer. That person shall not again be employed on the Work. Such discharge shall not be the basis for any claim for compensation or damages against the City, or any of its officers or agents.

### **3.16. SEPARATE CONTRACTS**

(a) The City reserves the right to let other contracts in connection with this Work. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate Contractor's work with the other Contractor 's work.

(b) If any part of the Contractor's work depends on proper execution or results upon the Work of any other Contractor , the Contractor shall inspect and promptly report to the Engineer any defects in such work that render it unsuitable for such proper execution and results. The Contractor's failure to inspect and report shall constitute an Acceptance of the other Contractor 's work as fit and proper for the reception of the Contractor's work, except as to defects which may develop in the other Contractor 's work after the execution of the Contractor's work.

(c) To insure the proper execution of Contractor's subsequent work, the Contractor shall measure work already in place and shall at once report to the Engineer any discrepancy between the executed work and the Drawings.

### **3.17. ASSIGNMENT**

The Contractor shall not assign the Contract or sublet it as a whole or in part without the written consent of the City, nor shall the Contractor assign any monies due, or to become due to the Contractor hereafter without the prior written consent of the City.

### **3.18. USE OF COMPLETED PORTIONS, RIGHT TO OPERATE UNSATISFACTORY EQUIPMENT OR FACILITIES**

(a) The City may, at any time, and from time to time, during the performance of the Work, enter the Work Site for the purpose of installing any necessary work by City labor or other contracts, and for other purpose in connection with the installation of facilities. In doing so, the City shall endeavor not to interfere with the Contractor and the Contractor shall not interfere with other work being done by or on behalf of the City.

(b) If, prior to completion and final Acceptance of all the Work, the City takes possession of any structure or facility (whether completed or otherwise) comprising a portion of the Work with the intent to retain possession thereof (as distinguished from temporary possession contemplating the return to the Contractor), then, while the City is in possession of the same, the Contractor shall be relieved of liability for loss or damage to such structure other than that resulting from the Contractor's fault or negligence. Such taking of possession by the City shall not relieve the Contractor from any provisions of this Contract regarding such structure, other than to the extent specified in the preceding sentence, nor shall such taking constitute a final Acceptance of such structure or facility.

(c) If, following installation of any equipment or facilities furnished by the Contractor, defects requiring correction by the Contractor are found, the City shall have the right to operate such unsatisfactory equipment or facilities and make reasonable use thereof until the equipment or facilities can be shut down for correction of defects without injury to the City.

### **3.19. LANDS FOR WORK, RIGHT-OF-WAY CONSTRUCTION ROADS**

(a) The City will provide the lands, easements, right-of-way, and/or encroachment permits necessary or other rights to enter and work on lands necessary for the performance of the Work. Other permits and licenses are addressed by Section 3.04. Should the Contractor find it advantageous to use any additional land for any purpose whatever, the Contractor shall provide for the use of such land at its expense. The Engineer shall be furnished with a copy of written agreements or otherwise be notified in writing of additional working space which is acquired. Nothing herein contained and nothing marked on the Plans shall be interpreted as giving the Contractor exclusive occupancy of the territory provided by the City. When two or more contracts are being executed at one time on the same or adjacent land in such a manner that work on one contract may interfere with that on another, the Engineer shall decide which Contractor shall cease work, and which shall continue, or whether the work on both contracts shall progress at the same time and in what manner, and the decision of the Engineer shall be final and binding. When the territory of one contract is the necessary or convenient means of access for the performance of another contract, such privilege of access or any other reasonable privilege may be granted by the Engineer to the Contractor so desiring, to the extent, amount, in the manner, and at the time permitted. No such decision as to the method or time of conducting the Work or the use of territory shall be the basis of any claim for delay or damage.

(b) Lands, easements or rights-of-way to be furnished by the City for construction operations will be specifically shown on the Plans.

(c) The Contractor shall construct and maintain all roads necessary to reach the various parts of the Work and for the transportation thereto of construction material and personnel. The cost of constructing and maintaining such roads shall be borne by the Contractor.



### 3.20. CITY'S RIGHT TO AUDIT AND PRESERVATION OF RECORDS

(a) The Contractor shall maintain books, records and accounts of all costs in accordance with generally accepted accounting principles and practices. The City and its authorized representatives shall have the right to audit the books, records and accounts of the Contractor under any of the following conditions:

(1) The Contract is terminated for any reason in accordance with the provisions of the Contract Documents in order to arrive at equitable termination costs;

(2) In the event of a disagreement between the Contractor and the City over the amount due the Contractor under the terms of the Contract;

(3) To check or substantiate any amounts invoiced or paid which are required to reflect the costs of the Contractor, or the Contractor's efficiency or effectiveness under this Contract or in connection with extras, changes, claims, additions, backcharges, or others, as may be provided for in this Contract;

(4) If it becomes necessary to determine the City's rights and the Contractor's obligations under the Contract or to ascertain facts relative to any claim against the Contractor which may result in a charge against the City;

(5) To determine any difference in cost occasioned by a permissible substitution;

(6) And/or for any other reason in the City's sole judgment.

(b) Contractor shall provide the City (or its representatives), unlimited, reasonable access during working hours to the Contractor's books and records. The City's audit rights shall be liberally construed in the City's favor.

(c) The Contractor, from the effective date of final payment or termination hereunder, shall preserve and make available to the City for a period of three (3) years thereafter, at all reasonable times at the office of the Contractor (but without any charge to the City), all its books, records, documents, photographs, micro-photographs, and other evidence bearing on the costs and expenses of the Contractor under this Contract and relating to the Work hereunder.

(d) The City will make all payments required of it under this Contract subject to audit, under circumstances stated above, which audit may be performed at the City's option, either during the Contract time period or during the record retention time period. Regardless of authorization, approval or acceptance, signatures or letters which are given by the City and are part of the City's control systems or are requested by the Contractor, the payments made under this Contract shall not constitute a waiver or agreement by the City that it accepts as correct the billings, invoices or other charges on which the payments are based. If the City's audit produces a claim against the Contractor, the City may pursue all its legal remedies even though it has made all or part of the payments required by this Contract.

(e) If any audit by the City or its representative discloses an underpayment by the City pursuant to the terms of the Contract Documents, the City shall have the duty to pay any amount found by the audit to be owed to the Contractor. If such audit discloses an overpayment, the Contractor shall have the obligation to reimburse the City for the amount of the

overpayment. The City's right to claim reimbursement from the Contractor of any overpayment shall not be terminated or waived until three years after the completion of the City's audit or upon the termination of audit rights under subparagraph 3.20(f), whichever date is later. The obligation of the Contractor to make reimbursements hereunder shall not terminate except as provided by law.

(f) The City's right to audit and the preservation of records shall terminate at the end of three (3) years after the date final payment is made or termination of the Contract. The Contractor shall include this "Right to Audit and Preservation of Records" clause in all subcontracts issued by it and it shall require the same to be inserted by all lower tier Subcontractors in their subcontracts, for any portion of the work. Should Contractor fail to include this clause in any such contract or lower tier contract, or otherwise fail to insure the City's rights hereunder, Contractor shall be liable to the City for all costs, expenses and attorney's fees which the City may have to incur obtaining or attempting to obtain an audit or inspection of or the restoration of records which otherwise would have been available to the City from said persons under this clause. Such audit may be conducted by the City or its authorized representative.

## **SECTION 4**

### **CONTROL OF MATERIALS**

#### **4.01. MATERIALS**

(a) Unless otherwise specifically stated in the Specifications, the Contractor shall furnish all materials necessary for the execution and completion of the Work. Unless otherwise specified, all materials shall be new and shall be manufactured, handled, and installed in a workmanlike manner to insure completion of the Work in accordance with the Contract Documents. The Contractor shall, upon request of the Engineer, furnish satisfactory evidence as to the kind and quality of materials.

(b) Where materials are to be furnished by the City, the type, size, quantity and location at which they are available will be stated in the Contract Documents.

(c) Manufacturers' warranties, guarantees, instruction sheets and parts listed, which are furnished with certain articles or materials incorporated in the Work, shall be delivered to the Engineer before Acceptance of the Contract.

#### **4.02. STORAGE OF MATERIALS**

Articles or materials to be incorporated in the Work shall be stored in such a manner as to insure the preservation of their quality and fitness for the Work, and to facilitate inspection.

#### **4.03. TRADE NAMES AND ALTERNATIVES**

Whenever a material, article, system or sub-system is specified or described by using the name and/or model of a proprietary product or trademark or the name of the manufacturer or vendor, the specified item shall establish the type, function, and quality required. It shall be understood that the words "or approved equivalent" are implied whether or not they follow the proprietary enumeration.

The City reserves the right to determine when proprietary items have no equivalency, and when uniformity of operations, interchangeability of parts, standard parts inventory, etc., are in the City's best interest.

Requests for review of equivalency will be considered upon submission of sufficient information as described herein, to allow complete review. Such requests shall not be accepted from anyone other than the Contractor. Such submission must be made prior to purchase, fabrication, manufacture or use of the equivalent items under consideration.

(a) **Contractor's Risk.** If the Contractor includes in its Bid or later proposes any material, product or equipment that the Contractor considers equivalent to that specified, the Contractor assumes all risk of any sort associated with Acceptance or rejection of proposed equivalent items. The Contractor shall have no right to make claim based upon Contractor's Bid that includes a proposed equivalent item(s) of work which resulted in a lower Bid amount for said item(s) or lower total bid.

(b) **Submission Requirements.** Each submission for equivalency review shall include:

(1) Justification for use of the proposed equivalent item(s), including evidence, as applicable, that Contract specified material, product or equipment is unobtainable or unobtainable within an acceptable time for contract completion;

(2) A description of the difference between specified item(s) and proposed equivalent item(s) and the comparative advantages and disadvantages of each;

(3) All relevant data addressing each specified parameter to show equivalency;

(4) A prediction of any effects the proposed change will have on operation and maintenance costs where applicable.

(c) Equivalency. An item will be considered equivalent to the item specified if it is equal to or better in:

(1) Design and strength in all sub-parts, quality, reliability and durability, operation, maintenance and serviceability, as applicable; and

(2) Specified parameters in performance in all respects for the specific function(s) indicated in the contract.

(d) Supplemental Requirements. Any tests required by the City to establish quality and performance standards shall be promptly conducted by or through the Contractor at no additional cost to the City. In addition, the Contractor shall:

(1) Submit any additional data requested by the Engineer for the equivalency review; and

(2) Satisfactorily accomplish all changes, including any Engineering associated with use of equivalent items, at no additional cost to the City.

(e) Equivalency Determinations. The Engineer shall be the sole judge as to equivalency determinations. The Engineer's decision shall be final. The Contractor shall have no right of appeal to any decision rejecting the equivalency of any item.

(f) Procedure.

(1) Data substantiating a request for a substitution of "an equal" item shall be submitted prior to the Award of the Contract pursuant to Section 3400 of the latest edition of the Public Contract Code.

(2) After the Bid opening, the apparent three low bidders shall have seven (7) calendar days to provide complete substantiating data for all product, material or system substitution requests. After this seven (7)-day period, the City may award the Contract to the apparent low bidder. In no event will product, material or system substitution requests submitted after the Award of Contract be considered. Failure to submit such substantiating data will result in the automatic rejection of the proposed substitution request. The City will have thirty (30) days to review the first ten (10) proposed substitution requests. For each additional five (5) product, material or system substitution requests over and above the initial ten (10), the City will have ten (10) additional days to review the proposed substitution requests.

(3) Each substitution request may include one alternate substitution. All alternate substitutions shall be submitted concurrently with substitution requests. Upon review by the City, proposed substitutions shall be returned to the Bidder marked either “accepted” or “rejected”. The City shall only review alternative substitution requests if the primary substitution request is rejected. If a substitution request, and its alternative, is returned “rejected”, no further substitution requests for that product, material or system will be allowed and the Bidder will provide the specified product, material or system.

(4) If, after all substitution requests have been processed, substitution requests by the apparent low Bidder are rejected by the City, the apparent low Bidder may elect not to execute the Contract. Under no circumstances, will bidders be allowed to alter their Bid Price as originally submitted. This election shall be made in writing no later than five (5) days following the receipt of the reviewed substitution requests. An election by the Bidder not to execute the Contract will result in the forfeiture of the bidder’s Bid bond. If the apparent low Bidder elects not to continue, and the second low Bidder is awarded the Contract, the second low Bidder may then elect not to execute the Contract for the contract price shown on its Bid Form. Subsequent bidders shall have five (5) days following the receipt of the reviewed substitution requests and the Notice of Award in which to make their election. This process shall continue until one Bidder decides to continue with the Award of Contract process.

(5) The City may award the Contract at any time after the time for submitting substitution requests expires pursuant to subpart (2), above. In the event the Contract is awarded prior to acceptance/rejection of substitution requests, all outstanding substitution requests shall be reviewed by the City as provided above. If the apparent low Bidder elects not to execute the Contract, the Award of Contract to the apparent low Bidder shall be rescinded and the Contract awarded to the next apparent low bidder. All bidders electing not to execute the Contract expressly agree that the City shall incur no liability for such rescissions. As provided herein, “apparent low bidder” means the lowest responsive and responsible bidder.

#### **4.04. CERTIFICATES OF COMPLIANCE**

(a) A Certificate of Compliance shall be furnished prior to the use of any materials for which the Technical Specifications require that such a certificate be furnished. In addition, when so authorized in the Specifications, the Engineer may permit the use of certain materials or assemblies prior to sampling and testing if accompanied by a Certificate of Compliance. The Certificate of Compliance shall be signed by the manufacturer of the material or the manufacturer of assembled materials and shall state that the materials involved comply in all respects with the requirements of the Contract. A Certificate of Compliance shall be furnished with each lot of material delivered to the Work and the lot so certified shall be clearly identified in the Certificate.

(b) All materials used on the basis of a Certificate of Compliance may be sampled and tested at any time. The fact that material is used on the basis of a Certificate of Compliance shall not relieve the Contractor of responsibility for incorporating material in the Work which conforms to the requirements of the Contract Documents and any such material not conforming to such requirements will be subject to rejection whether in place or not.

(c) The City reserves the right to refuse to permit the use of material on the basis of a Certificate of Compliance.

(d) The form of the Certificate of Compliance and its disposition shall be as directed by the Engineer.

## SECTION 5 LEGAL RELATIONS AND RESPONSIBILITY

### 5.01. COMPLIANCE WITH LAWS – PERMITS, REGULATIONS, TAXES

The Contractor is an independent Contractor and shall, at the Contractor's sole cost and expense, comply with all laws, rules, ordinances and regulations of all governing bodies having jurisdiction over the Work, obtain all necessary permits and licenses therefore, pay all manufacturers' taxes, sales taxes, use taxes, processing taxes, and all federal and state taxes, insurance and contributions for social security and unemployment which are measured by wages, salaries or any remuneration paid to Contractor's employees, whether levied under existing or subsequently enacted laws, rules or regulations. The Contractor shall also pay all property tax assessments on materials or equipment used until Acceptance by the City. If any discrepancy or inconsistency is discovered in the Plans or Specifications, or in this Contract in relation to any such law, rule, ordinance, regulation, order or decree, the Contractor shall forthwith report the same to the Engineer in writing. The Contractor shall also protect, defend and indemnify the City, the Engineer, and all of the City's officers, agents, and servants against any claim or liability arising from or based upon the violation of any such law, rule, ordinance, regulation, order or decree, whether by the Contractor or its employees. Particular attention is called to the following:

(a) Without limitation, materials furnished and performance by Contractor hereunder shall comply with Safety Orders of the Division of Industrial Safety, State of California, Federal Safety regulations of the Bureau of Labor, Department of Labor; and any other applicable Federal regulations.

(b) The Contractor, upon request shall furnish evidence satisfactory to the City and Engineer that any or all of the foregoing obligations have been or are being fulfilled. The Contractor warrants to the City that it is licensed by all applicable governmental bodies to perform this Contract and will remain so licensed throughout the progress of the Work, and that Contractor has, and will have, throughout the progress of the Work, the necessary experience, skill and financial resources to enable the Contractor to perform this Contract.

(c) Contractor is required to insure that material safety data sheets (MSDSs) for any material requiring a material safety data sheet pursuant to any federal or state law are available in a readily accessible place on the Project premises. Contractor is also required to insure:

(1) The proper labeling of any substance brought onto the Project premise by Contractor or any Subcontractors and

(2) That the person(s) working with the material, or within the general area of the material, are appropriately informed about the hazards of the substance and follow proper handling and protection procedures.

(d) Contractor is required to comply with the provisions of California Health and Safety Code section 25249.5, *et seq.* (Prop. 65), which requires the posting and giving of notice to persons who may be exposed to any chemical known to the State of California to cause cancer.

## 5.02. PREVAILING WAGE

(a) The Contractor shall forfeit as penalty to the City the amount specified by law for each calendar day or portion thereof for each worker (whether employed by the Contractor or any Subcontractor) paid less than the stipulated prevailing rates for any work done under the Contract in violation of the provisions of the Labor Code and in particular, Section 1775 which is incorporated herein by reference. Copies of the current schedules for prevailing wages are on file in the City's office, and the contents of those schedules are included herein as if set forth in full.

(b) The City will not recognize any claims for additional compensation because of the payment of the wages set forth in these General Conditions. The possibility of wage increases is one of the elements to be considered by the Contractor in determining its proposal, and will not under any circumstances, other than delays caused by the City, the Engineer, or the City's agents, be considered as the basis of a claim against the City.

(c) The Contractor agrees to follow the instructions of the City's labor compliance officer until notified otherwise in writing by the City.

(d) The Director of the Department of Industrial Relations of the State of California has determined the general prevailing rate of wages of per diem wages in the locality in which the work is to be performed for each craft or type of worker needed to execute the Contract. Copies of the applicable prevailing wage rate determinations are made available to the Contractor and Subcontractor at the Pre-Job Conference Meeting. The Contractor shall post a copy of this document at the prevailing wages at each job site, along with a CMU work place poster, printed on 8 1/2" X 11" paper or larger, in accordance with California Code of Regulations, Title 8, section 16451(d).

## 5.03. PREVAILING WAGE RECORDS

(a) The Work is subject to monitoring and enforcement of prevailing wage requirements by the Department of Industrial Relations ("DIR") and the following provisions will apply:

(1) Contractor and Subcontractors shall maintain and furnish to the DIR, a certified copy of each weekly payroll (but no less often than monthly), with a statement of compliance signed under penalty of perjury. Such certified payroll reports in PDF form shall be transmitted electronically to the DIR after first registering at <http://www.dir.ca.gov/Public-Works/Certified-Payroll-Reporting.html>. The provisions of Labor Code section 1776 are incorporated herein by reference.

(2) The CITY and the DIR shall review, including by way of job site inspections, and, if appropriate, audit payroll records to verify compliance with the public works requirements of the Labor Code. The DIR will notify the Contractor or Subcontractor(s), as appropriate) of any noncompliance, in order for all such Contractor or Subcontractor(s) to correct the noncompliance.

(3) The City shall withhold payments when payroll records are delinquent or inadequate.

(4) The City shall withhold payments equal to the amount of underpayment and applicable penalties when, after investigation, it is established that underpayment has occurred.

(5) The City shall cooperate with the DIR and DLSE in any investigation of suspected violations of prevailing wage requirements.

(6) As directed by the Labor Commissioner, the City shall withhold Contract payments equal to the payments due or estimated to be due to the Contractor or Subcontractors whose payroll records are delinquent or inadequate, plus any additional amount that the Labor Commissioner has reasonable cause to believe may be needed to cover a back wage and penalty assessment against such Contractor or Subcontractors. The Contractor shall be required to withhold payments to a Subcontractor whose payroll records are delinquent or inadequate until the Labor Commissioner provides notice that the Subcontractor has cured such delinquency or deficiency.

(7) These payroll records shall be made available to the City's representatives. These records shall be maintained during the course of the Work. The Contractor and all Subcontractors shall make the certified payroll records available for inspection by City representatives upon request and shall permit such representatives to interview employees during the work hours on the job site.

(8) The Contractor shall be held entirely responsible for the prompt resolution of all non-compliances with the prevailing wage laws, including those pertaining to all Subcontractors and any lower tier Subcontractors.

(9) The Project will not be accepted as complete by the City nor final payment made until all items of non-compliance are corrected or until appropriate provision is made by depository agreement to assure the ultimate resolution and payment of any back wages that may be found due.

(b) A pre-construction conference shall be conducted before commencement of the Work with the Contractor and Subcontractors at which time the prevailing wage requirements will be reviewed and agreed to by all parties.

#### **5.04. LABOR DISCRIMINATION**

Attention is directed to Section 1735 of the Labor Code, which reads as follows: "A Contractor shall not discriminate in the employment of persons upon public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code. Every Contractor for public works who violates this section is subject to all the penalties imposed for a violation of this chapter."

#### **5.05. EIGHT-HOUR DAY LIMITATION**

(a) In accordance with the provisions of the Labor Code, and in particular, Sections 1810 to 1815 thereof, inclusive, eight hours labor shall constitute a day's work, and no worker, in the employ of said Contractor, or any Subcontractor, doing or contracting to do any part of the work contemplated by this Contract, shall be required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of those provisions; provided that subject to Labor Code section 1815, a worker may perform work



in excess of either eight (8) hours per day or forty (40) hours during any one week upon compensation for all hours worked in excess of eight (8) hours per day or forty (40) hours during any one week at not less than one and one-half times the basic rate of pay.

(b) The Contractor and each Subcontractor shall also keep an accurate record showing the names and actual hours worked of all workers employed by them in connection with the Work. This record shall be open at all reasonable hours to the inspection of the City, State and Federal officers and agents. It is hereby further agreed that, the Contractor shall forfeit as a penalty to the City the sum of twenty-five dollars (\$25.00) for each worker employed in the performance of this Contract by the Contractor or by any of its Subcontractors for each calendar day during which such worker is required or permitted to labor more than eight (8) hours in and one calendar day and forty (40) hours in any one calendar week in violation of Sections 1810 through 1815.

#### **5.06. COMPLIANCE WITH STATE REQUIREMENTS FOR EMPLOYMENT OF APPRENTICES**

The Contractor's attention is directed to Section 1777.5 of the Labor Code. Provisions of said section pertaining to employment of registered apprentices are hereby incorporated by reference into these Specifications. As applicable, the Contractor or any Subcontractor employed by the Contractor in the performance of the Work shall take such actions as necessary to comply with the provisions of Section 1777.5.

#### **5.07. UNDERGROUND UTILITIES**

(a) In accordance with Government Code section 4215, the Contractor shall be compensated for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, and removing or relocating existing main or trunkline utility facilities which are not indicated in the Contract Plans and Specifications with reasonable accuracy, and for the equipment on the Project necessarily idled during such work, provided that the Contractor shall first notify the Engineer before commencing work on locating, repairing damage to, removing or relocating such utilities. Contractor shall not be assessed liquidated damages for delays in completing the Work when such delays are due to the failure of either the City or the owner of the utility to provide for removal or relocation of such utility facilities.

(b) The Contractor shall take all precautions necessary to protect the existing utilities within the project area. Any utilities damaged due to the Contractor's negligence shall be repaired or restored to their original condition at the Contractor's sole expense. Existing utilities shall be kept in service during the life of the Contract unless relocation, reconstruction, abandonment, or outage is specifically authorized by the Engineer.

(c) The Contractor shall provide and maintain such temporary supports as may be necessary to preserve the functions of the various utility systems. No wires, conduits and/or pipes shall be removed until all services therein have been made inoperable.

(d) The Contractor shall notify the Engineer and appropriate Regional Notification Center for operators of subsurface installations at least two (2) working days, but not more than fourteen (14) calendar days, prior to performing excavation or other work close to any underground pipeline, conduit, duct, wire and other structures. The Contractor shall provide updated information to the Notification Center as required and on a periodic basis. The Regional Notification Center includes but is not limited to the Underground Service Alert-Northern California (USA) at 1-800-642-2444.

(e) The Contractor is advised that the State of California does not participate in USA. The Contractor is required to notify Caltrans Permits Branch (916) 322-1297 for the location of State facilities.

(f) The Contractor shall not proceed with work until utility facilities involved have been located, disconnected, or otherwise adjusted by utility representatives.

(g) The City Utility Maintenance Division will make repairs to all water service laterals and water mains damaged by the Contractor during the course of construction unless directed otherwise by the Engineer. Except as otherwise provided in this section, the Contractor shall be required to pay all labor, material and equipment costs incurred by the City Utilities Maintenance Division for the repairs made to damaged water service laterals and water mains. The City will bill the Contractor for the repairs and the bills will be paid by the Contractor prior to either the next monthly progress payment or prior to the final payment, whichever comes first. The Contractor shall provide to the Engineer proof of payment of the repair bills prior to the issuance of either the monthly progress payment or final payment. The current labor and equipment rates for the City Utility Maintenance Division will be made available to the Contractor at the preconstruction conference. The City shall have the right to deduct the total amount of any unpaid City repair bill from the money due or to become due the Contractor.

#### **5.08. WATER POLLUTION**

The Contractor shall exercise every reasonable precaution to protect streams, lakes, reservoirs, and canals from pollution with fuels, oils, bitumens, calcium chloride, and other harmful materials and shall conduct and schedule Contractor's operations so as to avoid or minimize muddying and silting of said streams, lakes, reservoirs, and canals. Care shall be exercised to preserve vegetation beyond the limits of construction. The Contractor shall comply with Section 5650 of the California Fish and Game Code and all other applicable statutes and regulations relating to the prevention and abatement of water pollution.

#### **5.09. PAYMENT OF TAXES**

The Contract prices paid for the Work shall include full compensation for all taxes, which the Contractor is required to pay, whether imposed by federal, state, or local governments.

#### **5.10. PERMITS AND LICENSES**

The Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incident to the lawful prosecution of the work. All permits and licenses shall be obtained in sufficient time to prevent delays to the Work. The Contractor shall, at a minimum, possess and maintain the licenses and permits set forth in the Contract Provisions and shall ensure that its employees possess and maintain any certifications, licenses or permits required to perform work under this Contract, including but not limited to state certifications required by the California Department of Industrial Relations.

#### **5.11. PATENTS**

The Contractor shall assume all costs arising from the use of patented materials, equipment, devices, or processes used on or incorporated into the Work, and agrees to indemnify, defend and save harmless the City, the Engineer, and their duly authorized representatives, from all suits at law, or actions of every nature for, or on account of, the use of any patented materials, equipment, devices, or processes.

## 5.12. PUBLIC CONVENIENCE

This section defines the Contractor's responsibility with regard to convenience of the public and public traffic in connection with its operations.

(a) The Contractor shall so conduct its operations as to offer the least possible obstruction and inconvenience to the public. The Contractor shall have under construction no greater length or amount of work than can be properly prosecuted with due regard to the rights of the public.

(b) Unless otherwise provided in the Contract Documents, all public traffic shall be permitted to pass through the Work with as little inconvenience and delay as possible. In order to expedite the passage of public traffic through or around the work, the Contractor shall install as appropriate signs, lights, flares, barricades, and other facilities for the sole convenience and direction of public traffic. Also, where directed by the Engineer, the Contractor shall provide and station competent flagpersons whose sole duties shall consist of directing the movement of public traffic through or around the Work. The cost of furnishing and installing such signs, lights, flares, barricades, and other facilities, and the cost of providing and stationing such flagpersons, all for the convenience and direction of public traffic, will be considered as included in the Contract price and no additional compensation will be allowed.

(c) Spillage resulting from hauling operations along or across any publicly traveled way shall be removed immediately by the Contractor at its expense.

(d) Construction operations shall be conducted in such a manner as to cause as little inconvenience as possible to abutting property owners.

(e) Convenient access to driveways, houses and buildings along the line of the work shall be maintained and temporary approaches to crossings or intersecting highways shall be provided and kept in good condition. When the abutting property owner's access across the right-of-way line is to be eliminated, or to be replaced under the Contract by other access facilities, the existing access shall not be closed until the replacement access facilities are usable.

(f) Water shall be supplied if ordered by the Engineer for the alleviation or prevention of dust nuisance as provided in the Contract Documents. Any water obtained from a fire hydrant within the City of West Sacramento shall be subject to a fire hydrant permit issued by the Engineering Division of the City of West Sacramento.

(g) Flagpersons and guards, while assigned to traffic control, shall perform their duties and shall be provided with the necessary equipment in accordance with the current "Instructions to Flagmen" of the California Department of Transportation. The equipment shall be furnished and kept clean and in good repair by the Contractor at its expense.

(h) All traffic control shall be in accordance with California Manual on Uniform Traffic Control Devices (California MUTCD), Part 6 and this Section 5.12.

(1) Traffic Control Plans. Traffic Control Plans shall be developed for the project to assure that adequate consideration is given to the safety and convenience of motorists, pedestrians, and workers during construction. The Traffic Control Plans shall include, but not be limited to, signing, pavement markings, construction scheduling, permanent barricades, methods and devices for delineation and channelization, placement and

maintenance of devices, roadway lighting, traffic regulations, surveillance and inspection. The Traffic Control Plans shall be approved by the Engineer a minimum of two (2) working days prior to start of any work. Non-compliance with any stipulation of this section will be justification for the City to stop work.

(2) Traffic Control Devices and Procedures. Traffic control devices and procedures shall conform to the California Manual on Uniform Traffic Control Devices (California MUTCD), Part 6 and this Section 5.12. Non-compliance with any stipulation of this section will be justification for the City to stop work.

(3) Elimination of On-Street Parking. The Contractor shall place notification for the elimination of on-street parking, if required, at least forty-eight (48) hours, but not more than seventy-two (72) hours prior to the start of work. The notification shall include the Contractor's phone number, the City of West Sacramento Community Development Department phone number (916) 617-4645, and the phrase "VEHICLES WILL BE TOWED PURSUANT TO CVC SECTION 22651 (L)". This notice shall be affixed to a Type II barricade that is placed in the lane of the road (max. 200 ft. spacing) used for on-street parking. No other location or method of placement is acceptable. The notification shall be in a form approved by the Engineer. Non-compliance with any stipulation of this section will be justification for the City to stop work.

(4) Lane Closures. All lane closures shall be included in the Traffic Control Plans, and shall both conform to Section 5.12(h)(2) above, and be approved by the Engineer. Total road closures will not be allowed for the Project.

(5) Measurement and Payment. Unless specifically shown as an item of work on the proposal form, all traffic control shall be considered included in other items of work and no additional compensation will be made for labor, materials or equipment needed.

### **5.13. CONTINUOUS OPERABILITY OF FACILITIES**

Absent written permission by the Engineer, the continuous operation of all existing facilities is required and shall in no way be affected by the Work.

### **5.14. SAFETY**

#### **(a) General**

(1) The Contractor shall be solely and completely responsible for the conditions of the job Site, including safety of all persons and property during performance of the Work. This requirement shall apply continuously and not be limited to normal working hours. Safety provisions shall conform to all applicable federal, state, and local laws, ordinances, and codes, and to the rules and regulations established by the California Division of Industrial Safety, and to other rules of law applicable to the Work.

(2) The services of the Engineer in conducting construction review of the Contractor's performance is not intended to include review of the adequacy of the Contractor's work methods, equipment, bracing or scaffolding or safety measures, in, on, or near the construction site, and shall not be construed as supervision of the actual construction nor make the Engineer or the City responsible for providing a safe place for the performance of work by the Contractor, Subcontractors, or suppliers; or for access, visits, use work, travel or occupancy by any person.

(3) The Contractor shall carefully instruct all personnel working in potentially hazardous work areas as to potential dangers and shall provide such necessary safety equipment and instruction as is necessary to prevent injury to personnel and damage to property. Special care shall be exercised relative to electrical work, work involving excavation and in sump pump work.

(4) All work and materials shall be in strict accordance with all applicable State, Federal and local laws, rules, regulations, and codes.

(5) Nothing in this Contract is to be construed to permit work not conforming to governing law. When Contract Documents differ from governing law, the Contractor shall furnish and install the higher standards called for without extra charge. All equipment furnished shall be grounded and provided with guards and protection as required by safety codes. Where vapor-tight or explosion-proof electrical installation is required by law, this shall be provided.

(6) The Contractor shall submit a safety plan and/or narrative description to the Engineer prior to commencement of the Work. This safety plan and/or narrative description shall describe all first aid, safety clothing, etc. to be used at the Project Site.

(b) Shoring and Trench Safety Plan

(1) Attention is directed to Section 832 of the Civil Code of the State of California relating to lateral and subjacent support, and the Contractor shall comply with this law.

(2) In accordance with Section 6705 of the State Labor Code, the Contractor shall submit to the City specific plans to show details of provisions for worker protection from caving ground. Not less than thirty (30) days before beginning excavation for any trench or trenches five feet or more in depth required under this Contract, the Contractor shall furnish to the Engineer Working Drawings of its trench safety plan. The trench safety plan Working Drawings shall be detailed plans showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground. If such plan varies from the shoring system standards established by the Construction Safety Orders of the California Division of Industrial Safety or the Federal Safety and Health Regulations for Construction of the Occupational Safety and Health Administration, Department of Labor, the plan shall be prepared by a registered civil or structural engineer. In no event shall the Contractor use a shoring, sloping, or protective system less effective than that required by said Construction Safety Orders, or less effective than that required by said Federal Safety Standards. Submission of this plan in no way relieves the Contractor from the requirement to maintain safety in all operations performed by the Contractor or its Subcontractors.

## **5.15. BLASTING**

Except for exceptional circumstances, blasting shall be prohibited. Accordingly, Bids should be prepared on the basis that no blasting will be permitted. Should blasting be required and expressly approved by the City, the City will issue a Change Order for blasting work.

## **5.16. INTOXICATING LIQUORS AND NARCOTICS**

The Contractor shall not sell, permit or suffer the introduction or use of intoxicating liquors or narcotics upon or about the Site.

## **5.17. PROTECTION OF PERSONS AND PROPERTY**

(a) The Contractor shall take whatever precautions are necessary to prevent damage to all existing improvements, including above ground and underground utilities, trees, shrubbery that is not specifically shown to be removed, fences, signs, mailboxes, survey markers and monuments, buildings, structures, the City's property, adjacent property, and any other improvements or facilities within or adjacent to the work. If such improvements or property are injured or damaged by reason of the Contractor's operations, they shall be replaced or restored, at the Contractor's expense, to a condition at least as good as the condition they were in prior to the start of the Contractor's operations.

(b) The Contractor shall adopt all practical means to minimize interference to traffic and public inconvenience, discomfort or damage. The Contractor shall protect against injury to any pipes, conduits or other structures crossing the trenching or encountered in the Work and shall be responsible for any injury done to such pipes or structures, or damage to property resulting therefrom. The Contractor shall support or replace any such structures without delay and without any additional compensation to the entire satisfaction of the Engineer. All obstructions to traffic shall be guarded by barriers illuminated at night. The Contractor shall be responsible for all damage to persons and property directly or indirectly caused by its operations and, under all circumstances, Contractor must comply with the laws and regulations of the State of California relative to safety of persons and property and the interruption of traffic and the convenience of the public within the respective jurisdictions.

(c) The Contractor is cautioned that it must replace all improvements in rights-of-way and within the public streets to a condition at least equal to what existed prior to the Contractor's entry onto the job.

(d) Type and time of construction required at any road subject to interference by the work will be determined by those authorities responsible for maintenance of said road. It shall be the responsibility of the Contractor to determine the nature and extent of all such requirements, including provision of temporary detours as required; however, the construction right-of-way obtained by the City at affected roadways will be adequate for provision of all required detours. As required at any road crossing, the Contractor shall provide all necessary flagpersons, guardrails, barricades, signals, warning signs and lighting to provide for the safety of existing roads and detours. Immediately after the need for temporary detours ceases, or when directed, the Contractor shall remove such detours and perform all necessary cleanup work, including replacement of fences, and removal of pavement. Included shall be all necessary replacement of existing roadway appurtenances, grading work, soil stabilization and dust control measures, as required and directed.

(e) The Contractor shall examine all bridges, culverts, and other structures over which it will move its materials and equipment, and before using them, Contractor shall properly strengthen such structures where necessary. The Contractor shall be responsible for any and all injury or damage to such structures caused by reason of its operations.

## **5.18. RESPONSIBILITY FOR REPAIR OF FACILITIES**

All public or private facilities, including but not limited to, gravel surfacing at existing canals, structures, telephone cables, roadways, curbs, gutters, parking lots, private drives, levees and embankments for creeks, ponds and reservoirs disturbed during construction of the work shall be repaired and/or replaced by the Contractor to match facilities existing prior to

construction. In addition, the Contractor shall be responsible for any settlement damage to such facilities or adjoining areas for a period of one year after Acceptance of such required facilities.

#### **5.19. CITY'S REPAIR**

In the event the Contractor refuses or neglects to make good any loss or damage for which it is responsible under this Contract, the City may itself or by the employment of others, make good any such loss or damage, and the cost and expense of doing so, including any reasonable engineering, legal and other consultant fees, and any costs of administrative and managerial services, shall be charged to the Contractor. Such costs and expenses may be deducted by the City from claims for payment made by the Contractor for work completed or remaining to be completed.

#### **5.20. ANTITRUST CLAIM ASSIGNMENT**

In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to this contract, the Contractor and all Subcontractors shall offer and agree to assign to the 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. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or subcontract. This assignment shall be made and become effective at the time the City tenders final payment to the Contractor, without further acknowledgement by the parties.

#### **5.21. WAIVER OF RIGHT TO RESCIND FOR MATERIAL BREACH**

The Contractor agrees that it can be adequately compensated by money damages for any breach of this Contract which may be committed by the City and hereby agrees that no default, act, or omission of the City or the Engineer, shall constitute a material breach of the Contract entitling the Contractor to cancel or rescind the provisions of this Contract or (unless the City shall so consent or direct in writing) to suspend or abandon performance of all or any part of the Work. The Contractor hereby waives any and all rights and remedies to which it might otherwise be or become entitled, save only its right to money damages.

#### **5.22. CONTRACTOR'S LICENSE NOTICE**

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO:

REGISTRAR CONTRACTORS' STATE LICENSE BOARD  
9821 BUSINESS PARK DRIVE  
SACRAMENTO, CALIFORNIA 95827

MAILING ADDRESS:  
P.O. BOX 26000  
SACRAMENTO, CALIFORNIA 95826

#### **5.23. HISTORICAL, SCIENTIFIC AND ARCHEOLOGICAL DISCOVERIES**

All articles of historical or scientific value, including but not limited to coins, fossils, and articles of antiquity which may be uncovered by the Contractor during the progress of work,

shall become City property. Such findings shall be reported immediately to the Engineer who will determine the method of removal, where necessary, and the final disposition thereof.

#### **5.24. INSURANCE**

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by the Contractor, its agents, representatives, employees or Subcontractors. The cost of such insurance shall be included in the Contractor's bid.

(a) Neither the Contractor nor any Subcontractors shall commence any work until all required insurance has been obtained at their own expense. Such insurance must have the approval of the City as to limit, form, and amount, and shall be placed with insurers with a current A. M. Best's rating of no less than A-VII.

(b) Any insurance bearing on adequacy of performance shall be maintained after completion of the project for the full guarantee period.

(c) Prior to execution of the Contract, the Contractor shall furnish the City with original endorsements effecting coverage for all policies required by the Contract. The endorsements shall be signed by a person authorized by the insurer to bind coverage on its behalf. The endorsements are to be on forms provided or approved by the City. The City may require the Contractor or any Subcontractor to furnish complete certified copies of all insurance policies affecting the coverage required by the Contract.

(d) All of the Contractor's policies shall contain an endorsement providing that written notice shall be given to the City at least sixty (60) calendar days prior to termination, cancellation, or reduction of coverage in the policy.

(e) Any policy or policies of insurance that the Contractor elects to carry as insurance against loss or damage to its construction equipment and tools shall include a provision therein providing a waiver of the insurer's right to subrogation against the City and the Engineer.

(f) The requirements as to the types, limits, and the City's approval of insurance coverage to be maintained by the Contractor are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Contractor under the Contract.

(g) In addition to any other remedy the City may have, if the Contractor or any of the Subcontractors fails to maintain the insurance coverage as required in this section, the City may obtain such insurance coverage as is not being maintained, in form and amount substantially the same as required herein, and the City may deduct the cost of such insurance from any amounts due or which may become due the Contractor under this Contract.

(h) The Contractor and all Subcontractors shall, at their expense, maintain in effect at all times during the performance of work under the Contract not less than the following coverage and limits of insurance, which shall be maintained with insurers and under forms of policy satisfactory to the City. The maintenance by the Contractor and all Subcontractors of the following coverage and limits of insurance is a material element of this Contract. The failure of the Contractor or any Subcontractor to maintain or renew coverage or to provide evidence of renewal may be treated by the City as a material breach of this contract.



(1) Workers' Compensation and Employer's Liability Insurance

(i) Workers' Compensation

The Contractor and all Subcontractors shall maintain insurance to protect the Contractor or Subcontractor from all claims under Workers' Compensation and Employer's Liability Acts, including Longshoremen's and Harbor Workers' Act. Such coverage shall be maintained, in type and amount, in strict compliance with all applicable State and Federal statutes and regulations. The Contractor shall execute a certificate in compliance with Labor Code section 1861, on the form provided in the Contract Documents.

(ii) Claims Against City

If an injury occurs to any employee of the Contractor or any of the Subcontractors for which the employee or its dependents, in the event of its death, may be entitled to compensation from the City under the provisions of the said Acts, or for which compensation is claimed from the City, there will be retained out of the sums due the Contractor under this Contract, an amount sufficient to cover such compensation as fixed by said Acts, until such compensation is paid or it is determined that no compensation is due. If the City is required to pay such compensation, the amount so paid will be deducted and retained from such sums due, or to become due, the Contractor.

(2) Commercial General and Automobile Liability Insurance

The Contractor shall maintain in effect at all times during the performance of the work hereunder not less than the following coverage's and limits of Commercial General and Automobile Liability insurance:

(i) Form and Amount

The insurance shall include, but shall not be limited to, protection against claims arising from death, bodily injury, personal injury, or damage to property resulting from actions, failures to act, operations or equipment of the insured, or by its employees, agents or consultants, or by anyone directly or indirectly employed by the insured. The amount of insurance coverage shall not be less than \$1,000,000.00 per occurrence with an aggregate no less than two (2) times the required per occurrence limit applying to bodily injury, personal injury, and property damage, or any combination of the three. Any deductibles must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles as respects the entity, its officers, officials, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration expenses, and defense expenses. The commercial general and automobile liability insurance coverage shall also include the following:

(ii) Additional Requirements

Provision or endorsement naming the City, the Engineer and its consultants, and each of their officers, employees, and agents, each as additional insured's with respect to any potential liability arising out of the performance of any work under the Contract, and providing that such insurance is primary insurance as respects the interest of the City and Engineer, and its consultants, and each of their officers, employees, and agents and that any other insurance, risk pool membership, or other liability protection maintained by the City or maintained by the Engineer is excess to the insurance required hereunder, and will not be

called upon to contribute to any loss unless and until all limits available under the Contractor's and Subcontractor's insurance policy/policies have been paid. The additional insured coverage under the Contractor's policy shall be "primary and non-contributory" and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

(iii) "Cross Liability" or "Severability of Interest" clause.

(iv) Broad Form Property Damage, Personal Injury, Contractual Liability, Protective Liability, and Completed Operations coverage's, and elimination of any exclusion regarding loss or damage to property caused by explosion or resulting from collapse of buildings or structures or damage to property underground, commonly referred to by insurers as the "XCU" hazards.

(v) Provision or endorsement stating that such insurance, subject to all of its other terms and conditions, applies to the liability assumed by the Contractor under the Contract, including, without limitation, that set forth in Section 4.02, Indemnity and Litigation Costs.

(vi) Provision or endorsement stating that any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its officers, officials, employees, or volunteers.

(vii) The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(3) Builder's Risk or Installation Floater "All-Risk" Insurance. Before commencement of the Work, the Contractor shall submit written evidence that it has obtained for the period of the Contract, Builder's Risk "All-Risk" Completed Value Insurance and/or Inland Marine "All-Risk" Installation Floater Insurance, as may be applicable, upon the entire project which is the subject of this Contract, including completed work and work in progress. The policy or policies of insurance shall name the Contractor, City, and Engineer as insured's as their respective interests may appear, and shall include an insurer's waiver of subrogation rights in favor of each. Such insurance may have a deductible clause, but the amount of the deductible shall be subject to the approval of the City, except that the deductible on earthquake coverage may be in accordance with the underwriter's requirements.

## **5.25. INDEMNITY AND LITIGATION COST**

(a) Promptly upon execution of the Contract, the Contractor specifically obligates itself and hereby agrees to protect, hold free and harmless, defend and indemnify the City, the Engineer and its consultants, and each of their officers, employees and agents, from any and all liability, penalties, costs, losses, damages, expenses, causes of action, claims or judgments, including attorney's fees, which arise out of or are in any way connected with the Contractor's, or its Subcontractors' or suppliers', performance of work under this Contract or failure to comply with any of the obligations contained in the Contract. This indemnity shall imply no reciprocal right of the Contractor in any action on the contract pursuant to California Civil Code section 1717 or section 1717.5. To the fullest extent legally permissible, this indemnity, defense and hold harmless agreement by the Contractor shall apply to any and all acts or omissions, whether active or passive, on the part of the Contractor or its agents, employees, representatives, or Subcontractor's agents, employees and representatives, resulting in claim or

liability, irrespective of whether or not any acts or omissions of the parties to be indemnified hereunder may also have been a contributing factor to the liability, except such loss or damage which was caused by the active negligence, the sole negligence, or the willful misconduct of the City. The Contractor's obligations under this Section shall apply to claims arising from the Contractor's mistake, error, or neglect in preparing its Bid for this project. The Contractor's obligations under this Section shall apply to claims arising from the Contractor's mistake, error, or neglect in preparing its Bid for this project.

(b) In any and all claims against the City, the Engineer and each of their consultants, officers, employees and agents by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under Workers' Compensation statutes, disability benefit statutes or other employee benefit statutes.

## **5.26. PROTECTION OF WORK**

(a) The Contractor shall be responsible for the care of all the Work until its completion and final acceptance. The Contractor shall, at its own expense, replace damaged or lost material and repair damaged parts of the Work or the same may be done at the Contractor's expense by the City and the Contractor and its sureties shall be liable therefor. The Contractor shall make its own provisions for properly storing and protecting all material and equipment against theft, injury, or damage from any and all causes. Damaged material and equipment shall not be used in the Work. The Contractor shall take all risks from floods and casualties except as provided by law, and shall make no charge for the restoration of such portions of the work as may be destroyed or damaged by flood or other casualties or because of danger from flood or other casualties or for delays from such causes. The Contractor may, however, be allowed a reasonable extension of time on account of such delays, subject to the conditions herein before specified. The Contractor shall not be responsible for the cost, in excess of 5% of the contracted amount, of repairing or restoring damage to the Work, if the damage was proximately caused by an earthquake in excess of a magnitude of 3.5 on the Richter Scale or by tidal wave's; provided that the Work damaged was built in accordance with accepted and applicable building standards, and the plans and specifications of the City.

(b) Contractor shall effectively secure and protect adjacent property and structures, livestock, crops and other vegetation. If applicable, the Contractor shall open fences on or crossing the right-of-way and install temporary gates of sound construction thereon so as to prevent the escape of livestock. Adjacent fence posts shall be adequately braced to prevent the sagging or slackening of the wire. Before such fences are opened, the Contractor shall notify the owner or tenant of the property and, where practicable, the opening of the fence shall be in accordance with the wishes of said owner or tenant. The Contractor shall be responsible that no loss or inconvenience shall accrue to the owner or tenant by virtue of their fences having been opened or the gate not having been either shut or attended at all times. Where special types of fences are encountered, the Contractor shall install temporary gates made of similar materials and of suitable quality to serve the purposes of the original fences. In all cases where the Contractor removes fences to obtain workroom, the Contractor shall provide and install temporary fencing as required, and on completion of construction shall restore the original fence to the satisfaction of the Engineer. All costs of providing, maintaining and restoring gates and fencing shall be home by the Contractor. The Contractor shall provide and maintain all passageways, guard fences, lights and other facilities for protection required by public authority or local conditions.

(c) The Contractor shall use extreme care during construction to prevent damage from dust to crops and adjacent property. The Contractor, at its own expense, shall provide adequate dust control for the right-of-way and take other preventative measures as directed by the Engineer.

(d) The Contractor shall be responsible for all damage to any property resulting from trespass by the Contractor or its employees in the course of their employment, whether such trespass was committed with or without the consent or knowledge of the Contractor.

(e) The Contractor shall see that the Site is kept drained and free of all ground water and any other water, which may impede the progress or execution of the Work.

(f) The Contractor shall be responsible for any damage caused by drainage or water runoff from construction areas and from construction plant areas.

(g) In an emergency affecting the safety of life, the Work, or adjoining property, the Contractor, without special instruction or authorization from the Engineer, is hereby permitted to act at its discretion to prevent such threatened loss or injury, and the Contractor shall so act without appeal if so instructed or authorized. Any compensation claimed by the Contractor on account of emergency work shall be determined as specified in Section 2.07. Should the Engineer deem an emergency condition to exist, the Contractor shall immediately do those things and take those steps ordered by the Engineer. The decision of the Engineer in this respect shall be final and conclusive. Any claims for compensation made by the Contractor on account of emergency work shall be determined as specified in Section 2.07.

(h) Except as provided by Government Code section 4215, the Contractor shall be responsible for the removal, relocation and protection of all public and private utilities, including irrigation facilities in the nature of utilities, located on the site of the construction project if and to the extent that the same are identified in the Contract Documents, and the Contractor shall not be entitled to any extension of time or claim for damages for extra compensation in connection therewith. If and to the extent that such utilities or facilities are not identified in the Contract Documents, as between the Contractor and the City, the City will be responsible for the cost of their removal, relocation or protection, as the case may be, but the Contractor shall perform any such work in conformance with applicable provisions of Sections 2.06 and 2.07, if so directed by the Engineer. In such situations the Contractor shall not be responsible for delay in completion of the project caused by the failure of the City or the owner of the utility to provide for such removal or relocation. If the Contractor, while performing the Contract, discovers utility or irrigation facilities not identified by the City in the Contract Documents, the Contractor shall immediately notify the Engineer in writing.

(i) Subject to the provisions of this section, where the Work to be performed under the Contract crosses or otherwise interferes with existing streams, watercourses, canals, farm ditches, pipelines, drainage channels, or water supplies, the Contractor shall provide for such watercourse or pipelines and shall perform such construction during the progress of the Work so that no damage will result to either public or private interests, and the Contractor shall be liable for all damage that may result from failure to so provide during the progress of the Work.

## **5.27. ACCIDENTS**

(a) The Contractor shall provide and maintain, in accordance with Labor Code section 6708 and OSHA requirements, adequate emergency first-aid treatment for its employees and anyone else who may be injured in connection with the Work.

(b) The Contractor shall promptly report in writing to the Engineer all accidents whatsoever arising out of or in connection with, the performance of the Work, whether on or adjacent to the site, which caused death, personal injury, or property damage, giving full details and statements of witnesses. In addition, if death or serious injury or serious damage are caused, the accident shall be reported immediately by telephone or messenger to the City and the Engineer.

(c) If any claim is made by anyone against the Contractor or any Subcontractor on account of any accident, the Contractor shall promptly report the facts in writing to the Engineer, giving full details of the claim.

#### **5.28. NO PERSONAL LIABILITY**

Neither the City, the Engineer, nor any of their other officers, agents, or employees shall be personally responsible for any liability arising under the Contract, except such obligations as are specifically set forth herein.

## **SECTION 6**

### **PROGRESS AND COMPLETION OF WORK**

#### **6.01. PROGRESS SCHEDULE**

The Contractor shall submit within ten (10) days after execution of the Contract a detailed work schedule(s) which shall detail the actions of the Contractor and Subcontractors working at the Site. This schedule(s) shall both show the dates at which the Contractor will start and complete and conform to the completion time specified in the Contract. The controlling operation, defined as the least float path, if any, shall be identified.

The Contractor shall review, revise and resubmit the progress schedule at least once a month to reflect progress. In any event, Contractor shall submit, at any time during the contract period, a current schedule to the Engineer at the Engineer's request.

No progress payments will be made for any work performed until a satisfactory schedule has been submitted and approved by the Engineer. An updated schedule shall be required from the Contractor if the project falls ten (10) working days behind schedule.

If the Work falls behind the accepted schedule, the Contractor shall promptly take whatever actions are necessary to put the project back on schedule. For delays or portions of delays for which the Contractor is responsible, no payment will be made or time extension allowed for increase in work force, equipment, and working hours needed to put the project on schedule.

#### **6.02. COMMENCEMENT AND PROGRESS OF THE WORK AND TIME OF COMPLETION**

##### **(a) Commencement**

The Contractor shall begin the Work after receiving a Notice to Proceed within the period of time set forth in the Contract Provisions. Thereafter, Contractor shall diligently prosecute the Work to completion as specified in the Contract Documents. The Engineer shall have the right to specify the locations where Contractor shall start and proceed with the Work.

A preconstruction conference will be convened after the Contractor has delivered the necessary bonds, insurance certificates and signed agreement in proper form as required in the invitation to bid, Bid proposal and general conditions of these specifications. Prior to any work, the Contractor shall provide the Engineer with a list of key personnel assigned to the project and the telephone numbers where they may be reached at any time. The list shall be made available in sufficient copies and presented at the preconstruction conference.

Notwithstanding any other provisions of the Contract, the City shall not be obligated to accept or pay for any work furnished by the Contractor prior to the issuance of the Notice to Proceed whether or not the City has knowledge of the furnishing of such work. The Contractor shall not commence with work on this project until its Contract bonds and evidence of insurance comply with all Contract requirements and a Notice to Proceed has been issued.

The Contractor shall notify the Engineer in writing two (2) working days (48 hours) prior to commencement of work on the Project or scheduling work for a Saturday, Sunday, or City Holiday. Failure to provide said notification will void the City's obligation to provide inspection. Any work done in the absence of the City's Inspector shall be subject to rejection.

(b) Completion

All work under this Contract shall be completed within the period of time set forth in the Contract Provisions. The Contract shall be deemed completed when the Engineer has certified the completion of the Project as provided in Section 9.07 of these General Conditions.

**6.03. SUSPENSION OF WORK**

(a) The Engineer may at any time, by notice in writing to the Contractor, suspend any part of the Work for such period of time as may be necessary to prevent improper execution of the Work on the project by the Contractor, its Subcontractors or agents, and the Contractor shall have no claim for damages or additional compensation on account of any such suspension.

(b) The City may at any time suspend any part or all of the Work upon ten (10) days written notice to the Contractor, who shall thereupon discontinue all work suspended except for all operations to prevent loss or damage to work already executed as may be directed by the Engineer. Work shall be resumed by the Contractor after such suspension on written notice from the City.

(c) In the event of any suspension of the Work in whole or in part under subsection (B) above, the Contractor shall be entitled to an extension of time wherein to complete the Work to the extent of the delay caused to the Contractor thereby.

(d) In the event the entire work shall be suspended by order of the City, as herein above provided, and shall remain so suspended for a period of sixty (60) consecutive days, through no fault of the Contractor, and notice to resume the Work shall not have been served on the Contractor as herein above provided, Contractor may, at its option, by written notice to the City, terminate the Contract in the same manner as if the termination had been initiated by the City, and the City shall have no claim for damages because of such termination of the Contract.

**6.04. DELAY IN THE WORK – TIME EXTENSIONS**

The Contractor shall at all times employ such force, plant, materials, and tools as will be sufficient, in the opinion of the Engineer, to prosecute the Work at not less than the rates fixed under the terms of the Contract and to complete the Work thereof within the time limits fixed therein. If the Contractor refuses or fails to prosecute the Work, or any separable part thereof, with such diligence as will ensure the completion within the time specified in the Contract, or any extension thereof, or fails to complete said work within such time, the City may exercise the termination provisions set forth in Section 6.05, below.

(a) Excusable Delays. Excusable delays shall be delays in the controlling operation of the Contractor's work due to strikes, lockouts by others, fire, unusual delay in transportation, unavoidable casualties, adverse weather conditions which could not have been reasonably anticipated, or any other act(s) of God beyond the Contractor's control, or by delay authorized by the City, or by any cause which the City shall decide to justify the delay. Except as provided in Section 6.04(f), below, in the event of an excusable delay, the time of completion shall be extended for such reasonable time as the City may decide. The Contractor's right to an extension of time for an excusable delay is expressly subject to Contractor's giving written notice of such claim within ten (10) days following the date the Contractor knew or should have known of the delay. Failure to give such notice shall be construed as a waiver of such right. It is

understood and agreed that extensions of time shall be the Contractor's sole and exclusive remedy for excusable delays.

(b) Compensable delays. Compensable delays shall be delays in the controlling operating of the Contractor's work due to acts or neglect of the City, its employees or those under it by contract or otherwise, or by changes ordered in the work. In the event of a compensable delay, the time of completion shall be extended for such reasonable time as the City may decide. In addition, the Contractor may recover its direct costs as provided in Section 6.05. The Contractor's remedies for compensable delays are expressly subject to Contractor's giving ten (10) days written notice of such claim from the date the Contractor knew or should have known of the delay. It is understood and agreed that the Contractor's sole and exclusive remedies for compensable delays shall be an extension of the time and recovery of its direct costs as compensable hereunder, but only in accordance with the provisions of the Contract Documents.

(c) Contractor and City understand and agree that the Contract time for the completion of this project is a very important part of the contract. Extensions of time will only be granted as provided above when events actually cause the Contractor to be delayed in the performance of that schedule activity which is the controlling operation as of the time of the delay. When acts or omissions occur which could cause delay, Contractor will take all reasonable means in order to be able to continue to work as scheduled without any delay, or as short a delay as possible. Additionally, if inclement weather causes accumulation of standing water on the work site or other conditions which might cause delay, Contractor shall take all measures reasonably necessary to permit work to continue as quickly as possible.

(d) If adverse weather conditions are the basis for a claim for additional time, such claim shall be documented by date substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction. Adverse weather conditions shall be considered only as those conditions that exceed the average annual number of rain days and rain quantities as established by the Annual Local Climatological Summary and NOAA National Technical Memorandum NWS WR-65 (Revised) as published by the United States Government, National Weather Service, National Climate Center, Asheville, North Carolina.

(e) The Engineer shall be responsible for determining when adverse weather conditions result in non-workable days. It shall be the Contractor's duty to stay informed of such determinations by the Engineer. The Contractor may object to such adverse weather determinations by filing with the Engineer a written notice of objection. The notice of objection shall state the basis of the objection and provide supporting documentation, which substantiates that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction. All such notices of objection shall be filed within three (3) days of the day in dispute. It is hereby agreed that the Contractor's failure to submit a written notice of objection within three (3) days of the Engineer's adverse weather determination shall constitute a waiver by the Contractor of all its rights to further protest, judicial or otherwise.

(f) The Engineer will, within a reasonable period of time, issue a ruling on the Contractor's notice of objection. All such rulings by the Engineer shall be final, unless the Contractor files a written protest within fifteen (15) days of the Engineer's ruling. This protest shall clearly state the basis of the dispute. Such protest will be forwarded promptly to the City, which will issue a decision on each such protest. The City decision will be final. Pending the City decision, the Contractor shall proceed with its work in accordance with the Engineer's ruling



and/or instructions. It is hereby agreed that the Contractor's failure to file a protest within fifteen days (15) of the Engineer's ruling shall constitute a waiver by the Contractor of all its rights to further protest, judicial or otherwise.

(g) The number of days that are anticipated to be non-workable due to adverse weather conditions shall be as set forth in Section 4.0 of the Special Conditions. Days deemed non-workable by the Engineer in excess of such anticipated number shall be considered excusable delays.

(h) Unexcused delays shall be delays in the Contractor's work due to acts or neglect of the Contractor, its employees, Subcontractors or those under it by contract or otherwise. In the event of an unexcused delay, the Contractor expressly agrees that it shall not be entitled to either an extension of time or recovery of its costs.

(i) A request for an extension of time, or the granting of an extension of time, shall not constitute a basis for any claim against the City for additional compensation or damages unless caused by the City or another Contractor employed by the City.

#### **6.05. DAMAGES FOR DELAY**

In the event of compensable delay, the City shall only be liable for idle equipment, idle workers and the necessary costs of transporting equipment. The City shall be liable to the extent that the compensable delay is concurrent with excusable delays or Contractor caused delays to the controlling operation. The allowable costs shall be as for force account work under Section 2.04 with the following exceptions:

(a) The Delay Factor in the Labor Surcharge and Equipment Rental Rules applies to each equipment rental rate;

(b) The daily number of payable hours shall equal the normal working hours during the delay, not to exceed eight (8) hours per day; and

(c) No markups will be added.

#### **6.06. TERMINATION FOR CONVENIENCE**

If at any time before completion of the Work, the City determines that it is either impossible or against the interests of the City to complete the Work, or if the Work is stopped by an injunction of a court of competent jurisdiction or by order of any competent authority, the City may, upon ten (10) days written notice to the Contractor, discontinue the Work and terminate the Contract. Upon service of such notice of termination, the Contractor shall discontinue the Work in such manner, sequence, and at such times as described below. The Contractor shall have no claim for damages for such discontinuance or termination, nor any claim for anticipated profits on the Work thus dispensed with, nor any other actually performed up to the time of discontinuance, including any Extra Work ordered by the Engineer to be done, nor for any claim for liquidated damages.

Termination of the Contract for convenience and the total compensation payable to the Contractor in the event of termination shall be governed by the following:

(a) The Engineer will issue the Contractor a written notice signed by the Engineer, specifying that the Contract is to be terminated. Upon receipt of said written notice and, except as otherwise directed in writing by the Engineer, the Contractor shall:

(1) Stop all Work under the Contract except that specifically directed to be completed prior to Acceptance.

(2) Perform Work the Engineer deems necessary to secure the project for termination.

(3) Remove equipment from the site of the Work.

(4) Take such action as is necessary to protect materials from damage.

(5) Notify all Subcontractors and suppliers that the Contract is being terminated and that their contracts or orders are not to be further performed unless otherwise authorized in writing by the Engineer.

(6) Provide the Engineer with an inventory list of all material previously produced, purchased or ordered from suppliers for use in the Work and not yet used in the Work, including its storage location, and such other information as the Engineer may request.

(7) Dispose of material not yet used in the Work as directed by the Engineer.

It shall be the Contractor's responsibility to provide the City with good title to all materials purchased by the City hereunder, including material for which partial payment has been made and with bills of sale or other documents of title for such materials.

(8) Subject to the prior written approval of the Engineer, settle all outstanding liabilities and all claims arising out of subcontracts or orders for material terminated hereunder. To the extent directed by the Engineer, the Contractor shall assign to the City all the right, title and interest of the Contractor under subcontracts or orders for materials terminated hereunder.

(9) Furnish the Engineer with the documentation required to be furnished by the Contractor under the provisions of the Contract including, on projects as to which Federal funds are involved, all documentation required under the Federal requirements included in the Contract.

(10) Take such other actions as the Engineer may direct.

(b) Termination of the Contract shall not relieve the Contractor of responsibility for damage to materials except as follows:

(1) The Contractor's responsibility for damage to materials for which partial payment has been made and for materials furnished by the City for use in the Work and unused shall terminate when the Engineer certifies that such materials have been stored in the manner and at the locations he or she has directed.

(2) The Contractor's responsibility for damage to materials purchased by the City subsequent to the issuance of the notice that the Contract is to be terminated shall terminate when title and delivery of such materials has been taken by the City.

(3) When the Engineer determines that the Contractor has completed the Work under the Contract directed to be completed prior to termination and such other Work as may have been ordered to secure the project for termination, he or she will recommend that the Engineer formally accept the Contract, and immediately upon and after such Acceptance by the Engineer, the Contractor will not be required to perform any further Work thereon and shall be relieved of his or her Contractual responsibilities for injury to persons or damage to property which occurs after the formal Acceptance of the project by the Engineer.

(c) The total compensation to be paid to the Contractor shall be determined by the Engineer on the basis of the following:

(1) The reasonable cost to the Contractor, without profit, for all Work performed under the Contract, including mobilization, demobilization and Work done to secure the project for termination. Reasonable cost will include a reasonable allowance for project Overhead and general administrative Overhead not to exceed a total of seven (7%) percent of Direct Costs of such Work.

(2) A reasonable allowance for profit on the cost of the Work performed as determined under Section 2.04(a) above, provided the Contractor establishes to the satisfaction of the Engineer that it is reasonably probable that he or she would have made a profit had the Contract been completed and provided further, that the profit allowed shall in no event exceed four (4%) percent of said cost.

(3) The reasonable cost to the Contractor of handling material returned to the vendor, delivered to the City or otherwise disposed of as directed by the Engineer.

(4) A reasonable allowance for the Contractor's administrative costs in determining the amount payable due to termination of the Contract.

All records of the Contractor and the Subcontractors, necessary to determine compensation in accordance with this section shall be open to inspection or audit by representatives of the City at all times after issuance of the notice that the Contract is to be terminated and for a period of three (3) years, and such records shall be retained for that period.

After Termination of the Work by the Engineer, the Engineer may make payments on the basis of interim estimates pending issuance of the Final Statement, when in his or her opinion the amount thus paid, together with all amounts previously paid or allowed, will not result in total compensation in excess of that to which the Contractor will be entitled.

All payments, including payment upon the Final Statement, shall be subject to deduction for prior payments and amounts, if any, to be kept or retained under the provisions of the Contract.

(d) The provisions of this section shall be included in all subcontracts.

## **6.07. TERMINATION FOR DEFAULT**

(a) In the event of any default by the Contractor as described below, the City may, after giving ten (10) days' written notice to the Contractor, terminate the Contractor's right to proceed with the Work or any part of the Work in the City's sole discretion. Events of default include:

(1) Failure or refusal to prosecute the Work, or any separable part thereof, with such diligence as will ensure the completion within the time specified in the Contract, or any extension thereof, or failure to complete said work within such time.

(2) Filing of bankruptcy by the Contractor, or the making of a general assignment for the benefit of its creditors, or appointment of a receiver on account of Contractor's insolvency without discharge of the receiver within ten (10) days after its appointment.

(3) Failure to make prompt payments to Subcontractors or suppliers.

(4) Persistent disregard of laws, ordinances, or the instructions of the Engineer, or other substantial violation of any provision of the Contract.

(b) In the event the right of the Contractor to proceed with the Work, or any portion thereof, has been terminated because of the default of the Contractor and the Contractor has been given ten (10) days' notice to cure such fault and has not done so, the City may take over the Work and prosecute the same to completion by contract or any other method the City deems expedient, and may take possession of and utilize in completing the Work such materials, appliances, equipment and plant as may be on the site of the Work and necessary therefore. In such event, the Contractor and its sureties shall be liable for all damages including costs of managerial and administrative services, engineering, legal and other consultant fees, and liquidated damages sustained or incurred by the City.

(c) Upon termination, the Contractor shall not be entitled to receive any further payment until the Work is finished. If upon completion of the Work the total cost to the City, including engineering, legal and other consultant fees, costs of managerial and administrative services, construction costs, and liquidated damages shall be less than the amount which would have been paid if the Work had been completed by the Contractor in accordance with the terms of the Contract, then the difference shall be paid to the Contractor in the same manner as the final payment under the Contract. If the total cost incurred by the City on account of termination of the Contract and subsequent completion of the Work by the City by whatever method the City may deem expedient shall exceed said amount which the Contractor would otherwise have been paid, the Contractor and its sureties shall be liable to the City for the full amount of such excess expense.

(d) The rights and remedies of the City provided in this section are in addition to any of the rights and remedies provided by the law or under this Contract.

#### **6.08. FAILURE TO TIMELY COMPLETE THE WORK – LIQUIDATED DAMAGES**

(a) Liquidated Damages

(1) It is agreed by the parties to this Contract that time is of the essence. In the event all the Work is not completed before or upon the expiration of the time limit as set in the Bid, Contract and/or Progress Schedule, or within any time extensions that may have been granted, damage will be sustained by the City; and that it may be impracticable to determine the actual amount of damage by reason of such delay. Accordingly, it is agreed that the Contractor shall pay to the City as damages the amount set forth for each and every day's delay in finishing the Work in excess of the number of days specified. Liquidated damages shall be paid at a rate of one thousand dollars (\$1,000.00) per day unless otherwise stated in the Contract Documents. The parties expressly agree that the liquidated damage clause found in the Contract Documents

is reasonable under the circumstances existing at the time the Contract was made. The City shall have the right to deduct the amount of liquidated damages from any money due or to become due the Contractor.

(2) In addition, the City shall have the right to charge to the Contractor and to deduct from the final or progress payments for the Work the actual cost to the City of legal, engineering, inspection, superintendence, and other expenses, which are directly chargeable to the Contract and which accrue during the period of such delay, except that the cost of final inspection and preparation of the final estimate shall not be included in the charges.

(b) Exclusions

Notwithstanding the provisions of Section 2.06(a), the Contractor shall not be liable for liquidated damages or delays caused by the removal or relocation of utilities when such removal or relocation is the responsibility of the City or the owner of the utility under Government Code section 4215.

**6.09. CLEAN-UP**

During the progress of the Work, the Contractor shall maintain the Site and related structures and equipment in a clean, orderly condition and free from unsightly accumulation of rubbish. All waste materials shall be removed daily from the Site and disposed of by the Contractor by any proper means at its own expense unless designated otherwise on the plans. No waste materials shall be placed in the public street right-of-way. Unless otherwise specified, all existing piping, materials and/or equipment removed pursuant to this Contract shall become the Contractor's property.

Upon completion of the Work and before the final estimate is submitted, the Contractor shall, at its own cost and expense, remove from the vicinity of the Work all plants, buildings, rubbish, unused work materials, concrete forms, and temporary bridging and other like materials, belonging to the Contractor or used under the Contractor's direction during the construction, and in the event of the Contractor's failure to do so, the same may be removed by the City after ten (10) calendar days' notice to the Contractor. Such removal shall be at the expense of the Contractor.

The Contractor shall use care in the removal of materials and equipment so as not to cause damage to existing facilities and structures. Contractor shall assume liability for all such damage. Where the construction has crossed yards or driveways, restoration shall be by the Contractor to the complete satisfaction of the Engineer, at the Contractor's expense.

The Contractor shall make its own arrangements for the disposal of waste materials. If the Contractor elects to dispose of such materials on private property, Contractor shall obtain written permission from all property owners involved.

## **SECTION 7**

### **MEASUREMENT AND PAYMENT**

#### **7.01. MEASUREMENT OF QUANTITIES**

(a) Where the Contract provides for payment on a lump sum price basis, no measurement of quantity will be made. Where the Contract provides for payment on a unit price basis, the quantities of work performed will be computed by the Engineer on the basis of measurements taken by the Engineer, and these measurements shall be final and conclusive.

(b) All quantities of work computed under the Contract shall be based upon measurements by the Engineer according to United States Measurements and Weights.

(c) Methods of measurement are specified herein and in the Technical Specifications.

(d) Mobilization shall be measured and payment issued according to Section 11 of the State Standard Specifications.

#### **7.02. SCOPE OF PAYMENT**

(a) The Contractor shall accept the compensation provided in the Contract as full payment for furnishing all labor, materials, tools, equipment, and incidentals necessary to the completed work and for performing all work contemplated and embraced under the Contract; also for loss or damage arising from the nature of the work, or from the action of the elements, or from any unforeseen difficulties which may be encountered during the prosecution of the Work until the Acceptance by the City and for all risks of every description connected with the prosecution of the Work, also for all expenses incurred in consequence of the suspension or discontinuance of the work as provided in the Contract; and for completing the Work according to the Specifications and Plans. Neither the payment of any estimate nor of any retained percentage shall relieve the Contractor of any obligation to make good any defective work or material.

(b) No compensation will be made in any case for loss of anticipated profits. Increased or decreased work involving supplemental agreements will be paid for as provided in such agreements.

(c) The Work includes the preparatory work and operations needed for mobilization and demobilization of the Project. The Work, however, does not include establishing the Engineer's field facility(s) of utility work and connections needed for these facilities.

#### **7.03. PROGRESS ESTIMATE**

For each calendar month of Contract work, the Engineer will prepare a progress estimate of all work performed under the Contract. Within the first ten (10) days of each succeeding calendar month, the Engineer will prepare in writing an estimate which in the Engineer's opinion is a fair approximation of the value of all work done under the Contract, including any amounts due the Contractor for Extra Work and Change Orders. In arriving at the value of the Work done, the Engineer will give consideration to the value of labor and materials which have been incorporated into the permanent work by the Contractor during the preceding

month. Consideration will not be given to preparatory work done or for materials or equipment on hand.

In order to assist the Engineer, the Contractor shall furnish the Engineer with copies of invoices for all such items delivered to the job site.

#### **7.04. PROGRESS PAYMENTS**

(a) The City will pay the Contractor ninety-five percent (95%) of the amount of each progress estimate within thirty (30) days after receipt of an undisputed and properly submitted progress estimate from the Contractor, unless the City has made a finding prebid pursuant to Public Contract Code section 7201(b)(4) justifying a larger retention. If the City fails to pay an undisputed progress estimate within the allotted thirty (30) days, the City shall pay interest to the Contractor equivalent to the legal rate set forth in subdivision (A) of section 685.010 of the Code of Civil Procedure. Five percent (5%) of the amount of each estimate shall be retained by the City until final completion and Acceptance of all work under the Contract.

(b) Upon receipt of a payment request, the City shall act in accordance with both of the following:

(1) Each payment request shall be reviewed by the City as soon as practicable after receipt for the purpose of determining that the progress estimate is a proper payment request.

(2) Any payment request determined not to be a proper payment request suitable for payment shall be returned to the Contractor as soon as practicable, but not later than seven (7) days, after receipt. A request returned pursuant to this section shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

(c) The number of days available to the City to make a payment without incurring interest pursuant to this section shall be reduced by the number of days by which the City exceeds the seven-day return requirement set forth in paragraph (2) of subdivision (b).

(d) The Contractor may, in accordance with the provisions of Public Contracts Code section 22300, substitute securities for any monies which the City may withhold to insure performance under the Contract.

(e) When, in the judgment of the Engineer, the Work is not proceeding in accordance with the provisions of the Contract, or when in the Engineer's judgment the total amount of the Work done since the last estimate amounts to less than one thousand dollars (\$1,000.00), no pay estimate will be prepared and no progress payment will be made.

(f) No progress estimate or payment shall be considered to be an approval or Acceptance of any work, materials or equipment. Estimated amounts and values of work done and materials and equipment furnished will be conformed with actual amounts and values as they become available in subsequent progress estimates, progress payments and the final estimate and payment. All estimates and payments will be subject to correction in subsequent progress estimates and payments and the final estimate and payment.

(g) It is mutually agreed between the parties to the Contract that no payments made under the Contract, including progress payments and the final payment shall be evidence of the

performance of the Contract, either wholly or in part, and no payment shall construed to be an Acceptance of any defective or incomplete work or improper materials.

#### **7.05. PROMPT PROGRESS PAYMENT TO SUBCONTRACTORS**

A prime Contractor or Subcontractor shall pay any Subcontractor not later than seven (7) days of receipt of each progress payment in accordance with the provisions in Section 7108.5 of the California Business and Professions Code concerning prompt payment to Subcontractors. The seven (7) days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30 days may take place only for good cause and with the City's prior written approval. Any violation of Section 7108.5 shall subject the violating Contractor or Subcontractor to the penalties, sanctions and other remedies of that section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or Subcontractor in the event of a dispute involving late payment or nonpayment by the prime Contractor, deficient subcontract performance, or noncompliance by a Subcontractor. This provision applies to both DBE and non-DBE Subcontractors.

#### **7.06. LIENS AND STOP NOTICES**

The Contractor agrees to keep the Work, the site of the Work and all monies held by the City free and clear of all liens and stop notices related to labor and materials furnished in connection with the Work, if permitted by law. Furthermore, the Contractor waives any right it may have to file any type of lien or stop notice in connection with the Work. Notwithstanding anything to the contrary contained in the Contract Documents, if any such lien or stop notice is filed or there is evidence to believe that lien or stop notice may be filed at any time during the progress of the Work or within the duration of this Contract, the City may refuse to make any payment otherwise due the Contractor or may withhold any payment due the Contractor a sum sufficient in the opinion of the City to pay all obligations and expenses necessary to satisfy such lien or stop notice. The City may withhold such payment unless or until the Contractor, within ten days after demand therefor by the City, shall furnish satisfactory evidence that the indebtedness and any lien or stop notice in respect thereof has been satisfied, discharged and released of record, or that the Contractor has legally caused such lien or stop notice to be released of record pending the resolution of any dispute between the Contractor and any person or persons filing such lien or stop notice. If the Contractor shall fail to furnish such satisfactory evidence within ten days of the demand therefor, the City may discharge such indebtedness and deduct the amount thereof, together with any and all losses, costs and damages suffered or incurred by the City from any sum payable to the Contractor under the Contract Documents, including but not limited to final payment and retained percentage. This section shall be specifically included in all Subcontracts and purchase orders entered into by the Contractor.

#### **7.07. FINAL ACCEPTANCE AND DATE OF COMPLETION**

Whenever the Contractor shall deem all Work under this Contract to have been completed in accordance therewith, the Contractor shall so notify the Engineer in writing, and the Engineer shall promptly ascertain whether the Work has been satisfactorily completed and, if not, shall advise the Contractor in detail and in writing of any additional work required. When all the provisions of the Contract have been fully complied with, to the satisfaction of the Engineer, the Engineer shall proceed with all reasonable diligence to determine accurately the total value of all Work performed by the Contractor at the prices set forth in the Contract or fixed by Change Orders, and the total value of all extra work, all in accordance with the Contract. The Engineer will then certify to said final estimate and to the completion of the Work, and will



file copies thereof with the City and the Contractor, and shall cause of Notice of Completion to be filed with the Yolo County Clerk-Recorder . The date of completion shall be the date of filing of the Notice of Completion. All guarantees, warranties, and securities securing said guarantees and warranties, shall commence on said date.

#### **7.08. RIGHT TO WITHHOLD PAYMENTS**

(a) In addition to all other rights and remedies of the City hereunder and by virtue of the law, the City may withhold or nullify the whole or any part of any partial or final payment to such extent as may reasonably be necessary to protect the City from loss on account of:

- (1) Defective work not remedied, irrespective of when any such work be found to be defective;
- (2) Claims or liens filed or reasonable evidence indicating probable filing of claims or liens including, but not limited to claims under Sections 1775, 1776, or 1777.7 of the Labor Code;
- (3) Failure of the Contractor to make payments properly for labor, materials, equipment, or other facilities, or to Subcontractors and/or suppliers;
- (4) A reasonable doubt that the Work can be completed for the balance then unearned;
- (5) A reasonable doubt that the Contractor will complete the Work within the agreed time limits;
- (6) Costs to the City resulting from failure of the Contractor to complete the Work within the proper time; or
- (7) Damage to work or property.

(b) Whenever the City shall, in accordance herewith, withhold any monies otherwise due the Contractor, written notice of the amount withheld and the reasons therefor will be given the Contractor. After the Contractor has corrected the enumerated deficiencies, the City will promptly pay to the Contractor the amount so withheld. When monies are withheld to protect the City against claims or liens of mechanics, material men, Subcontractors, etc., the City may at its discretion permit the Contractor to deliver a surety bond in terms and amount satisfactory to the City, indemnifying the City against any loss or expense, and upon Acceptance thereof by the City, the City shall release to the Contractor monies so withheld.

#### **7.09. FINAL PAYMENT**

Within ten (10) days after the date of completion, the City will file in the Office of the County Recorder, a Notice of Completion of the Work herein agreed to be done by the Contractor. Within sixty (60) days of completion defined in Public Contract Code section 7107, the difference between said final estimate and all payments theretofore made to the Contractor shall be due and payable to the Contractor, subject to any requirements concerning the furnishings of a maintenance bond, and excepting only such sum or sums as may be withheld or deducted in accordance with the provisions of this Contract. All prior certifications upon which partial Payments may have been made, being merely estimates, shall be subject to correction in the final certificate.

#### **7.10. FINAL RELEASE**

Final payment to the Contractor in accordance with the final estimate is contingent upon the Contractor furnishing the City with a signed written release of all claims against the City arising by virtue of the Contract. Disputed Contract claims in stated amounts may be specifically excluded by the Contractor from the operation of the release. The release shall be in substantially the form specified in California Civil Code section 8138.

**PART 3 SUPPLEMENTAL CONDITIONS  
(SPECIAL PROVISIONS)**

## SUPPLEMENTAL CONDITIONS (SPECIAL PROVISIONS)

Except as modified by these Supplemental Conditions, the work shall be performed in accordance with Part 3 General Conditions. The numbering of these Supplemental Conditions coincides to the numbering in the General Conditions. The existence of a section in these Supplemental Conditions means that a corresponding section in the General Conditions is modified in some respect. Under these contract documents, Supplemental Conditions and Special Provisions have the same meaning.

The following Supplemental Conditions , if any, shall be used in conjunction with the City of West Sacramento Standard Specifications current edition including Standard Details and all revisions, and the current State of California Department of Transportation (Caltrans) Standard Specifications, in that order.

The following provisions apply to use of or reference to the Caltrans Standard Specifications:

1. None of the “General Provisions” of the Caltrans Standard Specifications, i.e., Sections 1 through 9, applies to these Contract Documents with the exception of any specific provisions, if any, which are expressly stated to apply to these Contract Documents. The City’s “General Conditions” shall govern.
2. If there is a conflict or inconsistency between any provision in the Caltrans Standard Specifications and a provision of these Contract Documents, the provision in the Contract Documents will govern.
3. Any reference to the “Engineer” in the Caltrans Standard Specifications is deemed to mean “City”, “Owner” or “Architect/Engineer” or Owner’s designated representative.
4. Any reference to the “State” in the Caltrans Standard Specifications is deemed to mean “City” or “Owner.”

City Standard Specifications are available online at:

<http://cityofwestsacramento.org/city/depts/comdev/engineering/specs/default.asp>

Bound hardcopies may be purchased from City Hall at:

1110 West Capitol Avenue, 2<sup>nd</sup> Floor  
West Sacramento, California 95691  
or by calling (916) 617-4645 for purchase by mail.

State Standard Specifications are available online at:

<http://www.dot.ca.gov/hq/esc/oe/standards.php>

## **PART 4 TECHNICAL SPECIFICATIONS**

The work shall be performed in accordance with the latest edition of the City of West Sacramento Standard Specifications – Division IV: Standard Construction Specifications and Caltrans Standard Specifications 2015, except as modified by these Technical Specifications. Section numbering of these Technical Specifications does not conform to the City's Standard Specifications.

Contractor shall provide submittals (shop drawings) for all materials to be installed or used on the project.

The Fire Station 44 Facility Repairs project includes re-roofing, exterior painting, lighting upgrades, and fencing.

Re-Roofing: The entire existing roof of the building is to be removed. Any necessary repairs are to be performed to eaves, skylights, and other roof accessories. The sheathing is to be fully replaced and a new composite roof is to be provided and installed. New gutters and downspouts are to be installed to direct water away from the building and walkways.

Skylight Replacement: An alternate bid associated with this project is to upgrade two of the existing skylights in the Apparatus Bay (garage) to venting skylights. The new skylights are to be manually operated venting skylights mounted on the existing skylight curbs.

Exterior Painting: The building exterior is to be cleaned and prepared for painting. The entire exterior is to be primed and painted with a color determined by the City.

Lighting Upgrades: All exterior lighting is to be replaced with LED fixtures. All overhead lighting in the Apparatus Bay (garage) are to be upgraded to LED fixtures. Minor electrical work may be necessary, but not expected.

Fencing: The wooden fence line located along the east side of the building is to be removed and disposed of. The metal posts are sound and are to be re-used, with new wooden stringers and boards provided and installed by contractor. The southwest corner of the fencing will need a new post to change the fence line to follow the property line and square off an existing jog in the fence. A small, decommissioned service pedestal located in the southwest corner of the lot is to be removed prior to building the new fence. One pedestrian gate is included in the project, located at the northeast corner of the building. The chain link fence located on the south side of the property and the wood fence to the west are NOT included in this project.

**BID PROPOSAL**

Proposal to: Ariana Adame, Director of Capital Projects  
City of West Sacramento  
1110 West Capitol Avenue, 1st Floor  
West Sacramento, CA 95691

The undersigned Bidder hereby proposes to furnish and deliver all necessary labor, tools, equipment, and other means of construction to perform the work required for the completion of the project entitled "FIRE STATION 44 FACILITY REPAIRS" in accordance with the intent of all plans, specifications, and Addenda issued by the City of West Sacramento prior to the opening of the Bid proposals.

Bidder has read the accompanying instructions to Bidders, has carefully examined the location(s) of the proposed work, and has examined all Contract Documents, drawings and Addenda issued by the City and will contract with the City to construct the project, complete and in satisfactory condition.

The Bidder further agrees to complete all work required under the Contract within Sixty (60) working days from the date designated in the Notice to Proceed, and to accept in full payment therefore the price indicated on the Bid Schedule.

The Bidder acknowledges that it understands that a waiting period from time of Bid opening until award may be sixty (60) days during which time Bidder may not withdraw its bid. The Bidder further acknowledges that it has adjusted its Bid price to include all possible items which may influence the proposal during the waiting period. Requests for Bid price change due to the delay shall not be agreed to by the City.

Company Name: Paine Construction Inc  
Bidder's Name (Printed): Mark Zaychenko  
Bidder's Title: Corporate Secretary  
Bidder's Signature:   
Date: 10/16/2023  
Address: 7212 8th St, Rio Linda, CA, 95673  
Phone Number: 916-868-1083  
Contractor's License Number: 333880  
Classification: B, C-10,13,15,33  
Expiration Date: 07/31/2024  
Public Works Contractor  
Registration Number: PW-LR-1000434239

## 5. Cost Table

### BASE BID FOR FACILITY REPAIRS

This bid schedule is only for the Re-Roofing of the Fire Station. Bid Alternate is found on the following table.

Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total
1	Mobilization	1	Lump Sum	\$4,000	\$4,000
2	Re-Roofing: Existing Roof Tear-Off	1	Lump Sum	\$12,000	\$12,000
3	Re-Roofing: Replace Sheathing, Flashing and Misc. Components	1	Lump Sum	\$12,000	\$12,000
4	Re-Roofing: Provide and Install new Gutters and Downspouts	1	Lump Sum	\$28,000	\$28,000
5	Re-Roofing: Provide and Install Composite Roofing	1	Lump Sum	\$29,000	\$29,000
6	Re-Roofing: Minor repairs of eaves and fascia	1	Lump Sum	\$5,000	\$5,000
7	Fencing: Removal and Disposal of existing wood fencing material, including removal and disposal of service pedestal.	1	Lump Sum	\$4,000	\$4,000
8	Fencing: Removal and Replacement of one steel fencing post to new location	1	Lump Sum	\$1000	\$1000
9	Furnish and Install wood fencing to match existing design. Rebuild gates to match existing design.	1	Lump Sum	\$8,000	\$8,000
10	Exterior Painting: Cleaning and Surface Preparation	1	Lump Sum	\$5,000	\$5,000
11	Exterior Painting: Prime and Paint exterior	1	Lump Sum	\$10,000	\$10,000

Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total
12	Lighting: Replacement of all exterior light fixtures and interior Apparatus Bay (garage) light fixtures with LED fixtures	1	Lump Sum	\$20,000	\$20,000
<b>TOTAL</b>		<b>\$138,000.00</b>			

**BID ALTERNATE - MANUAL VENTING SKYLIGHTS**

This bid schedule is for the replacement of existing skylights above the Apparatus Bay (garage) with manual venting skylights.

Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total	No Bid
12	Provide and Install manual venting skylights to replace existing skylights in the Apparatus Bay (garage).	2	Each	\$4,000	\$8,000	
<b>TOTAL</b>		<b>\$8,000</b>				



## BIDDER'S CHECKLIST

All items on the Bidder's Checklist must be initialed, dated and submitted for the Proposal to be considered complete. The City of West Sacramento reserves the right to award a Contract in a manner and on the basis which will best serve the City, taking into consideration the information in the statement of Bidder's qualifications and past work history with the City.

The Bidder's attention is especially called to the following forms which must be executed in full as required:

1. a) **BID PROPOSAL**  
To be filled in and signed by the Bidder.  
Initial: MZ Date: 10/16/2023
- b) **BID SCHEDULE (If applicable)**  
The unit prices Bid must be shown in the space provided. The total Bid price must be shown in the space provided.  
Initial: MZ Date: 10/16/2023
2. **BID SECURITY**  
The Bid bond is to be executed by the Bidder and the surety company unless Bid is accompanied by cash or certified check. The amount of this Bid bond shall be not less than ten percent (10%) of the total amount Bid and may be shown in dollars or on a percentage basis.  
Initial: MZ Date: 10/16/2023
3. **NON-COLLUSION DECLARATION**  
A Non-Collusion Declaration must be filled out, signed, and submitted with the Bid proposal for the Bid documents to be considered complete.  
Initial: MZ Date: 10/16/2023
4. **EXPERIENCE QUALIFICATIONS**  
A statement of the Bidder's Experience & Qualifications must be filled out, signed, and submitted with the Bid proposal for the Bid documents to be considered complete.  
Initial: MZ Date: 10/16/2023
5. **DESIGNATION OF SUBCONTRACTORS**  
A Designation of Subcontractors must be filled out and submitted with the Bid proposal for the Bid documents to be considered complete.  
Initial: MZ Date: 10/16/2023
6. **INSURANCE**  
The insurance requirements, Section 6.24 of the General Conditions, for this project have been read and understood.  
Initial: MZ Date: 10/16/2023

7. **SITE VISIT**

The Bidder certifies that it has toured the project site and is familiar with the work involved.

Initial: MZ Date: 10/16/2023

8. **PERFORMANCE AND PAYMENT BONDS (IN PART 2)**

The Bidder understands that a performance bond issued by an approved surety equaling one hundred percent (100%) of the Contract amount will be required. A payment bond equaling one hundred percent (100%) of the Contract amount will also be required.

Initial: MZ Date: 10/16/2023

9. **WORK SCHEDULE**

The City makes no guarantee as to the method of work chosen by the Bidder. It is the Bidder's responsibility to plan and schedule the work in order to complete the work in the time specified in the Special Provisions.

Initial: MZ Date: 10/16/2023

10. **ADDENDA**

The Bidder acknowledges that it must sign and attach any applicable Addenda to the Bid proposal.

Initial: MZ Date: 10/16/2023

11. **CONTRACTOR'S CERTIFICATE REGARDING WORKERS COMPENSATION (IN PART 2)**

The Bidder acknowledgment that Worker's Compensation Insurance will be required for this project.

Initial: MZ Date: 10/16/2023



**EXPERIENCE & QUALIFICATIONS**

The Bidder has been engaged in the contracting business under the present business name for 5 years. Experience in work of a nature similar to that covered in the proposal extends over a period of 40 years.

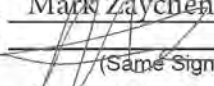
The Bidder, as a Contractor, has never failed to satisfactorily complete a Contract awarded to it, except as follows:

The following contracts have been satisfactorily completed in the last three (3) years for the persons, firm or authority indicated, and to whom reference is made:

Year	Type of Work	Contract Amount	Owner/Agency for Whom Work was Performed
2023	IFP Installation	\$152,000	Yuba USD
2023	Mono Lookout	\$125,000	Calfire
2023	Awning Repair	\$87,000	Caltrans

The following is a list of plant and equipment owned by the Bidder, which is available for use on the proposed work as required.

Quantity	Name, Type and Capacity	Condition	Location
4	Aerial Lift	Used	Rio Linda
5	Truck and trailer	Used	Rio Linda

Bidder's Name (Printed): Mark Zaychenko  
 Bidder's Signature:   
 (Same Signature as on Proposal)  
 Bidder's Title: Secretary  
 Date: 10/16/2023



**CONTRACTOR'S CERTIFICATE REGARDING WORKER'S COMPENSATION**

TO: Ariana Adame, Director of Capital Projects  
City of West Sacramento  
1110 West Capitol Avenue, 1st Floor  
West Sacramento, CA 95691

I am aware of the provisions of Section 3700 of the Labor Code of the State of California 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 of this Contract.

Paine Construction Inc  
(Contractor)

By Mark Zaychenko

7212 8th St,  
Rio Linda, CA, 95673  
  
(Business Address)

5008 Marysville Blvd  
Sacramento, CA, 95838  
  
(Place of Residence)

**PART 5 APPENDIX**

## BIDDER'S CHECKLIST

All items on the Bidder's Checklist must be initialed, dated and submitted for the Proposal to be considered complete. The City of West Sacramento reserves the right to award a Contract in a manner and on the basis which will best serve the City, taking into consideration the information in the statement of Bidder's qualifications and past work history with the City.

The Bidder's attention is especially called to the following forms which must be executed in full as required:

1. a) **BID PROPOSAL**  
To be filled in and signed by the Bidder.  
Initial:   MZ   Date:   10/16/2023
- b) **BID SCHEDULE (If applicable)**  
The unit prices Bid must be shown in the space provided. The total Bid price must be shown in the space provided.  
Initial:   MZ   Date:   10/16/2023
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The Bid bond is to be executed by the Bidder and the surety company unless Bid is accompanied by cash or certified check. The amount of this Bid bond shall be not less than ten percent (10%) of the total amount Bid and may be shown in dollars or on a percentage basis.  
Initial:   MZ   Date:   10/16/2023
3. **NON-COLLUSION DECLARATION**  
A Non-Collusion Declaration must be filled out, signed, and submitted with the Bid proposal for the Bid documents to be considered complete.  
Initial:   MZ   Date:   10/16/2023
4. **EXPERIENCE QUALIFICATIONS**  
A statement of the Bidder's Experience & Qualifications must be filled out, signed, and submitted with the Bid proposal for the Bid documents to be considered complete.  
Initial:   MZ   Date:   10/16/2023
5. **DESIGNATION OF SUBCONTRACTORS**  
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Initial:   MZ   Date:   10/16/2023
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The insurance requirements, Section 6.24 of the General Conditions, for this project have been read and understood.  
Initial:   MZ   Date:   10/16/2023



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The Bidder certifies that it has toured the project site and is familiar with the work involved.

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Initial: MZ Date: 10/16/2023

9. **WORK SCHEDULE**

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**BID PROPOSAL**

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City of West Sacramento  
1110 West Capitol Avenue, 1st Floor  
West Sacramento, CA 95691

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Bidder has read the accompanying instructions to Bidders, has carefully examined the location(s) of the proposed work, and has examined all Contract Documents, drawings and Addenda issued by the City and will contract with the City to construct the project, complete and in satisfactory condition.

The Bidder further agrees to complete all work required under the Contract within Sixty (60) working days from the date designated in the Notice to Proceed, and to accept in full payment therefore the price indicated on the Bid Schedule.

The Bidder acknowledges that it understands that a waiting period from time of Bid opening until award may be sixty (60) days during which time Bidder may not withdraw its bid. The Bidder further acknowledges that it has adjusted its Bid price to include all possible items which may influence the proposal during the waiting period. Requests for Bid price change due to the delay shall not be agreed to by the City.

Company Name: Paine Construction Inc  
Bidder's Name (Printed): Mark Zaychenko  
Bidder's Title: Corporate Secretary  
Bidder's Signature:   
Date: 10/16/2023  
Address: 7212 8th St, Rio Linda, CA, 95673  
Phone Number: 916-868-1083  
Contractor's License Number: 333880  
Classification: B, C-10,13,15,33  
Expiration Date: 07/31/2024  
Public Works Contractor  
Registration Number: PW-LR-1000434239

### BID SCHEDULE

The following quantities are approximate only and are given for the purpose of comparing proposals. The City does not expressly or by implication agree that the actual amount of work will correspond with quantities given herein, but reserves the right to increase or decrease the amount of any class or portion of the work as may be deemed necessary or advisable by the Engineer. Payment will be based upon the actual quantities installed or constructed, unless otherwise specified.

ITEM NO.	DESCRIPTION	UNIT	ESTIMATED QUANTITY	UNIT PRICE (\$)	TOTAL (\$)
1.	See cost table next page(s)				
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					
13.					
14.					
15.					
16.					
17.					
18.					
19.					
20.					
21.					
22.					
23.					
24.					
25.					
<b>TOTAL BID PRICE \$</b>					

In the case of discrepancy between unit prices and totals, unit prices will prevail and the City will recalculate the Bid total based on the unit prices and estimated quantities. In case of discrepancy between words and figures, words will prevail.

**Note:**      LS = Lump Sum                      FL = Linear Feet                      EA = Each  
                  SY = Square Yard                      SF = Square Feet

## 5. Cost Table

### BASE BID FOR FACILITY REPAIRS

This bid schedule is only for the Re-Roofing of the Fire Station. Bid Alternate is found on the following table.

Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total
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10	Exterior Painting: Cleaning and Surface Preparation	1	Lump Sum	\$5,000	\$5,000
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<b>TOTAL</b>		<b>\$138,000.00</b>			

**BID ALTERNATE - MANUAL VENTING SKYLIGHTS**

This bid schedule is for the replacement of existing skylights above the Apparatus Bay (garage) with manual venting skylights.

Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total	No Bid
12	Provide and Install manual venting skylights to replace existing skylights in the Apparatus Bay (garage).	2	Each	\$4,000	\$8,000	
<b>TOTAL</b>		<b>\$8,000</b>				

**NON-COLLUSION DECLARATION**

STATE OF CALIFORNIA            )  
  )  
COUNTY OF SACRAMENTO        )

The undersigned declares:

I am the Secretary of Paine Construction Inc, 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 its 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.

Any person executing this declaration on behalf of a Bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that it has full power to execute, and does execute, this declaration on behalf of the Bidder.

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 10/16/2023[date], at Rio Linda [city], CA [state].

Bidder's Name (Printed): Mark Zaychenko  
Bidder's Signature:   
(Same Signature as on Proposal)  
Bidder's Title: Secretary

**EXPERIENCE & QUALIFICATIONS**

The Bidder has been engaged in the contracting business under the present business name for 5 years. Experience in work of a nature similar to that covered in the proposal extends over a period of 40 years.

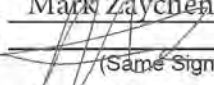
The Bidder, as a Contractor, has never failed to satisfactorily complete a Contract awarded to it, except as follows:

The following contracts have been satisfactorily completed in the last three (3) years for the persons, firm or authority indicated, and to whom reference is made:

Year	Type of Work	Contract Amount	Owner/Agency for Whom Work was Performed
2023	IFP Installation	\$152,000	Yuba USD
2023	Mono Lookout	\$125,000	Calfire
2023	Awning Repair	\$87,000	Caltrans

The following is a list of plant and equipment owned by the Bidder, which is available for use on the proposed work as required.

Quantity	Name, Type and Capacity	Condition	Location
4	Aerial Lift	Used	Rio Linda
5	Truck and trailer	Used	Rio Linda

Bidder's Name (Printed): Mark Zaychenko  
 Bidder's Signature:   
 (Same Signature as on Proposal)  
 Bidder's Title: Secretary  
 Date: 10/16/2023





**PART 6 CONTRACT DRAWINGS  
(BOUND SEPARATELY)**



MEETING DATE: November 15, 2023

ITEM # 5

**SUBJECT:**

**CONSIDERATION TO AWARD A CONSTRUCTION CONTRACT TO BAY AREA  
CONCRETES, INC. FOR THE RECREATION CENTER POOL DECK REPAIRS PHASE II  
PROJECT (CIP 52045)**

**INITIATED OR REQUESTED BY:**

Council     Staff  
 Other

**REPORT COORDINATED OR PREPARED BY:**

Christopher Dority, Project Manager II  
Capital Projects Department

**ATTACHMENT**     Yes     No         Information     Direction         Action

**OBJECTIVE**

The objective of this report is to provide the City Council with sufficient information to award a construction contract to Bay Area Concretos, Inc. for the Recreation Center Pool Deck Repairs Phase II Project (CIP 52045).

**RECOMMENDED ACTION**

Staff respectfully recommends that the City Council:

- 1) Find that the proposed Recreation Center Pool Deck Repairs Phase II Project is exempt from CEQA pursuant to the Categorical Exemptions under California Code of Regulations, Title 14, Division 6, Chapter 3 ("CEQA Guidelines"), Sections 15301, 15303, and 15304, and find that the determination represents the independent judgment of the City;
- 2) Award a construction contract to the lowest responsive, responsible bidder, Bay Area Concretos, Inc, in the amount of \$199,680;
- 3) Authorize to the City Manager, or his designee, to execute a construction contract with Bay Area Concretos, Inc. for an amount not to exceed \$199,680;
- 4) Authorize the City Manager, to execute non-substantive changes or modifications to the contract with Bay Area Concretos, Inc, with approval from the City Attorney; and
- 5) Authorize the City Manager, or his designee to execute contract amendments up to 10%, (\$19,968) of the value of the of the contract.

**BACKGROUND**

The Recreation Center located at 2801 Jefferson Boulevard, is a joint use facility between the City and River City High School which opened in January of 2009. The facility features a lap pool which is available for swim lessons, recreation and competitive swim programs, including River City High School's water polo, diving and swim teams. Additionally, lap swim and water fitness are heavily used by the City's active aging community. The pool deck area around the lap pool has experienced heavy traffic throughout its 14-year life and has reached a state of disrepair that has become a potential safety hazard. The pool deck needs to be repaired and resurfaced to ensure usefulness and to provide a safe facility to the community and High School athletes.

**ANALYSIS**

On October 10, 2023, the Capital Projects Department, in conjunction with the Parks and Recreation Department, issued an invitation to bid (ITB) for the project which was advertised in the local newspaper and on the City's website through OpenGov (formerly ProcureNow) and routed through the Chamber of Commerce.

At the close of the advertising period, City Staff received two (2) proposals which ranked as follows:

Ranking	Contractor	Bid Total
1	Bay Area Concretos, Inc.	\$199,680
2	B & M Builders, Inc	\$479,125

After examining the contractor's licenses, work experience, qualifications and proposals submitted in each completed bid package, staff determined that Bay Area Concretos is the lowest responsive and responsible bidder. Based on this information, staff recommends awarding the Construction Contract to Bay Area Concretos, Inc.

**Environmental Considerations**

The proposed project for the Recreation Center Pool Deck Repair Phase II is exempt from CEQA pursuant to the Categorical Exemptions under California Code of Regulations, Title 14, Division 6, Chapter 3 ("CEQA Guidelines"), Sections 15301, 15303, and 15304 (existing facilities). This project includes minor alterations and upgrades to the existing Recreation Pool Deck.

**Commission Recommendation**

On April 5, 2022, the Parks, Recreation, and Intergenerational Services Commission received an update on the Parks and Recreation Department Major Projects and Programs for 2022-2025, which included the Recreation Center Pool Deck Repairs Phase II Project.

**Strategic Plan Integration**

n/a

**Alternatives**

The Council's primary alternatives are summarized below:

- 1) Approve the recommended actions as described above in this report.
- 2) Alter the recommended actions.
- 3) Defer or cancel the project.

Staff recommends the Council proceed with Alternative 1, as this is a safety concern for users and deferring the repair would lead to further damage to the surface requiring a full deck replacement.

**Coordination and Review**

This report was prepared by the Capital Projects Department in coordination with and review by the Parks and Recreation Department and the Finance Department and Washinton Unified School District Facilities, Construction and Planning Department

**Budget/Cost Impact**

Recreation Center Pool Deck Repairs Phase II Project is included in the Capital Improvement Program, approved by the City Council as part of the City's mid-term budget process for FY 2019/2020. Sufficient funds are available in the project budget for the recommended actions and no additional budget appropriations are required or requested at this time.

**ATTACHMENTS**

1. Bay Area Concretes, Inc. Contract
2. Notice of Exemption

## CONSTRUCTION CONTRACT

THIS CONTRACT made on November 15, 2023, by and between the CITY OF WEST SACRAMENTO (“City”), and BAY AREA CONCRETES, INC., hereinafter “Contractor”. The City and Contractor may be collectively referred to as the “parties”.

The parties have mutually covenanted and agreed as follows:

### 1. THE CONTRACT DOCUMENTS:

The complete Contract consists of the following documents (“Contract Documents”):

Construction Contract (See Part 2)  
Payment Bond to accompany Contract (See Part 2)  
Performance Bond to accompany Contract (See Part 2)  
Contractor’s Certification Regarding Workers’ Compensation (See Part 2)  
General Conditions (See Part 3)  
Supplemental Conditions (Special Provisions) (See Part 4)  
Drawings  
Technical Specifications (See Part 4)  
Change Orders  
City of West Sacramento Standard Specifications 2002, with Amendments #1 & #2  
State of California Department of Transportation (Caltrans) Standard Specifications 2015  
Contractor’s Emergency Invoice (Accepted Bid)

### 2. THE WORK:

The Contractor agrees to furnish all tools, equipment, apparatus, facilities, labor, transportation, and material necessary to perform and complete in a good and workmanlike manner, the Recreation Pool Deck Repairs – Phase II “Project” as called for, and in the manner designated in, and in strict conformity with, the Contract Documents. It is understood and agreed that the tools, equipment, apparatus, facilities, labor, transportation, and material shall be furnished, and the work performed and completed as required in the Drawings and Specifications under the sole direction and control of the Contractor, and subject to inspection and approval of the City, or its representatives. The City hereby designates as its representative for the purpose of this Contract the following named person: Christopher Dority.

This project includes pool deck repairs for the 16000sf competition pool deck at the City of West Sacramento Recreation center. Scope shall include all safety precautions and prep-work to complete repairs. SOW is as follows:

- Mobilization to site to include safety precautions and barricades
- Prep concrete for repairs
- Patch all concrete sprawls with Ardex CP
- Apply Ardifix to repairs, mix with sand for larger cracks or pop outs
- Apply Ardex EP2000 Epoxy Primer
- Apply Ardex CD concrete dressing
- Apply Ardex CG concrete sealer (2 coats)
- Final Clean up and de-mobilization

**3. CONTRACT PRICE:**

The City agrees to pay and the Contractor agrees to accept, in full payment for the work above agreed to be done, the sum of \$199,680 for the Project subject to additions and deductions as provided in the Contract Documents.

**4. COMPLETION DATE:**

The Project shall be commenced on the date specified in the Notice to Proceed. The total project will be completed within thirty (30) calendar days, as defined in the General Conditions, after the date stated in the Notice to Proceed.

**5. NOTICE AND SERVICE THEREOF:**

Any notice from one party to the other under the Contract shall be in writing and shall be dated and signed by the party giving such notice or by a duly authorized representative of such party. Any such notice shall not be effective for any purpose whatsoever unless served in the following manner, namely:

(a) If the notice is given to the City, by personal delivery thereof to the Director of Capital Projects, or by depositing the same in the United States mail, enclosed in a sealed envelope, postage prepaid, and certified; addressed to the City at:

City of West Sacramento  
Ariana Adame, Director of Capital Projects  
1110 West Capitol Avenue, 1<sup>st</sup> Floor  
West Sacramento, CA 95691

(b) If the notice is given to the Contractor, by personal delivery thereof to said Contractor or to its duly authorized representative at the site of the project, or by depositing the same in the United States mail, enclosed in a sealed envelope, postage prepaid, and certified; addressed to the Contractor at:

Business	Bay Area Concretes
Attention	Dan Chance
Street Address	5637 La Ribera St Ste B
City, State, Zip Code	Livermore, CA 94550

(c) If the notice is given to the surety or any other person, by personal delivery to such surety or other person, or by depositing the same in the United States mail, enclosed in a sealed envelope, addressed to such surety or other person, as the case may be, at the address of such surety or person last communicated by it to the party giving the notice, postage prepaid and certified.

**6. LIQUIDATED DAMAGES:**

Liquidated damages as provided for in the General Conditions of the Contract shall be in the sum of One Thousand Dollars (\$1000.00) for each and every day as defined therein for each different scope of work as defined by the Base Bid and each change order except as otherwise specified in the Supplemental Conditions.

**7. PREVAILING WAGE:**

Copies of the prevailing rate of per diem wages as determined by the Director of the Department of Industrial Relations in accordance with Labor Code section 1773.2 are on file at the City, and copies are available for inspection at that office to any interested party on request. Bidders shall be responsible for verifying with the Director of the Department of Industrial Relations that all such copies of the prevailing rate provided by the City are current and accurate. The requirement to pay the wage rate so specified is further detailed in the General Conditions.

**8. CONTRACTOR REGISTRATION**

By the execution of this Contract, Contractor hereby certifies that it is registered with the California Department of Industrial Relations as required pursuant to Labor Code section 1725.5 (Contractor registration).

IN WITNESS WHEREOF, four (4) identical counterparts of this Contract, each of which shall for all purposes be deemed an original, have been duly executed by the above-named parties, on the date noted on the first page of this Contract.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Ryan Chance, President Bay Area Concretes

\_\_\_\_\_  
Date

\_\_\_\_\_  
Aaron Laurel, City Manager

Approved as to form:

\_\_\_\_\_  
Jeffrey Mitchell, City Attorney

Attest:

\_\_\_\_\_  
Jennifer Cusmir, City Clerk

## PAYMENT BOND

The CITY OF WEST SACRAMENTO, hereinafter "City," has awarded to Bay Area Concretes Inc., hereinafter "Contractor," a Contract for the work described as follows:

### RECREATION POOL DECK REPAIRS – PHASE II

WHEREAS, the Contractor is required by the Contract and by the provisions of Third Division, Part 4, Title 15, Chapter 7 of the Civil Code to furnish a bond in connection with the Contract, as hereinafter set forth.

NOW, THEREFORE, we, Bay Area Concretes, Inc, the undersigned Contractor, as Principal, and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_ duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the \_\_\_\_\_ in the sum of [AMOUNT], said sum being not less than one hundred (100) percent of the total Contract amount payable by the City, under the terms of the Contract, for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, THAT, if the Contractor, its heirs, executors, administrators, successors, and assigns or Subcontractors shall fail to pay for any materials, provisions, provender or other supplies or teams, implements or machinery used in, upon, for or about the performance of the work contracted to be done, or shall fail to pay for any work or labor thereon of any kind, or shall fail to pay any persons named in Civil Code section 9100, or shall fail to pay for amounts due under the Unemployment Insurance Code with respect to such work or labor thereon of any kind, or shall fail to pay for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Contractor and Subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work or labor, and provided that the claimant shall have complied with the provisions of that code, the Surety or Sureties hereon will pay for the same in an amount not exceeding the sum specified in the Contract; otherwise, the above obligation shall be void. In case suit is brought upon this bond, the Surety will pay reasonable attorneys' fees to the prevailing party to be fixed by the court.

This bond shall insure to the benefit of any and all persons, companies and corporations entitled to file claims under Section 9100 of the Civil Code, so as to give a right of action to them or to their assigns in any suit brought upon this bond.

It is further stipulated that the Surety of this bond shall not be exonerated or released from the obligation of the bond by any change, extension of time for performance, addition, alteration, or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement described above or pertaining or relating to the furnishing of labor, materials, or equipment therefor, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement described above, nor by any rescission or attempted rescission of the Contract, agreement, or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond, and that this bond be



construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the City and original Contractor or on the party of the obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 8400 and 8402 of the California Civil Code and has not been paid the full amount of its claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration, or modification.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Contractor as Principal)

(Seal) By \_\_\_\_\_

(Seal) By \_\_\_\_\_

NOTE: If Contractor is a Partnership, all partners should execute Bond.

IMPORTANT: Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in California.

## PERFORMANCE BOND

The CITY OF WEST SACRAMENTO, hereinafter “City,” entered into a Contract dated November 15, 2023 with Bay Area Concretes, Inc. hereinafter “Contractor,” for the work described as follows:

### RECREATION POOL DECK REPAIRS

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

WHEREAS, the Contract is by reference made a part hereof.

NOW, THEREFORE, we, \_\_\_\_\_, the undersigned Contractor, as Principal, and \_\_\_\_\_ (corporate surety), a corporation organized and existing under the laws of the State of \_\_\_\_\_, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the City in the penal sum of [WRITTEN NUMBER] [(NUMBER)], lawful money of the United States, said sum being not less than one hundred percent (100%) of the total Contract amount, for the payment of which sum be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, THAT, if the above-bounded Contractor, its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and perform the covenants, conditions, and agreements in said Contract and any alterations thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City, its officers and agents, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and virtue.

As a condition precedent to the satisfactory completion of said Contract, the above obligation in said amount shall hold good for a period of one (1) year after the completion and Acceptance of said work, during which time if the above-bounded Contractor, its heirs, executors, administrators, successors or assigns shall fail to make full, complete, and satisfactory repair and replacements or totally protect the City from loss or damage made evident during said period of one (1) year from the date of Acceptance of said work, and resulting from or caused by defective materials or faulty workmanship in the prosecution of the work done, the above obligation in said sum shall remain in full force and effect. However, anything in this paragraph to the contrary notwithstanding, the obligation of the Surety hereunder shall continue so long as any obligation of the Contractor remains.

And the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall, in any way, affect its obligations on this bond and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract or to the work or the specifications.

Said Surety hereby waives the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

In the event suit is brought upon this bond by the City and judgment is recovered, the Surety shall pay all costs incurred by the City in such suit, including reasonable attorneys' fees to be fixed by the Court.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Contractor as Principal)

(Seal)

By \_\_\_\_\_

(Seal)

By \_\_\_\_\_

NOTE: If Contractor is a Partnership, all parties must execute the Bond.

IMPORTANT: Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in California.

**CONTRACTOR'S CERTIFICATE REGARDING WORKER'S COMPENSATION**

TO: Ariana Adame, Director of Capital Projects  
City of West Sacramento  
1110 West Capitol Avenue, 1<sup>st</sup> Floor  
West Sacramento, CA 95691

I am aware of the provisions of Section 3700 of the Labor Code of the State of California 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 of this Contract.

\_\_\_\_\_  
(Ryan Chance, Bay Area Concretes, Inc)

By \_\_\_\_\_

5637 La Ribera St Ste B  
\_\_\_\_\_

Livermore, CA 94550  
\_\_\_\_\_

(Business Address)

5637 La Ribera St Ste B  
\_\_\_\_\_

Livermore, CA 94550  
\_\_\_\_\_

(Place of Residence)

## **PART 2 GENERAL CONDITIONS**

## **PART 2: GENERAL CONDITIONS**

### **SECTION 1**

#### **DEFINITIONS AND TERMS**

##### **1.01. GENERAL**

Wherever the following abbreviations and terms, or pronouns in place of them, are used in these Conditions and other Contract Documents of which these Conditions are a part, the intent and meaning shall be interpreted as provided below.

##### **1.02. ABBREVIATIONS**

The following abbreviations may be used in the Contract Documents:

AA	Aluminum Association
AASHTO	American Association of State Highway/Transportation Officials
ABMA	American Boiler Manufacturer's Association
ACI	American Concrete Institute
AFBMA	Anti-Friction Bearing Manufacturers Association
AGA	American Gas Association
AGC	Associated General Contractors
AGMA	American Gear Manufacturer's Association
AI	The Asphalt Institute
AIA	American Institute of Architects
AIEE	American Institute of Electrical Engineers
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute, Inc.
APA	American Plywood Association
API	American Petroleum Institute
APWA	American Public Works Association
ARA	American Railway Association
AREA	American Railway Engineering Association
ASCE	American Society Civil Engineers
ASHRAE	American Society of Heating, Refrigeration and Air Conditioning Engineers
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
AWG	American Wire Gage
AWPA	American Wood Preservers' Association
AWS	American Welding Society
AWWA	American Water Works Association
BHMA	Builders Hardware Manufacturers Association
CCMTC	California Concrete Masonry Technical Committee
CRSI	Concrete Reinforcement Steel Institute
ETL	Electrical Testing Laboratory
FS	Federal Specification
ICBO	International Conference of Building Officials
IEEE	The Institute of Electrical and Electronics Engineers
IES	Illuminating Engineering Society

IPCEA	Insulated Power Cable Engineers Association
JICS	Joint Industry Conference Standards
MBMA	Metal Building Manufacturer’s Association
MSS	Manufacturers Standardization Society of the Valve and Fitting Industry Standards
NBFU	National Board of Fire Underwriters
NBS	National Building Standards
NEC	National Electrical Code
NEMA	National Electrical Manufacturers Association
NFPA	National Fire Protection Association
OSHA	Occupational Safety and Health Act of 1970
PCA	Portland Cement Association
SMACNA	Sheet Metal and Air Conditioning Contractor’s National Association
SSPC	Steel Structures Painting Council
SSPWC	Standard Specifications for Public Works Construction
UBC	Uniform Building Code
UL	Underwriter’s Laboratory
UMC	Uniform Mechanical Code
UPC	Uniform Plumbing Code
USAS	The United States of America Standard Institute
USBR	United States Bureau of Reclamation
USPHS	United States Public Health Service
WCLIB	West Coast Lumber Inspection Bureau
WIC	Woodwork Institute of California

### 1.03. DEFINITIONS

The intent and meaning of the following, wherever they appear in the Contract Documents, shall be interpreted as follows:

**Acceptance** - The formal Acceptance by the Engineer of the entire Contract, which has been completed in all respects in accordance with the Specifications and any, approved modifications.

**Addenda** - Any written change, clarification or supplement to documents issued for bidding, issued by the City or its Engineer prior to bid.

**As Approved** - The words “as approved”, unless otherwise qualified, shall be understood to be followed by the words “by the Engineer”.

**As Shown, and As Indicated** - The words “as shown” and “as indicated” shall be understood to be followed by the words “on the Plans”.

**Award** - The decision of the City Council to accept the proposal of the lowest responsible Bidder for the Work, subject to the execution and approval of a satisfactory contract therefore and bond to secure the performance thereof and to such other conditions as may be specified or required by law.

**Bid** - The offer of the Bidder for the Work when made out and submitted on the prescribed Bid form, properly signed and guaranteed. A Bid is also known as a Proposal.

**Bid Security** - The cash, cashier's check, certified check, or bidder's bond accompanying the Bid submitted by the bidder, as a guarantee that the Bidder will enter into a Contract with the City for the performance of Work herein described.

**Bidder** - Any individual, firm, partnership or corporation submitting a Bid for the Work contemplated and acting directly or through a duly authorized representative.

**Bureau** - United States Bureau of Reclamation.

**Calendar Day** - Each day shown on the calendar.

**Change Order** - Written order issued by the Engineer to the Contractor covering changes in the Contract and establishing the bases of compensation and time adjustments for work affected by the changes.

**City** - The City of West Sacramento, also referred to as the Owner.

**City Council or Council** - The City Council of the City of West Sacramento.

**City Standard Details** - The standard details contained in the City Standard Specifications as modified.

**City Standard Specifications** - 2002 edition of the City of West Sacramento Standard Specifications and Details as amended to date of Bid submittal.

**Claim** - A separate demand by the Contractor for (i) a time extension, (ii) payment of money or damages arising from work done by or on behalf of the Contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (iii) an amount the payment of which is disputed by the City.

**Contract** - The written agreement covering the performance of the work and the furnishing of labor, materials, tools and equipment in the construction of the Work. The Contract shall include all Contract Documents and supplemental agreements amending or extending the work contemplated which may be required to complete the Work in a substantial and acceptable manner. Supplemental agreements are written agreements covering alterations, amendments, or extensions to the contract and include Addenda and change orders.

**Contract Documents** - Contract Documents is the collective term for all of the following documents and any other document incorporated therein by reference: Invitation to Bid, Accepted Bid (and all accompanying documents), Designation of Subcontractors, Construction Contract, Payment Bond to Accompany Contract, Performance Bond to Accompany Contract, General Conditions, Supplementary and Special Conditions, (if any), Drawings (and Specifications), Addenda, Change Orders, City of West Sacramento Standard Specifications, State of California Department of Transportation (Caltrans) Standard Specifications 2015, Contractor's Certification Regarding Workers' Compensation.

**Contractor** - The person or persons, firm, partnership or corporation or other entity who has entered into the Contract with the City to perform the Work.

**County** - County of Yolo, California.

**Date of Completion** - Date of filing of the Notice of Completion with the Yolo County Clerk-Recorder's Office.



**Date of Execution of the Contract** - The date on which the Contract is signed by the City's authorized representative.

**Datum** - The Figures given in the Specifications or upon the drawings after the word "Elevation" or an abbreviation of it, shall mean U.S.G.S. datum, unless otherwise noted.

**Days** - Unless otherwise designated, days as used in the Contract Documents shall mean calendar days.

**Elevation** - The figures given on the Plans or in the other Contract Documents after the word "elevation" or abbreviation of it shall mean the distance in feet above the standard datum used by the City.

**Engineer** - The City Engineer, or the person designated by the City as its engineering representative during the course of construction, acting either directly or through properly authorized agents, such agents acting within the scope of the particular duties delegated to them.

**Extra Work** - Work other than that required either expressly or implied by the Contract in its executed form.

**Notice of Completion** - notice of completion is the recorded project completion document filed with the Yolo County Clerk.

**Or Equal** - The term "or equal" shall be understood to indicate that the "equal" product be the equivalent or better than the product named in function, performance, reliability, quality, and general configuration. Determination of equality in reference to the project design requirements will be made by the Engineer.

**Plans or Specification Drawings** - The term "Plans" or "Specification Drawings" refers to the official plans, profiles, cross sections, elevations, details, and other Working Drawings and supplementary drawings, or reproductions thereof, signed by the Engineer, which show the location, character, dimensions, and details of the work to be performed. Plans may either be bound in the same book as the balance of the Contract Documents or bound in separate sets. Regardless of the method of binding, Plans shall be part of the Contract Documents.

**Plant** - All physical, resources, facilities, machinery, equipment, staging, tools, work and storage space other than provided by the Contract, together with subsidiary essentials and necessary maintenance for proper construction and acceptable completion of the project.

**Project** - The entire Work to be completed under the Contract.

**Project Manager** - The person designated by the City as its project management representative during the course of construction, acting either directly or through properly authorized agents, such agents acting within the scope of the particular duties delegated to them. The Project Manager will be the City Engineer unless the City designates a separate Project Manager. When a Project Manager is used for a project, the Project Manager has full authority to act as the City Engineer unless the designation specifically states otherwise.

**Shop Drawings** - Drawings prepared by the fabricator or supplier showing the layout and details of components fabricated in a shop for inclusion in the permanent facility (e.g., structural steel, reinforcing steel, railings).

**Site** - The area upon or in which the Contractor's operations are carried on and such other areas adjacent thereto as may be designated by the Engineer.

**Specifications** - The term "specifications" refers to the terms, provisions, and requirements contained herein. Where reference specifications, such as those of "ASTM", "AASHTO", etc. have been referred to, the applicable portions of such standard specifications shall become a part of these Contract Documents.

**State** - State of California.

**State Standard Specifications** - Standard Specifications issued by the State of California Department of Transportation, dated 2015, and as amended Bid in the supplemental conditions.

**Subcontractor** - The term "Subcontractor", as employed herein, includes only those having a direct contract with the Contractor and it includes one who furnishes material worked to a special design according to the plans or specifications of this work, but does not include one who merely furnishes material not so worked and would be considered a supplier only.

**Supplementary & Special Conditions Provisions** - Additions, revisions, special directions, and requirements peculiar to a project and not otherwise thoroughly set forth in General and/or Specifications.

**Time Limits** - All time limits stated in the Contract Documents are of the essence of the Contract.

**Work** - All the work specified, indicated, shown or contemplated in the Contract Documents to construct the improvements, including all alterations, amendments or extensions thereto made by Change Order or other written orders of the Engineer.

**Working Days** - A Working day is defined as any day, except Saturdays, Sundays and legal holidays of the City.

**Working Drawings** - Drawings furnished by the Contractor showing the layout and details of temporary construction procedures and methods of construction, and data for construction equipment which are to be employed in the construction of the permanent facility (e.g., form drawings, erection drawings, load test pile procedures, pile hammer data, etc.).

**Written Notice** - "Written Notice" shall be deemed to have been duly served when delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by certified U.S. mail to the last business address known to the party who gives the notice as specified in the Contract.

Whenever in the Specifications or upon the drawings the words "directed", "required", "permitted", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the direction, requirement, permission, order, designation or prescription of the Engineer is intended, and similarly the words "approved", "acceptable", "satisfactory", or words of like import, shall mean approved or acceptable to, or satisfactory to the Engineer, unless otherwise expressly stated.

## **SECTION 2**

### **SCOPE OF WORK**

#### **2.01. INTENT OF CONTRACT DOCUMENTS**

The intent of the Contract Documents is to prescribe the details for the construction and completion of the Work, which the Contractor undertakes to perform in accordance with the terms of the Contract. These General Conditions are meant to replace Division I of the State Standard Specifications for all City public works contracts which incorporate these General Conditions by reference.

Where the Specifications and Plans describe portions of the Work in general terms, but not in complete detail, it is understood that only the best general practice is to prevail and that only materials and workmanship of the first quality are to be used. Unless otherwise specified, the Contractor shall furnish all labor, materials, tools, equipment and incidentals and do all the Work involved in performing the Contract in a satisfactory and workmanlike manner.

The technical provisions are presented in sections for convenience. However, this presentation does not necessarily delineate trades or limits of responsibility. All sections of the Specifications and Plans are interdependent and applicable to the Project as a whole.

The Contract Documents are complementary, and what is called for in any one shall be as binding as if called for in all. Anything shown on the Drawings and not mentioned in the Specifications or mentioned in the Specifications and not shown on the Drawings shall have the same effect as if shown or mentioned respectively in both. Any work shown on one Drawing shall be construed to be shown in all Drawings and the Contractor will coordinate the Work and the Drawings.

If any portion of the Contract Documents shall be in conflict with any other portion, the various documents comprising the Contract Documents shall govern in the following order of precedence: Change Orders; Addenda; Shop Drawings, Drawings, Supplementary and Special Conditions; Designation of Subcontractors; Construction Contract; General Conditions; City of West Sacramento Standard Specifications; State of California Department of Transportation (Caltrans) Standard Specifications 2015.

Detail Drawings take precedence over General Drawings. As between schedules and other information given on Drawings, the Schedules shall govern. If an item is shown on any Drawing and not specifically included in Technical Specifications specific to this project, the Drawing shall govern. Any conflict or inconsistency between or in the drawings shall be submitted to the Engineer for clarification as soon as the Contractor becomes aware of such inconsistency.

#### **2.02. CONTRACTOR'S UNDERSTANDING**

It is understood and agreed that the Contractor has, by careful examination, satisfied itself as to the nature and location of the Work, the conformation of the ground, the character, quality and quantity of the materials to be encountered, the character of equipment and facilities needed preliminary to and during the prosecution of the Work, the general and local conditions, and all other matters which can in any way affect the Work under this Contract. No verbal agreement or conversation with any officer, agent or employee of the City, either before or after the execution of this Contract, shall affect or modify any of the terms or obligations contained herein.

### 2.03. CHANGES IN THE WORK

(a) The City may, at any time, by written order, make changes in the Work as deemed necessary by the Engineer. Such changes include, but are not limited to:

- (1) In the Specifications or Plans;
- (2) In the sequence, method or manner of performance of the Work;
- (3) In the owner-furnished facilities, equipment, materials, services or site; and
- (4) Directing acceleration of the Work.

(b) If such changes cause an increase or decrease in the Contractor's cost of, or time required for, performance of the Contract, an equitable adjustment will be made and the Contract modified in writing accordingly.

#### (1) Change Orders

A change pursuant to this section will be in the form of a Change Order, which will set forth the work to be done or the method by which the change and cost adjustment, if any, will be determined, and the time of completion of the work.

Upon receipt of a 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 a Change Order. A Change Order executed by the Contractor and approved by the Engineer is an executed Change Order as that term is used throughout this section.

#### (2) Change Order Protests

A Change Order may be issued to the Contractor at any time. Should the Contractor disagree with any terms or conditions set forth in a Change Order, which he has not executed, he shall submit a written protest to the Engineer within fifteen (15) days after the receipt of such Change Order. The protest shall state the points of disagreement and, if possible, the quantities and cost involved.

If a written protest is not submitted, payment will be made as set forth in the Change Order. Such payment shall constitute full compensation for all work included therein or required thereby. Such unprotested Change Orders shall be considered as executed Change Orders.

Where the protest concerning a Change Order relates to compensation, the compensation payable for all work specified or required by said Change Order to which such protest relates will be determined in the same manner as provided in Section 2.04 of this section. The Contractor shall keep full and complete records of the cost of such work and shall permit the Engineer to have such access thereto as may be necessary to assist in the determination of the compensation payable for such work. Where the protest concerning a Change Order relates to the adjustment of time and for completion of the Work, the time to be allowed therefor will be determined as provided in this section.

The consent of the Contractor's sureties shall not be required as to any change or Extra Work, and the liability of the Contractor's Bonds shall be increased or decreased accordingly without notice to the sureties.

#### **2.04. PROCEDURES AND ALLOWABLE COSTS ON CHANGES AND ADDITIONS TO WORK**

##### **(a) Forms of Payment**

If the change in, or addition to, the Work will result in an increase in the contract sum, the City shall have the right to require the performance thereof. The compensation to be paid for any such work shall, in the City's sole discretion, be determined in one or more of the following ways:

- (1) By extension of agreed unit prices, if unit prices are required by the City's Bid form and provided with Contractor 's bid;
- (2) By revision of unit prices;
- (3) By proposal and Acceptance of an agreed upon lump sum; and
- (4) On a force account basis.

Until one of the above methods is agreed on, or if the Work is to be paid for on a time and materials basis, the Contractor shall keep full and complete records of the cost of such work in the form and manner prescribed by the Engineer and shall permit the Engineer to have access to such records as may be necessary to assist in the determination of the compensation payable for such work.

##### **(b) Lump Sum Payment**

The City, in its sole and absolute discretion, may request a lump sum proposal by Contractor to perform the change in, or addition to, the Work performed. Such lump sum proposal shall be submitted by the Contractor within ten (10) days of the City's request therefor. Request for a lump sum proposal by City shall not be deemed an election by City to have the Work performed on a lump sum basis. Costs of preparing the proposal shall not be compensable.

##### **(1) Contents of Lump Sum Proposal**

(2) The Contractor's proposal shall be itemized and segregated by labor and materials for the various components of the change (no aggregate labor total will be acceptable). The proposal shall be accompanied by signed proposals of any Subcontractors, which will perform any portion of the change, and of any persons who will furnish materials or equipment for incorporation therein. The proposal shall also include the Contractor's estimate of the time required to perform said changes or additional work.

##### **(3) Computation of Labor Costs**

The portion of the proposal relating to labor, whether by the Contractor's forces or the forces of any of its Subcontractors, may include the projected wages of the reasonably anticipated Site labor, including foremen, who will be directly involved in the change in the Work.

These projected wages shall not include charges for assistant superintendents, superintendents, office personnel, timekeepers and maintenance mechanics.

Labor costs may also include Contractor's overhead and profit which shall be computed by adding to the labor costs either up to fifteen percent (15%) of the projected wages, but not payroll costs, or the labor surcharge set forth in the California Department of Transportation publication entitled Labor Surcharge And Equipment Rental Rates, which is in effect on the date upon which the Work is accomplished and which is a part of the Contract. The method of computing the overhead and profit shall be solely within the discretion of the City.

The labor surcharge, if used, shall constitute full compensation for all payments imposed by State and Federal laws and for all other payments made to, or on behalf of, the workmen, other than actual wages as defined above. No time or charges will be allowed except when the workers are actually engaged in the proper, efficient and diligent performance or completion of the extra work as authorized. Overtime shall not be worked without prior approval of the Engineer.

(4) Computation of Equipment and Materials Costs

The portion of the proposal relating to materials may include the reasonably anticipated direct costs to the Contractor or to any of its Subcontractors of materials to be purchased for incorporation in the change in the Work. This portion of the proposal may also include transportation and applicable sales or use taxes. Up to fifteen percent (15%) of these direct costs may be included as overhead and profit for the Contractor or any such Subcontractor (such overhead and profit to include all small tools).

This portion of the proposal may further include the Contractor's and any of its Subcontractors' reasonably anticipated costs for the rental and operation of prime construction and automotive equipment furnished and used in connection with the change in the Work. The equipment rental and operation rates used shall be the latest edition of the Department of Transportation, Division of Construction, Equipment Rental Rates. These costs shall not include charges for listed equipment or major tools with a new cost of five hundred dollars (\$500.00) or less. No time charges shall be allowed except for equipment actually used for the proper and efficient performance or completion of the authorized change in the Work.

(5) Subcontractors

The lump sum proposal may include up to five percent (5%) of the amount, which the Contractor will pay to any of its Subcontractors for the change in the Work as allowable overhead and profit to the Contractor.

(6) Failure to Submit Lump Sum Proposal

In the event that the Contractor fails to submit its proposal within the designated period, the Engineer may direct the Contractor to proceed with the change or addition to the Work and the Contractor shall so proceed. The Engineer shall unilaterally determine the reasonable costs and time to perform the work in question, which determination shall be final and binding upon the Contractor.

(7) Failure to Agree on Lump Sum Amount

In the event that the parties are unable to agree as to the reasonable costs and time to perform the change in or addition to the Work based upon the Contractor's proposal and

the Engineer and City do not elect to have the change in the Work performed on a time and material basis, the Engineer and City shall make a unilateral determination of the reasonable cost and time to perform the change in the Work, based upon their own estimates, the Contractor's submission or combination thereof. In such instances, a Change Order shall be issued for the amount of costs and time determined by the Engineer and the City and shall become binding upon the Contractor unless the Contractor submits its protest in writing to the City within thirty (30) days of the issuance of the Change Order. The City has the right to direct the Contractor in writing to perform the change in the Work, which is the subject of the Change Order. Failure of the parties to reach agreement regarding the costs and time of performing the change in the Work and/or any pending protest shall not relieve the Contractor from performing the change in the Work promptly and expeditiously.

(c) Payment by Unit Prices

If any of the items included in the lump sum proposal are covered by unit prices contained in the contract document, the City may, if it requires the change in the Work to be performed on a lump sum basis, elect to use these unit prices in lieu of the similar items included in the lump sum proposal in which event an appropriate deduction will be made in the lump sum amount prior to the application of any allowed overhead and profit percentages. No overhead and profit shall be applied to any unit prices.

(d) Payment on a Force Account Basis

If the City elects to have the change or addition to the Work performed on a force account basis, the Work shall be performed, whether by the Contractor's forces or the forces of any of its Subcontractors or Sub-Subcontractors, and payment shall be made subject to the following provision. The Contractor will be paid the direct costs of the labor, equipment and materials used in performing the force account work determined as hereinafter provided.

(1) For labor, the Contractor will be paid the cost of labor for the workers (including foremen when authorized by the Engineer or Project Manager) used in the actual and direct performance of the work. The cost of labor, whether the employer is the Contractor or any or any Subcontractor of any tier, shall be actual wages, including basic hourly wage, health and welfare payments and pension payments incurred in performing the force account work, plus any travel and subsistence payments for the workers performing such work and made necessary thereby. To the actual wages shall be added a labor surcharge as set forth in the State Department of Transportation publication entitled "Labor Surcharge and Equipment Rental Rates", as in effect on the date the work is performed. The labor surcharge shall be deemed to encompass the City's entire liability to reimburse the Contractor for workers compensation insurance payments, social security payments, Medicare payments, federal unemployment insurance payments, state unemployment insurance payments and state training taxes, made necessary by the force account work.

(2) For equipment, the Contractor will be paid for the use of equipment at the rental rates listed for that equipment in the State Department of Transportation publication entitled "Labor Surcharge and Equipment Rental Rates", which is in effect on the date the work is performed, regardless of ownership or any rental agreement entered into by Contractor for such equipment. The rental rate paid in accord with said publication shall be deemed to include the cost of fuel, oil, lubrication, supplies, small tools, attachments, repairs and maintenance, depreciation, storage and insurance for said equipment. Rental time will not be paid when equipment is inoperable due to breakdowns, repairs or maintenance. Payment for loading, transporting and unloading time will be in accordance with the State Standard Specifications

applicable to loading, transporting and unloading equipment for force account work, as applicable as of the date the equipment is loaded, transported or unloaded.

(3) For materials used in the work, the City will pay for materials furnished by the Contractor and necessarily used in the force account work. Prior to markups as set forth below, the amount paid shall be the price paid by the actual purchaser to the actual supplier plus any necessary actual costs of handling the materials.

Contractor may add fifteen percent (15%) to the total labor, equipment and material charges as the total overhead and profit to the entity or entities actually performing the force account work. If the entity or entities actually performing the work are Subcontractors or Sub-Subcontractors, the Contractor shall be allowed five percent (5%) of the total charge of the performing entity or entities (including mark-up) as Contractor's mark-up. No other mark-ups shall be allowed hereunder.

The Contractor shall submit to the City daily work and material tickets, to include the identification number assigned to the change in the Work, the location and description of the change in the Work, the classification of labor employed (and names and social security numbers), hours expended, the material used, the equipment rented (not tools) and such other evidence of cost as the City may require. The City may require authentication of all time and material tickets and invoices by persons designated by the City for such purpose. The failure of the Contractor to secure any required authentication shall, if the City elects to treat it as such, constitute a waiver by the Contractor of any claim for the cost of that portion of the Change in the Work covered by a non-authenticated ticket or invoice; provided, however, that the authentication of any such ticket or invoice by the City shall not constitute an acknowledgment by the City that the items thereon were reasonably required for the Change in the Work.

(e) Limitations on Changes

The Contractor shall not be entitled to any amount for indirect costs, damages or expenses of any nature, including, but not limited to, so-called "impact" costs, labor inefficiency, wage, material or other escalations beyond the prices upon which the proposal is based and to which the parties have agreed pursuant to the provisions of this section, and which the Contractor, its Subcontractors and Sub-Subcontractors or any other person may incur as a result of delays, interferences, suspensions, changes in sequence or the like, for whatever cause, whether reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable, arising from the performance of any and all changes in the work performed pursuant to this section. It is understood and agreed that the Contractor's sole and exclusive remedy in such event shall be recovery of its direct costs as compensable hereunder and an extension of the time of the Contract, but only in accordance with the provisions of the Contract Documents.

It is expressly agreed that Contractor shall not be entitled to claim damages for anticipated profits on any portion of the Work that may be deleted.

The amount of any adjustment for work deleted shall be estimated at the time deletion of work is ordered and the estimated adjustment will be deducted for the subsequent monthly pay estimates. The City reserves its rights under Section 3.20 to audit Contractor's as-Bid profit in connection with any deductive change, to arrive at a final adjustment. Contractor's as-Bid profit shall be reduced pro rata according to the proportion of the original contract value less as-Bid profit, represented by the work deleted.



The City reserves the right to contract with any person or firm other than the Contractor for any or all Extra Work.

## **2.05. UNILATERAL CHANGE IN OR ADDITION TO THE WORK**

Notwithstanding the above, the City, directly or through the Engineer, may direct the Contractor in writing to perform changes in or additions to the scope of the Contract. The Contractor shall perform such work and the parties shall proceed pursuant to the provisions of Section 2.04.

## **2.06. DIFFERING SITE CONDITIONS**

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

(a) Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25110.02 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; or

(b) Subsurface or latent physical conditions at the Site differing from those indicated in the Contract Documents; or

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

The Engineer shall thereupon promptly investigate the conditions. If the Engineer finds that they do involve hazardous waste, or do materially differ and cause an decrease or increase in the Contractor's cost or time of performance, the Engineer will issue a change order as appropriate. Any increase or decrease of cost resulting from such changes shall be adjusted in the manner provided in Section 2.04 for adjustments as to extra and/or additional work and changes. In the event that a dispute arises between the City and the Contractor, whether the conditions materially differ, or involve hazardous waste, or cause and decrease or increase the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided by the Contract, but shall proceed with all work to be performed under the Contract, the procedures applicable to claims for extra costs shall then apply.

## **2.07. CLAIMS FOR EXTRA COSTS**

### **(a) Notice of Potential Claims**

(1) It is hereby mutually agreed that the Contractor shall not be entitled to the payment of any additional compensation for any cause, including any act, or failure to act, by the Engineer, or the happening of any event, thing or occurrence, unless the Contractor provides the Engineer with written notice of the potential claims as hereinafter specified. Compliance with this section, however, shall not be a prerequisite as to matters within the scope of the protest provisions in Section 2.03.

The written notice of potential claims shall set forth the reasons for which the Contractor believes additional compensation will or may be due, the nature of the costs involved, and, insofar as possible, the amount of the potential claim. The notice as above required shall be given to the Engineer prior to the time that the Contractor commences

performance of the Work giving rise to the potential claim for additional compensation, if based on an act or failure to act by the Engineer, or in all other cases within ten (10) days after the happening of the event, thing or occurrence giving rise to the potential claim.

(b) Construction Dispute

(1) The Contractor may submit a dispute to the Engineer concerning any matter for which a protest under Section 2.03, or a notice of potential claim, is filed. Such disputes, or potential claims, shall be submitted to the Engineer within sixty (60) days following the submission of said protest or notice, unless, due to the nature of the dispute or the uncompleted state of the Work, it is impracticable to determine the amount or the extent of the claim within such period. In such cases, disputes shall be submitted at the earliest practicable time in which such a determination can be made. In any event, all disputes shall be filed on or before the date of the final release by the Contractor as provided for in Section 7.09.

(2) All disputes shall be in writing and shall set forth clearly and in detail, for each item of additional compensation requested, the reasons for the dispute, reference to applicable provisions of the Specifications, the nature and the amount of the cost involved, the computations used in determining such costs, all pertinent factual data and all the documents necessary to substantiate the dispute. The Contractor shall maintain complete and accurate records of the cost or any portion of the Work for which additional compensation is claimed, and shall provide the Engineer with copies thereof, as required. The Engineer shall provide a written decision to the dispute or potential claim as soon as practicable but not later than 30 days following receipt thereof.

(c) Resolution of Construction Claims

(1) To the extent that the Contractor disputes the Engineer's Written Decision issued pursuant to Section 4.07(b)(2), or to the extent the Engineer fails to issue a timely written decision, the Contractor may file a written claim, as defined by Public Contract Code section 9204(c)(1), with the City including reasonable documentation to support the claim. Upon receipt of the claim, the City shall conduct a reasonable review of the claim, and within a period not to exceed 45 days, the City shall provide the Contractor with a written statement identifying what portion of the claim is disputed and what portion is undisputed. The time in which the City must provide a written statement may be extended by mutual agreement of the parties as specified by Public Contract Code section 9204(d)(1)(C). The City shall pay any undisputed portion of the claim within 60 days after issuance of its written statement.

(2) Claims submitted by the Contractor shall be accompanied by a notarized certificate containing the following language:

Under the penalty of law for perjury or falsification and with specific reference to the California False Claims Act, Government Code section 12650, et. seq., the undersigned,

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Ryan Chance

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President

\_\_\_\_\_  
Bay Area Concretes

hereby certifies that the claim for the additional compensation and time, if any, made herein for the work on this contract is a true statement of the actual costs incurred and time sought, and is fully documented and supported under the contract between parties.

Dated: \_\_\_\_\_

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

Subscribed and sworn before me this \_\_\_\_\_ day

of \_\_\_\_\_

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_

Failure to submit the notarized certificate will be sufficient cause for denying the claim.

Any claim for overhead type expenses or costs, in addition to being certified as stated above, shall be supported by an audit report of any independent Certified Public Accountant. Any such overhead claim shall also be subject to audit by the City at its discretion.

Any costs or expenses incurred by the City in reviewing or auditing any claims that are not supported by the Contractor's cost accounting or other records shall be deemed to be damages incurred by the City within the meaning of the California False Claims Act.

(3) Meet And Confer Regarding Unresolved Claims. If the Contractor disputes the City's written statement issued pursuant to Section 4.07(c)(1) or if the City fails to issue a timely written response, the Contractor 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 City shall schedule a meet and confer conference within 30 days for settlement of the dispute. The meet and confer conference shall be attended by senior executives of the parties who have authority to settle the controversy. Within 10 business days following the conclusion of the meet and confer conference, the City shall provide the Contractor with a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. The City shall pay any undisputed portion of the claim within 60 days after it issues its written statement.

(4) Mediation. If the Contractor disputes, in writing, any portion of the City's written statement as issued under Section 4.07(c)(3), the disputed items shall be submitted to nonbinding mediation according to the provisions of Public Contract Code section 9204(d)(2), and any costs of mediation shall be allocated as set forth in that section. Upon receipt of a claim, the City and the Contractor may agree to waive, in writing, mediation.

(5) Failure to Respond or Pay. If the City fails to timely respond to a claim from the Contractor or otherwise fails to meet the time requirements of Public Contract Code section 9204, the claim shall be deemed rejected in its entirety. Additionally, amounts not timely

paid in the manner required by Public Contract Code section 9204 shall bear interest at 7 percent per annum.

(6) Subcontractor Claims. If a Subcontractor or a lower tier Subcontractor lacks legal standing to assert a claim against the City because privity of contract does not exist, the Contractor may present to the City a claim on behalf of the Subcontractor or lower tier Subcontractor pursuant to Public Contract Code section 9204(d)(5).

## 2.08. CIVIL ACTION PROCEDURES

(a) Alternative Dispute Resolution of Claims of \$375,000.00 or Less.

(1) Claims Less Than \$375,000.00. Notwithstanding any other provision herein but after compliance with the provisions of Public Contract Code section 9204 as set forth in Section 4.07, claims of \$375,000.00 or less shall be resolved pursuant to the alternative dispute resolution procedures set forth in Public Contract Code section 20104 *et seq.* "Claim" for this purpose means a separate demand by the Contractor for a time extension, payment of money or damages arising from work done by or on behalf of the Contractor pursuant to the Contract, for which payment is expressly provided, or the Contractor is otherwise entitled to, or an amount the payment of which is disputed by the City.

(2) Submission of Claims Less than \$375,000.00. The Contractor shall submit its claim of \$375,000.00 or less to the City in writing, within the time frames established under paragraph 4.07, but no later than before the final payment is made. The City shall respond within the time provided by statute. If the Contractor disagrees with the response or the City fails to respond within the time permitted, the Contractor shall notify the City of the disagreement in writing within fifteen (15) days from the date of the response or expiration of the time permitted to respond and demand a meet-and-confer conference. The City shall schedule a meet-and-confer conference within thirty (30) days of the demand. The meet and confer conference shall be attended by senior executives of the parties who have authority to settle the controversy. If not resolved at the meet-and-confer conference, the Contractor may initiate a civil action as set forth in Public Contract Code section 20104 *et seq.*, including but not limited to compliance with applicable Government Code provisions.

(3) Time Limits Not Extended. Nothing in subdivision (a) of Public Contract Code section 20104.2 shall extend the time limit or supersede the notice requirements provided in this Contract for filing claims by the Contractor.

(b) Alternative Dispute Resolution of Claims in Excess of \$375,000.00.

As a condition precedent to the initiation of litigation, disputes in excess of a total value of \$375,000.00 shall first be submitted to the claims procedures set forth in Sections 4.06 and 4.07.

## 2.09. GUARANTEE

(a) In addition to warranties, representations and guarantees stated elsewhere in the Contract Documents, the Contractor unconditionally guarantees all materials and workmanship furnished hereunder and agrees to replace the same at its sole cost and expense, and to the satisfaction of the Engineer, any and all materials which may be defective or improperly installed.

(b) The Contractor shall repair or replace to the satisfaction of the Engineer any or all such work that may prove defective in workmanship or materials, ordinary wear and tear excepted, together with any other work, which may be damaged or displaced in so doing.

(c) In the event of failure to comply with the above stated conditions within a reasonable time, the City is authorized to have the defect repaired and made good at the expense of the Contractor who will pay the costs and charges therefore immediately upon demand, including any reasonable management and administrative costs, and engineering, legal and other consultant fees incurred to enforce this section.

(d) The signing of the Contract by the Contractor shall constitute execution of the above guarantees. Except as otherwise provided in this Contract, the guarantees and warranties shall remain in effect for a period of one (1) year after final Acceptance of the Work by the City.

### **SECTION 3**

#### **CONTROL OF WORK**

##### **3.01. AUTHORITY OF ENGINEER**

(a) The Engineer is the representative of the City and has full authority to interpret the Contract Documents, to conduct the construction review and inspection of the Contractor's performance, and to decide questions, which arise during the course of the Work and the Engineer's decisions on these matters, shall be final and conclusive. The Engineer has the authority to reject all work and materials, which do not conform to the Contract Documents, and has the authority to stop the Work whenever such stoppage may be necessary to insure the proper execution of the Contract. The Engineer's failure to stop the Work shall not obligate the City to accept defective or otherwise unacceptable work or otherwise affect the Engineer's or City's authority to reject work for any reason set forth in the Contract Documents.

(b) If at any time the Contractor's work force, tools, plant or equipment appear to the Engineer to be insufficient or inappropriate to secure the required quality of work or the proper rate of progress, the Engineer may order the Contractor to increase their efficiency, improve their character, to augment their number or to substitute other personnel, new or additional tools, plant or equipment, as the case may be, and the Contractor shall comply with such order. Neither the failure of the Engineer to demand such increase of efficiency, number, or improvement, nor the compliance by the Contractor with the demand, shall relieve the Contractor of its obligation to provide quality work at the rate of progress necessary to complete the Work within the specified time.

(c) The Engineer may authorize minor variations in the work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Time. These may be accomplished by a Field Order. Contractor shall comply promptly with all Field Orders. If the Engineer and Contractor are unable to agree on entitlement or on the amount or extent, if any, of any adjustment in the Contract Price or Contract time, or cost, as a result of a Field Order, a claim may be made therefor pursuant to Section 2.07.

(d) Any order given by the Engineer, not otherwise required by the Contract Documents to be in writing shall, on request of the Contractor, be given or confirmed by the Engineer in writing.

(e) Whenever work, methods of procedure, or any other matters are made subject to direction or approval, such direction or approval will be given by the Engineer.

##### **3.02. DRAWINGS**

(a) Drawings furnished herewith are for bidding purposes. The Engineer will furnish the Contractor, free of charge, copies of full size Drawings which are reasonably necessary for the execution of the Work. The Contractor shall have no claim for excusable delay on account of the failure of the Engineer to deliver such Drawings, unless the Engineer shall have failed to deliver the same within two weeks after receipt of written demand therefore from the Contractor. The Contractor shall keep one copy of said Drawings, in good order, available to the Engineer and the Engineer's representatives, and convenient to the working site.

(b) If the Contractor, in the course of the Work, finds any discrepancy between the Drawings and the physical condition of the locality, or any errors or omissions in the Drawings,

or in the layout as given by points and instructions, it shall be the Contractor's duty to inform the Engineer in writing, and the Engineer will promptly verify the same.

Any work done after such discovery, until authorized, will be done at the Contractor's risk. All Drawings, Specifications, and copies thereof furnished by the Engineer are the property of the Engineer and shall not be reused on other work and, with the exception of the signed Contract sets, are to be returned to the Engineer, on request, at the completion of the Work. All models are the property of the City.

(c) The Drawings shall be supplemented by such Shop Drawings prepared by the fabricator and/or supplier and Working Drawings prepared by the Contractor as are necessary to adequately control the Work. No changes shall be made by the Contractor in any Shop or Working Drawings after they have been reviewed by the Engineer, if the Engineer deems that no further submittals are necessary. The Contractor shall not commence the layout, purchase, fabrication, or construction of any work for which Shop or Working Drawings are required until Engineer has reviewed the specifications and drawings and has indicated in writing no further submittals are required for compliance with the Contract Documents.

(d) Shop and Working Drawings for any structure shall include, but not be limited to, detail design calculations, fabrication and installation drawings, lists, graphs, operating instructions, etc., which shall be reviewed and accepted by the Engineer before any such work is performed.

(e) Shop and Working Drawings will be required for cribs, cofferdams, falsework, centering and form work and for other temporary work and methods of construction the Contractor proposes to use. Such Drawings shall be subject to the review and Acceptance of the Engineer insofar as the details affect the character of the finished work, but details of design will be left to the Contractor who shall be responsible for the successful construction of the Work.

(f) Contractor agrees that Shop and/or Working Drawings processed by the Engineer are not Change Orders; that the purpose of these Drawings submitted by the Contractor is to demonstrate to the Engineer that the Contractor understands the design concept, that the Contractor demonstrates its understanding by indicating which equipment and material the Contractor intends to furnish and by detailing the fabrication methods it intends to use. It is expressly understood, however, that favorable review of the Contractor's Shop and Working Drawings shall not relieve the Contractor of any responsibility for accuracy of dimensions and details, or for mutual agreements of dimensions and details. It is mutually agreed that the Contractor shall be responsible for agreement and conformity of its Drawings with the Specifications. Contractor further agrees that if deviations, discrepancies or conflicts between Shop and/or Working Drawings and Specifications are discovered either prior to or after the Drawings are processed by the Engineer, the Specifications shall control and shall be followed.

(g) Unless otherwise stated, the Engineer shall have thirty (30) days from the date of receipt of Shop and/or Working Drawings for review.

(h) Full compensation for furnishing all Shop and/or Working Drawings shall be considered as included in the prices paid for the Contract items of work to which such drawings relate and no additional compensation will be allowed therefore. Any cost related to the Engineer's review of any particular set of Shop and/or Working Drawings more than twice, due to incompleteness or unacceptability, shall be borne by the Contractor, and the City reserves the right to withhold such costs from payments due the Contractor.

(i) All reasonable effort has been made to locate and delineate all known structures and facilities on the plans. Except as otherwise provided herein, the City of West Sacramento shall assume no responsibility for the completeness or accuracy of its delineation of underground utilities nor the existence of other buried objects which may be encountered, or which are not shown on the plans.

(j) The Contractor shall keep and maintain a clean set of plans for the project and shall record in red ink all changes, revisions, etc. made during the course of construction. These plans shall include all changes, revisions, etc. from the original plan complete with the exact sizes, locations, dimensions, elevations, etc. These plans shall be kept and maintained in a neat, clean and legible condition and shall be available for inspection at all times by the Engineer. The Contractor shall deliver these completed plans to the Engineer and the Engineer shall approve these plans prior to final Acceptance of the project by the City.

### **3.03. CONSTRUCTION STAKING AND SURVEYS**

The City will provide one set of construction stakes and benchmarks as it deems necessary to establish lines and grades required for the completion of the site work specified in the Contract. The Contractor shall notify the Engineer a minimum of seven (7) days in advance of the time work is to begin on any portion of the project that may require construction staking to be provided by the City. The Contractor shall make all other surveys necessary for the completion of the Work.

Alternatively, the Engineer may provide the Contractor with drawings showing benchmarks and reference points as it deems necessary to establish lines and grades required for the completion of the site work specified in the Contract Documents. The Contractor shall make or furnish all surveys and set all construction stakes necessary for the completion of the work.

Stakes and marks set by the City or Engineer shall be carefully preserved by the Contractor. The Contractor shall be charged for the cost of replacing or restoring the stakes and marks, which are destroyed or damaged by Contractor's operation. This charge will be deducted from any monies due or to become due to the Contractor under the Contract.

### **3.04. PERMITS AND REGULATIONS**

Permits and licenses, of a temporary nature, necessary for the prosecution of the Work shall be secured and paid for by the Contractor. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the City unless otherwise specified.

The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the Work as shown on the plans and described in the Specifications. Contractor shall promptly notify the Engineer in writing of any specification at variance therewith. In such instances, any necessary changes shall be adjusted as provided in the Contract for changes in the Work. If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules, and regulations and without such notice to the Engineer, Contractor shall bear all costs arising therefrom.

### **3.05. CONFORMITY WITH CONTRACT DOCUMENTS AND ALLOWABLE DEVIATIONS**

Work and materials shall conform to the lines, grades, cross sections, dimensions and material requirements, including tolerances, shown on Contract Documents. Although



measurement, sampling, and testing may be considered evidence as to such conformity, the Engineer shall be the sole judge as to whether the Work or materials deviate from the Contract Documents. The Engineer's decision as to any allowable deviations therefrom shall be final and conclusive.

### **3.06. COORDINATION AND INTERPRETATION OF CONTRACT DOCUMENTS**

(a) Should it appear that the Work to be done or any of the matters relative thereto are not sufficiently detailed or explained in the Specifications and Plans, the Contractor shall apply to the Engineer for such further explanations as may be necessary and shall conform to them as part of the Contract. In the event of any doubt or question arising respecting the true meaning of the Specifications and Plans, reference shall be made to the Engineer, whose decision thereon shall be final and conclusive.

(b) Any reference made in the Specifications and Plans to any specification, standard, method, or publication of any scientific or technical society or other organization shall, in the absence of a specific designation to the contrary, be understood to refer to the specification, standard, method, or publication in effect as of the date that the Work is advertised for Bids.

### **3.07. SUBCONTRACTORS**

(a) The attention of the Contractor is directed to the provisions of California Public Contract Code sections 4100-4113 regarding subcontracting and said provisions are by this reference incorporated herein and made a part hereof.

(b) Each subcontract shall contain a suitable provision for the suspension or termination thereof should the Work be suspended or terminated or should the Subcontractor neglect or fail to conform to every provision of the Contract Documents insofar as such provisions are relevant. The Contractor shall be fully responsible to the City for the acts or omissions of the Contractor's Subcontractors and of the persons either directly or indirectly employed by the Contractor. Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and the City. If a legal action, including arbitration and litigation, against the City is initiated by a Subcontractor or Supplier, the Contractor shall reimburse the City for the amount of legal, engineering and all other expenses incurred by the City in defending itself in said action.

(c) The City and the Engineer reserve the right to approve all Subcontractors.

Such approval shall be a consideration to the awarding of the Contract and unless notification to the contrary is given to the Contractor prior to the signing of the Contract, the list of Subcontractors which is submitted with the Contractor's proposal will be deemed to be acceptable. Contractor shall not, without the written consent of the City, subcontract the whole of the Work.

### **3.08. COOPERATION OF CONTRACTORS**

(a) Should construction be under way by other forces or by other contractors within or adjacent to the limits of the Work specified or should work of any other nature be under way by other forces within or adjacent to said limits, the Contractor shall cooperate with all such other contractors or other forces to the end that any delay or hindrance to their work will be avoided. The right is reserved to perform other or additional work at or near the site (including material sources) at any time, by the use of other forces.

(b) When two or more contractors are employed on related or adjacent work, each shall conduct its operation in such a manner as not to cause any unnecessary delay or hindrance to the other. Each Contractor shall be responsible to the other for all damage to work, to persons or property caused to the other by its operations, and for loss caused the other due to unnecessary delays or failure to finish the work within the time specified for completion.

### **3.09. SUPERINTENDENCE**

(a) The Contractor shall designate in writing, before starting work, an individual as authorized representative who shall have the authority to represent and act for the Contractor. This authorized representative shall be present at the Site of the Work at all times while work is actually in progress on the Contract. When the Work is not in progress and during periods when the Work is suspended, arrangements acceptable to the Engineer shall be made for any emergency work, which may be required.

(b) The Contractor is solely responsible, at all times, for the superintendence of the Work and for its safety and progress.

(c) Whenever the Contractor or its authorized representative is not present on any particular part of the Work where it may be desired to give direction, orders will be given by the Engineer, which shall be received and obeyed by the superintendent or foreman who may have charge of the particular work in reference to which the orders are given.

(d) Any order given by the Engineer, not otherwise required by the Specifications to be in writing, will on request of the Contractor, be given or confirmed by the Engineer in writing.

### **3.10. INSPECTION OF WORK**

(a) Unless otherwise provided, all equipment, materials, and work shall be subject to inspection and testing by the Engineer. The Engineer will observe the progress and quality of the Work and determine, in general, if the Work is proceeding in accordance with the intent of the Contract Documents. The Engineer shall not be required to make comprehensive or continuous inspections to check the quality of the Work. The Engineer shall not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work. Visits and observations made by the Engineer shall not relieve the Contractor of Contractor's obligation to conduct comprehensive inspections of the Work and to furnish proper materials, labor, equipment and tools, and perform acceptable work, and to provide adequate safety precautions, in conformance with the intent of the Contract.

(b) Whenever the Contractor varies the period during which work is carried on each day, the Contractor shall give due notice to the Engineer so that proper inspection may be provided. Any work done in the absence of the Engineer shall be subject to rejection. Proper facilities for safe access for inspection to all parts of the Work shall at all times be maintained for the necessary use of the Engineer and other agents of the City, and agents of the federal, state, or local governments at all reasonable hours for inspection by such agencies to ascertain compliance with laws and regulations.

(c) One or more inspectors may be assigned to observe the Work by the Engineer and to act in matters of construction under this Contract. It is understood that inspectors shall have the power to issue instructions and make decisions within the limitations of the authority of the Engineer. Such inspection shall not relieve the Contractor of the Contractor's obligation to conduct comprehensive inspections of the Work, to furnish proper materials, labor, equipment

and tools, and perform acceptable work, and to provide adequate safety precautions in conformance with the intent of the Contract.

(d) The Engineer and the Engineer's representatives shall at all times have access to the Work wherever it is in preparation or progress, and the Contractor shall provide safe and convenient facilities for such access and for inspection. If the Specifications, the Engineer's instructions, laws, ordinances, or any public authority require any material, equipment or work to be specifically tested or approved, the Contractor shall give the Engineer timely notice of its readiness for inspection, and if the inspection is by an authority other than the City, of the time fixed for inspection. Inspections by the Engineer will be made promptly and, where practicable, at the source of supply.

(e) Work performed without inspection may be required to be removed and replaced under proper inspection. In such instances, the entire cost of removal and replacing, including the cost of City-furnished materials used in the Work, shall be borne by the Contractor, regardless of whether or not the Work exposed is found to be defective. Examination of questioned work, other than that installed without inspection, may be ordered by the Engineer and, if so ordered, the Work must be uncovered by the Contractor. If such work is found to be in accordance with the Contract Documents, the City will pay the cost of re-examination and replacement. If such work is found to be not in accordance with the Contract Documents, the Contractor shall pay such cost, unless the Contractor can show that the defect in the Work was caused by another Contractor, and in that event the City will pay such costs.

(f) The inspection of the Work shall not relieve the Contractor of the Contractor's obligation to fulfill the Contract as herein prescribed, or in any way alter the standard of performance provided by the Contractor, and defective work shall be made good and unusable materials may be rejected, notwithstanding that such work and materials have been previously overlooked by the Engineer and accepted or estimated for payment. If the Work or any part thereof shall be found defective, the Contractor shall, within ten (10) calendar days, make good such defect in a manner satisfactory to the Engineer. If the Contractor fails to make ordered repairs of defective work or to remove the condemned materials from the Work within ten (10) calendar days after written direction by the Engineer, the City may make the ordered repairs, or remove the condemned materials, and deduct the cost thereof from any monies due the Contractor.

(g) The Contractor shall furnish promptly, without additional charge, all facilities, labor and materials reasonably needed by the Engineer for performing all inspection and tests. Contractor shall be charged with any additional cost of inspection when material and workmanship are not ready at the time specified by the Contractor for its inspection.

(h) Where any part of the Work is being done under an encroachment permit or building permit, or is subject to federal, state, county or city codes, laws, ordinances, rules or regulations, representatives of the government agency shall have full access to the Work and shall be allowed to make any inspection or tests in accordance with such permits, codes, laws, ordinances, rules, or regulations. If advance notice of the readiness of the Work for inspection by the governing agency is required, the Contractor shall furnish such notice to the appropriate agency.

(i) The Engineer may inspect the production of material, or the manufacture of products at the source of supply. Plant inspection, however, will not be undertaken until the Engineer is assured of the cooperation and assistance of both the Contractor and the material producer. The Engineer or the Engineer's authorized representative shall have free entry at all times to such parts of the plant as concerns the manufacture or production of the materials.

Adequate facilities shall be furnished free of charge to make the necessary inspection. The City assumes no obligation to inspect materials at the source of supply.

### **3.11. TESTS**

The Contractor shall perform, at the Contractor's own expense, all tests specified or required by the Specifications. The Engineer may perform such tests as the Engineer deems necessary to determine the quality of work or compliance with Contract Documents. The Contractor shall furnish promptly without additional charge all facilities, labor, and material reasonably required for performing safe and convenient tests as may be required by the Engineer. All tests by the Engineer will be performed in such a manner as will not unnecessarily delay the Work. The Contractor shall not be required to reimburse the City for tests performed by the City or Engineer. If samples of materials are submitted which fail to pass the specified tests, the Contractor shall pay for all subsequent tests.

### **3.12. REMOVAL OF REJECTED AND UNAUTHORIZED WORK AND MATERIALS**

(a) All work or materials, which have been rejected, shall be remedied, or removed and replaced by the Contractor in an acceptable manner and no compensation shall be allowed the Contractor for such removal, replacement, or remedial work.

(b) Any work done beyond the lines and grades shown on the plans or established by the Engineer or any Extra Work done without written authority will be considered as unauthorized work and will not be paid for. Upon order of the Engineer, unauthorized work shall be remedied, removed, or replaced at the Contractor's expense.

(c) Upon failure of the Contractor to comply with any order of the Engineer made under this section, the City may cause rejected or unauthorized work to be remedied, removed, or replaced, and may deduct the costs therefore from any monies due or to become due the Contractor.

### **3.13. DEDUCTIONS FOR UNCORRECTED WORK**

If the Engineer deems it inexpedient to correct work damaged or not done in accordance with the Contract, an equitable deduction from the Contract price shall be made therefore, and such sum may be withheld by the City from Contractor's payment.

### **3.14. EQUIPMENT AND PLANTS**

(a) Only equipment and plants suitable to produce the quality of work and materials required will be permitted to operate on the Project.

(b) Plants will be designed and constructed in accordance with general practice for such equipment and shall be of sufficient capacity to insure the production of sufficient material to carry the Work to completion within the time limit.

(c) The Contractor shall provide adequate and suitable equipment and plants to meet the above requirements, and when ordered by the Engineer, shall remove unsuitable equipment from the Work and discontinue the operation of unsatisfactory plants. Contractor shall, upon request of the Engineer, submit one or more lists identifying, by make, model number, Contractor's identification number and empty gross weight, each piece of operable equipment used for the Work. Contractor shall, upon request of the Engineer, submit

documentation establishing that any measuring device used for the Work has been tested and properly approved under California Test 109.

(d) In the case of termination of this Contract before its completion for any cause whatsoever, the Contractor, if notified to do so by the City, shall promptly remove any part or all of its equipment and supplies from the property of the City. If the Contractor fails to do so, the City shall have the right to remove such equipment and supplies at the expense of the Contractor.

### **3.15. CHARACTER OF WORKER**

If any Subcontractor, or person employed by the Contractor or any Subcontractor fails or refuses to carry out the directions of the Engineer or appears to the Engineer to be incompetent or to act in a disorderly or improper manner, said person shall be removed from the Project immediately on the requisition of the Engineer. That person shall not again be employed on the Work. Such discharge shall not be the basis for any claim for compensation or damages against the City, or any of its officers or agents.

### **3.16. SEPARATE CONTRACTS**

(a) The City reserves the right to let other contracts in connection with this Work. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate Contractor's work with the other Contractor 's work.

(b) If any part of the Contractor's work depends on proper execution or results upon the Work of any other Contractor , the Contractor shall inspect and promptly report to the Engineer any defects in such work that render it unsuitable for such proper execution and results. The Contractor's failure to inspect and report shall constitute an Acceptance of the other Contractor 's work as fit and proper for the reception of the Contractor's work, except as to defects which may develop in the other Contractor 's work after the execution of the Contractor's work.

(c) To insure the proper execution of Contractor's subsequent work, the Contractor shall measure work already in place and shall at once report to the Engineer any discrepancy between the executed work and the Drawings.

### **3.17. ASSIGNMENT**

The Contractor shall not assign the Contract or sublet it as a whole or in part without the written consent of the City, nor shall the Contractor assign any monies due, or to become due to the Contractor hereafter without the prior written consent of the City.

### **3.18. USE OF COMPLETED PORTIONS, RIGHT TO OPERATE UNSATISFACTORY EQUIPMENT OR FACILITIES**

(a) The City may, at any time, and from time to time, during the performance of the Work, enter the Work Site for the purpose of installing any necessary work by City labor or other contracts, and for other purpose in connection with the installation of facilities. In doing so, the City shall endeavor not to interfere with the Contractor and the Contractor shall not interfere with other work being done by or on behalf of the City.

(b) If, prior to completion and final Acceptance of all the Work, the City takes possession of any structure or facility (whether completed or otherwise) comprising a portion of the Work with the intent to retain possession thereof (as distinguished from temporary possession contemplating the return to the Contractor), then, while the City is in possession of the same, the Contractor shall be relieved of liability for loss or damage to such structure other than that resulting from the Contractor's fault or negligence. Such taking of possession by the City shall not relieve the Contractor from any provisions of this Contract regarding such structure, other than to the extent specified in the preceding sentence, nor shall such taking constitute a final Acceptance of such structure or facility.

(c) If, following installation of any equipment or facilities furnished by the Contractor, defects requiring correction by the Contractor are found, the City shall have the right to operate such unsatisfactory equipment or facilities and make reasonable use thereof until the equipment or facilities can be shut down for correction of defects without injury to the City.

### **3.19. LANDS FOR WORK, RIGHT-OF-WAY CONSTRUCTION ROADS**

(a) The City will provide the lands, easements, right-of-way, and/or encroachment permits necessary or other rights to enter and work on lands necessary for the performance of the Work. Other permits and licenses are addressed by Section 3.04. Should the Contractor find it advantageous to use any additional land for any purpose whatever, the Contractor shall provide for the use of such land at its expense. The Engineer shall be furnished with a copy of written agreements or otherwise be notified in writing of additional working space which is acquired. Nothing herein contained and nothing marked on the Plans shall be interpreted as giving the Contractor exclusive occupancy of the territory provided by the City. When two or more contracts are being executed at one time on the same or adjacent land in such a manner that work on one contract may interfere with that on another, the Engineer shall decide which Contractor shall cease work, and which shall continue, or whether the work on both contracts shall progress at the same time and in what manner, and the decision of the Engineer shall be final and binding. When the territory of one contract is the necessary or convenient means of access for the performance of another contract, such privilege of access or any other reasonable privilege may be granted by the Engineer to the Contractor so desiring, to the extent, amount, in the manner, and at the time permitted. No such decision as to the method or time of conducting the Work or the use of territory shall be the basis of any claim for delay or damage.

(b) Lands, easements or rights-of-way to be furnished by the City for construction operations will be specifically shown on the Plans.

(c) The Contractor shall construct and maintain all roads necessary to reach the various parts of the Work and for the transportation thereto of construction material and personnel. The cost of constructing and maintaining such roads shall be borne by the Contractor.

### **3.20. CITY'S RIGHT TO AUDIT AND PRESERVATION OF RECORDS**

(a) The Contractor shall maintain books, records and accounts of all costs in accordance with generally accepted accounting principles and practices. The City and its authorized representatives shall have the right to audit the books, records and accounts of the Contractor under any of the following conditions:

(1) The Contract is terminated for any reason in accordance with the provisions of the Contract Documents in order to arrive at equitable termination costs;

(2) In the event of a disagreement between the Contractor and the City over the amount due the Contractor under the terms of the Contract;

(3) To check or substantiate any amounts invoiced or paid which are required to reflect the costs of the Contractor, or the Contractor's efficiency or effectiveness under this Contract or in connection with extras, changes, claims, additions, backcharges, or others, as may be provided for in this Contract;

(4) If it becomes necessary to determine the City's rights and the Contractor's obligations under the Contract or to ascertain facts relative to any claim against the Contractor which may result in a charge against the City;

(5) To determine any difference in cost occasioned by a permissible substitution;

(6) And/or for any other reason in the City's sole judgment.

(b) Contractor shall provide the City (or its representatives), unlimited, reasonable access during working hours to the Contractor's books and records. The City's audit rights shall be liberally construed in the City's favor.

(c) The Contractor, from the effective date of final payment or termination hereunder, shall preserve and make available to the City for a period of three (3) years thereafter, at all reasonable times at the office of the Contractor (but without any charge to the City), all its books, records, documents, photographs, micro-photographs, and other evidence bearing on the costs and expenses of the Contractor under this Contract and relating to the Work hereunder.

(d) The City will make all payments required of it under this Contract subject to audit, under circumstances stated above, which audit may be performed at the City's option, either during the Contract time period or during the record retention time period. Regardless of authorization, approval or acceptance, signatures or letters which are given by the City and are part of the City's control systems or are requested by the Contractor, the payments made under this Contract shall not constitute a waiver or agreement by the City that it accepts as correct the billings, invoices or other charges on which the payments are based. If the City's audit produces a claim against the Contractor, the City may pursue all its legal remedies even though it has made all or part of the payments required by this Contract.

(e) If any audit by the City or its representative discloses an underpayment by the City pursuant to the terms of the Contract Documents, the City shall have the duty to pay any amount found by the audit to be owed to the Contractor. If such audit discloses an overpayment, the Contractor shall have the obligation to reimburse the City for the amount of the overpayment. The City's right to claim reimbursement from the Contractor of any overpayment shall not be terminated or waived until three years after the completion of the City's audit or upon the termination of audit rights under subparagraph 3.20(f), whichever date is later. The obligation of the Contractor to make reimbursements hereunder shall not terminate except as provided by law.

(f) The City's right to audit and the preservation of records shall terminate at the end of three (3) years after the date final payment is made or termination of the Contract. The Contractor shall include this "Right to Audit and Preservation of Records" clause in all subcontracts issued by it and it shall require the same to be inserted by all lower tier Subcontractors in their subcontracts, for any portion of the work. Should Contractor fail to

include this clause in any such contract or lower tier contract, or otherwise fail to insure the City's rights hereunder, Contractor shall be liable to the City for all costs, expenses and attorney's fees which the City may have to incur obtaining or attempting to obtain an audit or inspection of or the restoration of records which otherwise would have been available to the City from said persons under this clause. Such audit may be conducted by the City or its authorized representative.



## **SECTION 4**

### **CONTROL OF MATERIALS**

#### **4.01. MATERIALS**

(a) Unless otherwise specifically stated in the Specifications, the Contractor shall furnish all materials necessary for the execution and completion of the Work. Unless otherwise specified, all materials shall be new and shall be manufactured, handled, and installed in a workmanlike manner to insure completion of the Work in accordance with the Contract Documents. The Contractor shall, upon request of the Engineer, furnish satisfactory evidence as to the kind and quality of materials.

(b) Where materials are to be furnished by the City, the type, size, quantity and location at which they are available will be stated in the Contract Documents.

(c) Manufacturers' warranties, guarantees, instruction sheets and parts listed, which are furnished with certain articles or materials incorporated in the Work, shall be delivered to the Engineer before Acceptance of the Contract.

#### **4.02. STORAGE OF MATERIALS**

Articles or materials to be incorporated in the Work shall be stored in such a manner as to insure the preservation of their quality and fitness for the Work, and to facilitate inspection.

#### **4.03. TRADE NAMES AND ALTERNATIVES**

Whenever a material, article, system or sub-system is specified or described by using the name and/or model of a proprietary product or trademark or the name of the manufacturer or vendor, the specified item shall establish the type, function, and quality required. It shall be understood that the words "or approved equivalent" are implied whether or not they follow the proprietary enumeration.

The City reserves the right to determine when proprietary items have no equivalency, and when uniformity of operations, interchangeability of parts, standard parts inventory, etc., are in the City's best interest.

Requests for review of equivalency will be considered upon submission of sufficient information as described herein, to allow complete review. Such requests shall not be accepted from anyone other than the Contractor. Such submission must be made prior to purchase, fabrication, manufacture or use of the equivalent items under consideration.

(a) **Contractor's Risk.** If the Contractor includes in its Bid or later proposes any material, product or equipment that the Contractor considers equivalent to that specified, the Contractor assumes all risk of any sort associated with Acceptance or rejection of proposed equivalent items. The Contractor shall have no right to make claim based upon Contractor's Bid that includes a proposed equivalent item(s) of work which resulted in a lower Bid amount for said item(s) or lower total bid.

(b) **Submission Requirements.** Each submission for equivalency review shall include:

(1) Justification for use of the proposed equivalent item(s), including evidence, as applicable, that Contract specified material, product or equipment is unobtainable or unobtainable within an acceptable time for contract completion;

(2) A description of the difference between specified item(s) and proposed equivalent item(s) and the comparative advantages and disadvantages of each;

(3) All relevant data addressing each specified parameter to show equivalency;

(4) A prediction of any effects the proposed change will have on operation and maintenance costs where applicable.

(c) Equivalency. An item will be considered equivalent to the item specified if it is equal to or better in:

(1) Design and strength in all sub-parts, quality, reliability and durability, operation, maintenance and serviceability, as applicable; and

(2) Specified parameters in performance in all respects for the specific function(s) indicated in the contract.

(d) Supplemental Requirements. Any tests required by the City to establish quality and performance standards shall be promptly conducted by or through the Contractor at no additional cost to the City. In addition, the Contractor shall:

(1) Submit any additional data requested by the Engineer for the equivalency review; and

(2) Satisfactorily accomplish all changes, including any Engineering associated with use of equivalent items, at no additional cost to the City.

(e) Equivalency Determinations. The Engineer shall be the sole judge as to equivalency determinations. The Engineer's decision shall be final. The Contractor shall have no right of appeal to any decision rejecting the equivalency of any item.

(f) Procedure.

(1) Data substantiating a request for a substitution of "an equal" item shall be submitted prior to the Award of the Contract pursuant to Section 3400 of the latest edition of the Public Contract Code.

(2) After the Bid opening, the apparent three low bidders shall have seven (7) calendar days to provide complete substantiating data for all product, material or system substitution requests. After this seven (7)-day period, the City may award the Contract to the apparent low bidder. In no event will product, material or system substitution requests submitted after the Award of Contract be considered. Failure to submit such substantiating data will result in the automatic rejection of the proposed substitution request. The City will have thirty (30) days to review the first ten (10) proposed substitution requests. For each additional five (5) product, material or system substitution requests over and above the initial ten (10), the City will have ten (10) additional days to review the proposed substitution requests.

(3) Each substitution request may include one alternate substitution. All alternate substitutions shall be submitted concurrently with substitution requests. Upon review by the City, proposed substitutions shall be returned to the Bidder marked either “accepted” or “rejected”. The City shall only review alternative substitution requests if the primary substitution request is rejected. If a substitution request, and its alternative, is returned “rejected”, no further substitution requests for that product, material or system will be allowed and the Bidder will provide the specified product, material or system.

(4) If, after all substitution requests have been processed, substitution requests by the apparent low Bidder are rejected by the City, the apparent low Bidder may elect not to execute the Contract. Under no circumstances, will bidders be allowed to alter their Bid Price as originally submitted. This election shall be made in writing no later than five (5) days following the receipt of the reviewed substitution requests. An election by the Bidder not to execute the Contract will result in the forfeiture of the bidder’s Bid bond. If the apparent low Bidder elects not to continue, and the second low Bidder is awarded the Contract, the second low Bidder may then elect not to execute the Contract for the contract price shown on its Bid Form. Subsequent bidders shall have five (5) days following the receipt of the reviewed substitution requests and the Notice of Award in which to make their election. This process shall continue until one Bidder decides to continue with the Award of Contract process.

(5) The City may award the Contract at any time after the time for submitting substitution requests expires pursuant to subpart (2), above. In the event the Contract is awarded prior to acceptance/rejection of substitution requests, all outstanding substitution requests shall be reviewed by the City as provided above. If the apparent low Bidder elects not to execute the Contract, the Award of Contract to the apparent low Bidder shall be rescinded and the Contract awarded to the next apparent low bidder. All bidders electing not to execute the Contract expressly agree that the City shall incur no liability for such rescissions. As provided herein, “apparent low bidder” means the lowest responsive and responsible bidder.

#### **4.04. CERTIFICATES OF COMPLIANCE**

(a) A Certificate of Compliance shall be furnished prior to the use of any materials for which the Technical Specifications require that such a certificate be furnished. In addition, when so authorized in the Specifications, the Engineer may permit the use of certain materials or assemblies prior to sampling and testing if accompanied by a Certificate of Compliance. The Certificate of Compliance shall be signed by the manufacturer of the material or the manufacturer of assembled materials and shall state that the materials involved comply in all respects with the requirements of the Contract. A Certificate of Compliance shall be furnished with each lot of material delivered to the Work and the lot so certified shall be clearly identified in the Certificate.

(b) All materials used on the basis of a Certificate of Compliance may be sampled and tested at any time. The fact that material is used on the basis of a Certificate of Compliance shall not relieve the Contractor of responsibility for incorporating material in the Work which conforms to the requirements of the Contract Documents and any such material not conforming to such requirements will be subject to rejection whether in place or not.

(c) The City reserves the right to refuse to permit the use of material on the basis of a Certificate of Compliance.

(d) The form of the Certificate of Compliance and its disposition shall be as directed by the Engineer.

## SECTION 5 LEGAL RELATIONS AND RESPONSIBILITY

### 5.01. COMPLIANCE WITH LAWS – PERMITS, REGULATIONS, TAXES

The Contractor is an independent Contractor and shall, at the Contractor's sole cost and expense, comply with all laws, rules, ordinances and regulations of all governing bodies having jurisdiction over the Work, obtain all necessary permits and licenses therefore, pay all manufacturers' taxes, sales taxes, use taxes, processing taxes, and all federal and state taxes, insurance and contributions for social security and unemployment which are measured by wages, salaries or any remuneration paid to Contractor's employees, whether levied under existing or subsequently enacted laws, rules or regulations. The Contractor shall also pay all property tax assessments on materials or equipment used until Acceptance by the City. If any discrepancy or inconsistency is discovered in the Plans or Specifications, or in this Contract in relation to any such law, rule, ordinance, regulation, order or decree, the Contractor shall forthwith report the same to the Engineer in writing. The Contractor shall also protect, defend and indemnify the City, the Engineer, and all of the City's officers, agents, and servants against any claim or liability arising from or based upon the violation of any such law, rule, ordinance, regulation, order or decree, whether by the Contractor or its employees. Particular attention is called to the following:

(a) Without limitation, materials furnished and performance by Contractor hereunder shall comply with Safety Orders of the Division of Industrial Safety, State of California, Federal Safety regulations of the Bureau of Labor, Department of Labor; and any other applicable Federal regulations.

(b) The Contractor, upon request shall furnish evidence satisfactory to the City and Engineer that any or all of the foregoing obligations have been or are being fulfilled. The Contractor warrants to the City that it is licensed by all applicable governmental bodies to perform this Contract and will remain so licensed throughout the progress of the Work, and that Contractor has, and will have, throughout the progress of the Work, the necessary experience, skill and financial resources to enable the Contractor to perform this Contract.

(c) Contractor is required to insure that material safety data sheets (MSDSs) for any material requiring a material safety data sheet pursuant to any federal or state law are available in a readily accessible place on the Project premises. Contractor is also required to insure:

(1) The proper labeling of any substance brought onto the Project premise by Contractor or any Subcontractors and

(2) That the person(s) working with the material, or within the general area of the material, are appropriately informed about the hazards of the substance and follow proper handling and protection procedures.

(d) Contractor is required to comply with the provisions of California Health and Safety Code section 25249.5, *et seq.* (Prop. 65), which requires the posting and giving of notice to persons who may be exposed to any chemical known to the State of California to cause cancer.

## 5.02. PREVAILING WAGE

(a) The Contractor shall forfeit as penalty to the City the amount specified by law for each calendar day or portion thereof for each worker (whether employed by the Contractor or any Subcontractor) paid less than the stipulated prevailing rates for any work done under the Contract in violation of the provisions of the Labor Code and in particular, Section 1775 which is incorporated herein by reference. Copies of the current schedules for prevailing wages are on file in the City's office, and the contents of those schedules are included herein as if set forth in full.

(b) The City will not recognize any claims for additional compensation because of the payment of the wages set forth in these General Conditions. The possibility of wage increases is one of the elements to be considered by the Contractor in determining its proposal, and will not under any circumstances, other than delays caused by the City, the Engineer, or the City's agents, be considered as the basis of a claim against the City.

(c) The Contractor agrees to follow the instructions of the City's labor compliance officer until notified otherwise in writing by the City.

(d) The Director of the Department of Industrial Relations of the State of California has determined the general prevailing rate of wages of per diem wages in the locality in which the work is to be performed for each craft or type of worker needed to execute the Contract. Copies of the applicable prevailing wage rate determinations are made available to the Contractor and Subcontractor at the Pre-Job Conference Meeting. The Contractor shall post a copy of this document at the prevailing wages at each job site, along with a CMU work place poster, printed on 8 1/2" X 11" paper or larger, in accordance with California Code of Regulations, Title 8, section 16451(d).

## 5.03. PREVAILING WAGE RECORDS

(a) The Work is subject to monitoring and enforcement of prevailing wage requirements by the Department of Industrial Relations ("DIR") and the following provisions will apply:

(1) Contractor and Subcontractors shall maintain and furnish to the DIR, a certified copy of each weekly payroll (but no less often than monthly), with a statement of compliance signed under penalty of perjury. Such certified payroll reports in PDF form shall be transmitted electronically to the DIR after first registering at <http://www.dir.ca.gov/Public-Works/Certified-Payroll-Reporting.html>. The provisions of Labor Code section 1776 are incorporated herein by reference.

(2) The CITY and the DIR shall review, including by way of job site inspections, and, if appropriate, audit payroll records to verify compliance with the public works requirements of the Labor Code. The DIR will notify the Contractor or Subcontractor(s), as appropriate) of any noncompliance, in order for all such Contractor or Subcontractor(s) to correct the noncompliance.

(3) The City shall withhold payments when payroll records are delinquent or inadequate.

(4) The City shall withhold payments equal to the amount of underpayment and applicable penalties when, after investigation, it is established that underpayment has occurred.

(5) The City shall cooperate with the DIR and DLSE in any investigation of suspected violations of prevailing wage requirements.

(6) As directed by the Labor Commissioner, the City shall withhold Contract payments equal to the payments due or estimated to be due to the Contractor or Subcontractors whose payroll records are delinquent or inadequate, plus any additional amount that the Labor Commissioner has reasonable cause to believe may be needed to cover a back wage and penalty assessment against such Contractor or Subcontractors. The Contractor shall be required to withhold payments to a Subcontractor whose payroll records are delinquent or inadequate until the Labor Commissioner provides notice that the Subcontractor has cured such delinquency or deficiency.

(7) These payroll records shall be made available to the City's representatives. These records shall be maintained during the course of the Work. The Contractor and all Subcontractors shall make the certified payroll records available for inspection by City representatives upon request and shall permit such representatives to interview employees during the work hours on the job site.

(8) The Contractor shall be held entirely responsible for the prompt resolution of all non-compliances with the prevailing wage laws, including those pertaining to all Subcontractors and any lower tier Subcontractors.

(9) The Project will not be accepted as complete by the City nor final payment made until all items of non-compliance are corrected or until appropriate provision is made by depository agreement to assure the ultimate resolution and payment of any back wages that may be found due.

(b) A pre-construction conference shall be conducted before commencement of the Work with the Contractor and Subcontractors at which time the prevailing wage requirements will be reviewed and agreed to by all parties.

#### **5.04. LABOR DISCRIMINATION**

Attention is directed to Section 1735 of the Labor Code, which reads as follows: "A Contractor shall not discriminate in the employment of persons upon public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code. Every Contractor for public works who violates this section is subject to all the penalties imposed for a violation of this chapter."

#### **5.05. EIGHT-HOUR DAY LIMITATION**

(a) In accordance with the provisions of the Labor Code, and in particular, Sections 1810 to 1815 thereof, inclusive, eight hours labor shall constitute a day's work, and no worker, in the employ of said Contractor, or any Subcontractor, doing or contracting to do any part of the work contemplated by this Contract, shall be required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of those provisions; provided that subject to Labor Code section 1815, a worker may perform work in excess of either eight (8) hours per day or forty (40) hours during any one week upon compensation for all hours worked in excess of eight (8) hours per day or forty (40) hours during any one week at not less than one and one-half times the basic rate of pay.

(b) The Contractor and each Subcontractor shall also keep an accurate record showing the names and actual hours worked of all workers employed by them in connection with the Work. This record shall be open at all reasonable hours to the inspection of the City, State and Federal officers and agents. It is hereby further agreed that, the Contractor shall forfeit as a penalty to the City the sum of twenty-five dollars (\$25.00) for each worker employed in the performance of this Contract by the Contractor or by any of its Subcontractors for each calendar day during which such worker is required or permitted to labor more than eight (8) hours in and one calendar day and forty (40) hours in any one calendar week in violation of Sections 1810 through 1815.

#### **5.06. COMPLIANCE WITH STATE REQUIREMENTS FOR EMPLOYMENT OF APPRENTICES**

The Contractor's attention is directed to Section 1777.5 of the Labor Code. Provisions of said section pertaining to employment of registered apprentices are hereby incorporated by reference into these Specifications. As applicable, the Contractor or any Subcontractor employed by the Contractor in the performance of the Work shall take such actions as necessary to comply with the provisions of Section 1777.5.

#### **5.07. UNDERGROUND UTILITIES**

(a) In accordance with Government Code section 4215, the Contractor shall be compensated for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, and removing or relocating existing main or trunkline utility facilities which are not indicated in the Contract Plans and Specifications with reasonable accuracy, and for the equipment on the Project necessarily idled during such work, provided that the Contractor shall first notify the Engineer before commencing work on locating, repairing damage to, removing or relocating such utilities. Contractor shall not be assessed liquidated damages for delays in completing the Work when such delays are due to the failure of either the City or the owner of the utility to provide for removal or relocation of such utility facilities.

(b) The Contractor shall take all precautions necessary to protect the existing utilities within the project area. Any utilities damaged due to the Contractor's negligence shall be repaired or restored to their original condition at the Contractor's sole expense. Existing utilities shall be kept in service during the life of the Contract unless relocation, reconstruction, abandonment, or outage is specifically authorized by the Engineer.

(c) The Contractor shall provide and maintain such temporary supports as may be necessary to preserve the functions of the various utility systems. No wires, conduits and/or pipes shall be removed until all services therein have been made inoperable.

(d) The Contractor shall notify the Engineer and appropriate Regional Notification Center for operators of subsurface installations at least two (2) working days, but not more than fourteen (14) calendar days, prior to performing excavation or other work close to any underground pipeline, conduit, duct, wire and other structures. The Contractor shall provide updated information to the Notification Center as required and on a periodic basis. The Regional Notification Center includes but is not limited to the Underground Service Alert-Northern California (USA) at 1-800-642-2444.

(e) The Contractor is advised that the State of California does not participate in USA. The Contractor is required to notify Caltrans Permits Branch (916) 322-1297 for the location of State facilities.

(f) The Contractor shall not proceed with work until utility facilities involved have been located, disconnected, or otherwise adjusted by utility representatives.

(g) The City Utility Maintenance Division will make repairs to all water service laterals and water mains damaged by the Contractor during the course of construction unless directed otherwise by the Engineer. Except as otherwise provided in this section, the Contractor shall be required to pay all labor, material and equipment costs incurred by the City Utilities Maintenance Division for the repairs made to damaged water service laterals and water mains. The City will bill the Contractor for the repairs and the bills will be paid by the Contractor prior to either the next monthly progress payment or prior to the final payment, whichever comes first. The Contractor shall provide to the Engineer proof of payment of the repair bills prior to the issuance of either the monthly progress payment or final payment. The current labor and equipment rates for the City Utility Maintenance Division will be made available to the Contractor at the preconstruction conference. The City shall have the right to deduct the total amount of any unpaid City repair bill from the money due or to become due the Contractor.

#### **5.08. WATER POLLUTION**

The Contractor shall exercise every reasonable precaution to protect streams, lakes, reservoirs, and canals from pollution with fuels, oils, bitumens, calcium chloride, and other harmful materials and shall conduct and schedule Contractor's operations so as to avoid or minimize muddying and silting of said streams, lakes, reservoirs, and canals. Care shall be exercised to preserve vegetation beyond the limits of construction. The Contractor shall comply with Section 5650 of the California Fish and Game Code and all other applicable statutes and regulations relating to the prevention and abatement of water pollution.

#### **5.09. PAYMENT OF TAXES**

The Contract prices paid for the Work shall include full compensation for all taxes, which the Contractor is required to pay, whether imposed by federal, state, or local governments.

#### **5.10. PERMITS AND LICENSES**

The Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incident to the lawful prosecution of the work. All permits and licenses shall be obtained in sufficient time to prevent delays to the Work. The Contractor shall, at a minimum, possess and maintain the licenses and permits set forth in the Contract Provisions and shall ensure that its employees possess and maintain any certifications, licenses or permits required to perform work under this Contract, including but not limited to state certifications required by the California Department of Industrial Relations.

#### **5.11. PATENTS**

The Contractor shall assume all costs arising from the use of patented materials, equipment, devices, or processes used on or incorporated into the Work, and agrees to indemnify, defend and save harmless the City, the Engineer, and their duly authorized representatives, from all suits at law, or actions of every nature for, or on account of, the use of any patented materials, equipment, devices, or processes.

#### **5.12. PUBLIC CONVENIENCE**

This section defines the Contractor's responsibility with regard to convenience of the public and public traffic in connection with its operations.



(a) The Contractor shall so conduct its operations as to offer the least possible obstruction and inconvenience to the public. The Contractor shall have under construction no greater length or amount of work than can be properly prosecuted with due regard to the rights of the public.

(b) Unless otherwise provided in the Contract Documents, all public traffic shall be permitted to pass through the Work with as little inconvenience and delay as possible. In order to expedite the passage of public traffic through or around the work, the Contractor shall install as appropriate signs, lights, flares, barricades, and other facilities for the sole convenience and direction of public traffic. Also, where directed by the Engineer, the Contractor shall provide and station competent flagpersons whose sole duties shall consist of directing the movement of public traffic through or around the Work. The cost of furnishing and installing such signs, lights, flares, barricades, and other facilities, and the cost of providing and stationing such flagpersons, all for the convenience and direction of public traffic, will be considered as included in the Contract price and no additional compensation will be allowed.

(c) Spillage resulting from hauling operations along or across any publicly traveled way shall be removed immediately by the Contractor at its expense.

(d) Construction operations shall be conducted in such a manner as to cause as little inconvenience as possible to abutting property owners.

(e) Convenient access to driveways, houses and buildings along the line of the work shall be maintained and temporary approaches to crossings or intersecting highways shall be provided and kept in good condition. When the abutting property owner's access across the right-of-way line is to be eliminated, or to be replaced under the Contract by other access facilities, the existing access shall not be closed until the replacement access facilities are usable.

(f) Water shall be supplied if ordered by the Engineer for the alleviation or prevention of dust nuisance as provided in the Contract Documents. Any water obtained from a fire hydrant within the City of West Sacramento shall be subject to a fire hydrant permit issued by the Engineering Division of the City of West Sacramento.

(g) Flagpersons and guards, while assigned to traffic control, shall perform their duties and shall be provided with the necessary equipment in accordance with the current "Instructions to Flagmen" of the California Department of Transportation. The equipment shall be furnished and kept clean and in good repair by the Contractor at its expense.

(h) All traffic control shall be in accordance with California Manual on Uniform Traffic Control Devices (California MUTCD), Part 6 and this Section 5.12.

(1) Traffic Control Plans. Traffic Control Plans shall be developed for the project to assure that adequate consideration is given to the safety and convenience of motorists, pedestrians, and workers during construction. The Traffic Control Plans shall include, but not be limited to, signing, pavement markings, construction scheduling, permanent barricades, methods and devices for delineation and channelization, placement and maintenance of devices, roadway lighting, traffic regulations, surveillance and inspection. The Traffic Control Plans shall be approved by the Engineer a minimum of two (2) working days prior to start of any work. Non-compliance with any stipulation of this section will be justification for the City to stop work.

(2) **Traffic Control Devices and Procedures.** Traffic control devices and procedures shall conform to the California Manual on Uniform Traffic Control Devices (California MUTCD), Part 6 and this Section 5.12. Non-compliance with any stipulation of this section will be justification for the City to stop work.

(3) **Elimination of On-Street Parking.** The Contractor shall place notification for the elimination of on-street parking, if required, at least forty-eight (48) hours, but not more than seventy-two (72) hours prior to the start of work. The notification shall include the Contractor's phone number, the City of West Sacramento Community Development Department phone number (916) 617-4645, and the phrase "VEHICLES WILL BE TOWED PURSUANT TO CVC SECTION 22651 (L)". This notice shall be affixed to a Type II barricade that is placed in the lane of the road (max. 200 ft. spacing) used for on-street parking. No other location or method of placement is acceptable. The notification shall be in a form approved by the Engineer. Non-compliance with any stipulation of this section will be justification for the City to stop work.

(4) **Lane Closures.** All lane closures shall be included in the Traffic Control Plans, and shall both conform to Section 5.12(h)(2) above, and be approved by the Engineer. Total road closures will not be allowed for the Project.

(5) **Measurement and Payment.** Unless specifically shown as an item of work on the proposal form, all traffic control shall be considered included in other items of work and no additional compensation will be made for labor, materials or equipment needed.

### **5.13. CONTINUOUS OPERABILITY OF FACILITIES**

Absent written permission by the Engineer, the continuous operation of all existing facilities is required and shall in no way be affected by the Work.

### **5.14. SAFETY**

#### **(a) General**

(1) The Contractor shall be solely and completely responsible for the conditions of the job Site, including safety of all persons and property during performance of the Work. This requirement shall apply continuously and not be limited to normal working hours. Safety provisions shall conform to all applicable federal, state, and local laws, ordinances, and codes, and to the rules and regulations established by the California Division of Industrial Safety, and to other rules of law applicable to the Work.

(2) The services of the Engineer in conducting construction review of the Contractor's performance is not intended to include review of the adequacy of the Contractor's work methods, equipment, bracing or scaffolding or safety measures, in, on, or near the construction site, and shall not be construed as supervision of the actual construction nor make the Engineer or the City responsible for providing a safe place for the performance of work by the Contractor, Subcontractors, or suppliers; or for access, visits, use work, travel or occupancy by any person.

(3) The Contractor shall carefully instruct all personnel working in potentially hazardous work areas as to potential dangers and shall provide such necessary safety equipment and instruction as is necessary to prevent injury to personnel and damage to property. Special care shall be exercised relative to electrical work, work involving excavation and in sump pump work.

(4) All work and materials shall be in strict accordance with all applicable State, Federal and local laws, rules, regulations, and codes.

(5) Nothing in this Contract is to be construed to permit work not conforming to governing law. When Contract Documents differ from governing law, the Contractor shall furnish and install the higher standards called for without extra charge. All equipment furnished shall be grounded and provided with guards and protection as required by safety codes. Where vapor-tight or explosion-proof electrical installation is required by law, this shall be provided.

(6) The Contractor shall submit a safety plan and/or narrative description to the Engineer prior to commencement of the Work. This safety plan and/or narrative description shall describe all first aid, safety clothing, etc. to be used at the Project Site.

(b) Shoring and Trench Safety Plan

(1) Attention is directed to Section 832 of the Civil Code of the State of California relating to lateral and subjacent support, and the Contractor shall comply with this law.

(2) In accordance with Section 6705 of the State Labor Code, the Contractor shall submit to the City specific plans to show details of provisions for worker protection from caving ground. Not less than thirty (30) days before beginning excavation for any trench or trenches five feet or more in depth required under this Contract, the Contractor shall furnish to the Engineer Working Drawings of its trench safety plan. The trench safety plan Working Drawings shall be detailed plans showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground. If such plan varies from the shoring system standards established by the Construction Safety Orders of the California Division of Industrial Safety or the Federal Safety and Health Regulations for Construction of the Occupational Safety and Health Administration, Department of Labor, the plan shall be prepared by a registered civil or structural engineer. In no event shall the Contractor use a shoring, sloping, or protective system less effective than that required by said Construction Safety Orders, or less effective than that required by said Federal Safety Standards. Submission of this plan in no way relieves the Contractor from the requirement to maintain safety in all operations performed by the Contractor or its Subcontractors.

### **5.15. BLASTING**

Except for exceptional circumstances, blasting shall be prohibited. Accordingly, Bids should be prepared on the basis that no blasting will be permitted. Should blasting be required and expressly approved by the City, the City will issue a Change Order for blasting work.

### **5.16. INTOXICATING LIQUORS AND NARCOTICS**

The Contractor shall not sell, permit or suffer the introduction or use of intoxicating liquors or narcotics upon or about the Site.

### **5.17. PROTECTION OF PERSONS AND PROPERTY**

(a) The Contractor shall take whatever precautions are necessary to prevent damage to all existing improvements, including above ground and underground utilities, trees, shrubbery that is not specifically shown to be removed, fences, signs, mailboxes, survey markers and monuments, buildings, structures, the City's property, adjacent property, and any other improvements or facilities within or adjacent to the work. If such improvements or property

are injured or damaged by reason of the Contractor's operations, they shall be replaced or restored, at the Contractor's expense, to a condition at least as good as the condition they were in prior to the start of the Contractor's operations.

(b) The Contractor shall adopt all practical means to minimize interference to traffic and public inconvenience, discomfort or damage. The Contractor shall protect against injury to any pipes, conduits or other structures crossing the trenching or encountered in the Work and shall be responsible for any injury done to such pipes or structures, or damage to property resulting therefrom. The Contractor shall support or replace any such structures without delay and without any additional compensation to the entire satisfaction of the Engineer. All obstructions to traffic shall be guarded by barriers illuminated at night. The Contractor shall be responsible for all damage to persons and property directly or indirectly caused by its operations and, under all circumstances, Contractor must comply with the laws and regulations of the State of California relative to safety of persons and property and the interruption of traffic and the convenience of the public within the respective jurisdictions.

(c) The Contractor is cautioned that it must replace all improvements in rights-of-way and within the public streets to a condition at least equal to what existed prior to the Contractor's entry onto the job.

(d) Type and time of construction required at any road subject to interference by the work will be determined by those authorities responsible for maintenance of said road. It shall be the responsibility of the Contractor to determine the nature and extent of all such requirements, including provision of temporary detours as required; however, the construction right-of-way obtained by the City at affected roadways will be adequate for provision of all required detours. As required at any road crossing, the Contractor shall provide all necessary flagpersons, guardrails, barricades, signals, warning signs and lighting to provide for the safety of existing roads and detours. Immediately after the need for temporary detours ceases, or when directed, the Contractor shall remove such detours and perform all necessary cleanup work, including replacement of fences, and removal of pavement. Included shall be all necessary replacement of existing roadway appurtenances, grading work, soil stabilization and dust control measures, as required and directed.

(e) The Contractor shall examine all bridges, culverts, and other structures over which it will move its materials and equipment, and before using them, Contractor shall properly strengthen such structures where necessary. The Contractor shall be responsible for any and all injury or damage to such structures caused by reason of its operations.

## **5.18. RESPONSIBILITY FOR REPAIR OF FACILITIES**

All public or private facilities, including but not limited to, gravel surfacing at existing canals, structures, telephone cables, roadways, curbs, gutters, parking lots, private drives, levees and embankments for creeks, ponds and reservoirs disturbed during construction of the work shall be repaired and/or replaced by the Contractor to match facilities existing prior to construction. In addition, the Contractor shall be responsible for any settlement damage to such facilities or adjoining areas for a period of one year after Acceptance of such required facilities.

## **5.19. CITY'S REPAIR**

In the event the Contractor refuses or neglects to make good any loss or damage for which it is responsible under this Contract, the City may itself or by the employment of others, make good any such loss or damage, and the cost and expense of doing so, including any reasonable engineering, legal and other consultant fees, and any costs of administrative and

managerial services, shall be charged to the Contractor. Such costs and expenses may be deducted by the City from claims for payment made by the Contractor for work completed or remaining to be completed.

#### **5.20. ANTITRUST CLAIM ASSIGNMENT**

In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to this contract, the Contractor and all Subcontractors shall offer and agree to assign to the 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. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or subcontract. This assignment shall be made and become effective at the time the City tenders final payment to the Contractor, without further acknowledgement by the parties.

#### **5.21. WAIVER OF RIGHT TO RESCIND FOR MATERIAL BREACH**

The Contractor agrees that it can be adequately compensated by money damages for any breach of this Contract which may be committed by the City and hereby agrees that no default, act, or omission of the City or the Engineer, shall constitute a material breach of the Contract entitling the Contractor to cancel or rescind the provisions of this Contract or (unless the City shall so consent or direct in writing) to suspend or abandon performance of all or any part of the Work. The Contractor hereby waives any and all rights and remedies to which it might otherwise be or become entitled, save only its right to money damages.

#### **5.22. CONTRACTOR'S LICENSE NOTICE**

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO:

REGISTRAR CONTRACTORS' STATE LICENSE BOARD  
9821 BUSINESS PARK DRIVE  
SACRAMENTO, CALIFORNIA 95827

MAILING ADDRESS:  
P.O. BOX 26000  
SACRAMENTO, CALIFORNIA 95826

#### **5.23. HISTORICAL, SCIENTIFIC AND ARCHEOLOGICAL DISCOVERIES**

All articles of historical or scientific value, including but not limited to coins, fossils, and articles of antiquity which may be uncovered by the Contractor during the progress of work, shall become City property. Such findings shall be reported immediately to the Engineer who will determine the method of removal, where necessary, and the final disposition thereof.

#### **5.24. INSURANCE**

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by the Contractor, its agents, representatives, employees or Subcontractors. The cost of such insurance shall be included in the Contractor's bid.

(a) Neither the Contractor nor any Subcontractors shall commence any work until all required insurance has been obtained at their own expense. Such insurance must have the approval of the City as to limit, form, and amount, and shall be placed with insurers with a current A. M. Best's rating of no less than A-VII.

(b) Any insurance bearing on adequacy of performance shall be maintained after completion of the project for the full guarantee period.

(c) Prior to execution of the Contract, the Contractor shall furnish the City with original endorsements effecting coverage for all policies required by the Contract. The endorsements shall be signed by a person authorized by the insurer to bind coverage on its behalf. The endorsements are to be on forms provided or approved by the City. The City may require the Contractor or any Subcontractor to furnish complete certified copies of all insurance policies affecting the coverage required by the Contract.

(d) All of the Contractor's policies shall contain an endorsement providing that written notice shall be given to the City at least sixty (60) calendar days prior to termination, cancellation, or reduction of coverage in the policy.

(e) Any policy or policies of insurance that the Contractor elects to carry as insurance against loss or damage to its construction equipment and tools shall include a provision therein providing a waiver of the insurer's right to subrogation against the City and the Engineer.

(f) The requirements as to the types, limits, and the City's approval of insurance coverage to be maintained by the Contractor are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Contractor under the Contract.

(g) In addition to any other remedy the City may have, if the Contractor or any of the Subcontractors fails to maintain the insurance coverage as required in this section, the City may obtain such insurance coverage as is not being maintained, in form and amount substantially the same as required herein, and the City may deduct the cost of such insurance from any amounts due or which may become due the Contractor under this Contract.

(h) The Contractor and all Subcontractors shall, at their expense, maintain in effect at all times during the performance of work under the Contract not less than the following coverage and limits of insurance, which shall be maintained with insurers and under forms of policy satisfactory to the City. The maintenance by the Contractor and all Subcontractors of the following coverage and limits of insurance is a material element of this Contract. The failure of the Contractor or any Subcontractor to maintain or renew coverage or to provide evidence of renewal may be treated by the City as a material breach of this contract.

(1) Workers' Compensation and Employer's Liability Insurance

(i) Workers' Compensation

The Contractor and all Subcontractors shall maintain insurance to protect the Contractor or Subcontractor from all claims under Workers' Compensation and Employer's Liability Acts, including Longshoremen's and Harbor Workers' Act. Such coverage shall be maintained, in type and amount, in strict compliance with all applicable State and Federal statutes and regulations. The Contractor shall execute a certificate in compliance with Labor Code section 1861, on the form provided in the Contract Documents.

(ii) Claims Against City

If an injury occurs to any employee of the Contractor or any of the Subcontractors for which the employee or its dependents, in the event of its death, may be entitled to compensation from the City under the provisions of the said Acts, or for which compensation is claimed from the City, there will be retained out of the sums due the Contractor under this Contract, an amount sufficient to cover such compensation as fixed by said Acts, until such compensation is paid or it is determined that no compensation is due. If the City is required to pay such compensation, the amount so paid will be deducted and retained from such sums due, or to become due, the Contractor.

(2) Commercial General and Automobile Liability Insurance

The Contractor shall maintain in effect at all times during the performance of the work hereunder not less than the following coverage's and limits of Commercial General and Automobile Liability insurance:

(i) Form and Amount

The insurance shall include, but shall not be limited to, protection against claims arising from death, bodily injury, personal injury, or damage to property resulting from actions, failures to act, operations or equipment of the insured, or by its employees, agents or consultants, or by anyone directly or indirectly employed by the insured. The amount of insurance coverage shall not be less than \$1,000,000.00 per occurrence with an aggregate no less than two (2) times the required per occurrence limit applying to bodily injury, personal injury, and property damage, or any combination of the three. Any deductibles must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles as respects the entity, its officers, officials, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration expenses, and defense expenses. The commercial general and automobile liability insurance coverage shall also include the following:

(ii) Additional Requirements

Provision or endorsement naming the City, the Engineer and its consultants, and each of their officers, employees, and agents, each as additional insured's with respect to any potential liability arising out of the performance of any work under the Contract, and providing that such insurance is primary insurance as respects the interest of the City and Engineer, and its consultants, and each of their officers, employees, and agents and that any other insurance, risk pool membership, or other liability protection maintained by the City or maintained by the Engineer is excess to the insurance required hereunder, and will not be called upon to contribute to any loss unless and until all limits available under the Contractor 's and Subcontractor's insurance policy/policies have been paid. The additional insured coverage under the Contractor's policy shall be "primary and non-contributory" and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

(iii) "Cross Liability" or "Severability of Interest" clause.

(iv) Broad Form Property Damage, Personal Injury, Contractual Liability, Protective Liability, and Completed Operations coverage's, and elimination of any exclusion regarding loss or damage to property caused by explosion or resulting from collapse

of buildings or structures or damage to property underground, commonly referred to by insurers as the “XCU” hazards.

(v) Provision or endorsement stating that such insurance, subject to all of its other terms and conditions, applies to the liability assumed by the Contractor under the Contract, including, without limitation, that set forth in Section 4.02, Indemnity and Litigation Costs.

(vi) Provision or endorsement stating that any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its officers, officials, employees, or volunteers.

(vii) The Contractor’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

(3) Builder’s Risk or Installation Floater “All-Risk” Insurance. Before commencement of the Work, the Contractor shall submit written evidence that it has obtained for the period of the Contract, Builder’s Risk “All-Risk” Completed Value Insurance and/or Inland Marine “All-Risk” Installation Floater Insurance, as may be applicable, upon the entire project which is the subject of this Contract, including completed work and work in progress. The policy or policies of insurance shall name the Contractor, City, and Engineer as insured’s as their respective interests may appear, and shall include an insurer’s waiver of subrogation rights in favor of each. Such insurance may have a deductible clause, but the amount of the deductible shall be subject to the approval of the City, except that the deductible on earthquake coverage may be in accordance with the underwriter’s requirements.

## **5.25. INDEMNITY AND LITIGATION COST**

(a) Promptly upon execution of the Contract, the Contractor specifically obligates itself and hereby agrees to protect, hold free and harmless, defend and indemnify the City, the Engineer and its consultants, and each of their officers, employees and agents, from any and all liability, penalties, costs, losses, damages, expenses, causes of action, claims or judgments, including attorney’s fees, which arise out of or are in any way connected with the Contractor’s, or its Subcontractors’ or suppliers’, performance of work under this Contract or failure to comply with any of the obligations contained in the Contract. This indemnity shall imply no reciprocal right of the Contractor in any action on the contract pursuant to California Civil Code section 1717 or section 1717.5. To the fullest extent legally permissible, this indemnity, defense and hold harmless agreement by the Contractor shall apply to any and all acts or omissions, whether active or passive, on the part of the Contractor or its agents, employees, representatives, or Subcontractor’s agents, employees and representatives, resulting in claim or liability, irrespective of whether or not any acts or omissions of the parties to be indemnified hereunder may also have been a contributing factor to the liability, except such loss or damage which was caused by the active negligence, the sole negligence, or the willful misconduct of the City. The Contractor’s obligations under this Section shall apply to claims arising from the Contractor’s mistake, error, or neglect in preparing its Bid for this project. The Contractor’s obligations under this Section shall apply to claims arising from the Contractor’s mistake, error, or neglect in preparing its Bid for this project.

(b) In any and all claims against the City, the Engineer and each of their consultants, officers, employees and agents by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in way by any



limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under Workers' Compensation statutes, disability benefit statutes or other employee benefit statutes.

## 5.26. PROTECTION OF WORK

(a) The Contractor shall be responsible for the care of all the Work until its completion and final acceptance. The Contractor shall, at its own expense, replace damaged or lost material and repair damaged parts of the Work or the same may be done at the Contractor's expense by the City and the Contractor and its sureties shall be liable therefor. The Contractor shall make its own provisions for properly storing and protecting all material and equipment against theft, injury, or damage from any and all causes. Damaged material and equipment shall not be used in the Work. The Contractor shall take all risks from floods and casualties except as provided by law, and shall make no charge for the restoration of such portions of the work as may be destroyed or damaged by flood or other casualties or because of danger from flood or other casualties or for delays from such causes. The Contractor may, however, be allowed a reasonable extension of time on account of such delays, subject to the conditions herein before specified. The Contractor shall not be responsible for the cost, in excess of 5% of the contracted amount, of repairing or restoring damage to the Work, if the damage was proximately caused by an earthquake in excess of a magnitude of 3.5 on the Richter Scale or by tidal wave' s; provided that the Work damaged was built in accordance with accepted and applicable building standards, and the plans and specifications of the City.

(b) Contractor shall effectively secure and protect adjacent property and structures, livestock, crops and other vegetation. If applicable, the Contractor shall open fences on or crossing the right-of-way and install temporary gates of sound construction thereon so as to prevent the escape of livestock. Adjacent fence posts shall be adequately braced to prevent the sagging or slackening of the wire. Before such fences are opened, the Contractor shall notify the owner or tenant of the property and, where practicable, the opening of the fence shall be in accordance with the wishes of said owner or tenant. The Contractor shall be responsible that no loss or inconvenience shall accrue to the owner or tenant by virtue of their fences having been opened or the gate not having been either shut or attended at all times. Where special types of fences are encountered, the Contractor shall install temporary gates made of similar materials and of suitable quality to serve the purposes of the original fences. In all cases where the Contractor removes fences to obtain workroom, the Contractor shall provide and install temporary fencing as required, and on completion of construction shall restore the original fence to the satisfaction of the Engineer. All costs of providing, maintaining and restoring gates and fencing shall be home by the Contractor. The Contractor shall provide and maintain all passageways, guard fences, lights and other facilities for protection required by public authority or local conditions.

(c) The Contractor shall use extreme care during construction to prevent damage from dust to crops and adjacent property. The Contractor, at its own expense, shall provide adequate dust control for the right-of-way and take other preventative measures as directed by the Engineer.

(d) The Contractor shall be responsible for all damage to any property resulting from trespass by the Contractor or its employees in the course of their employment, whether such trespass was committed with or without the consent or knowledge of the Contractor.

(e) The Contractor shall see that the Site is kept drained and free of all ground water and any other water, which may impede the progress or execution of the Work.

(f) The Contractor shall be responsible for any damage caused by drainage or water runoff from construction areas and from construction plant areas.

(g) In an emergency affecting the safety of life, the Work, or adjoining property, the Contractor, without special instruction or authorization from the Engineer, is hereby permitted to act at its discretion to prevent such threatened loss or injury, and the Contractor shall so act without appeal if so instructed or authorized. Any compensation claimed by the Contractor on account of emergency work shall be determined as specified In Section 2.07. Should the Engineer deem an emergency condition to exist, the Contractor shall immediately do those things and take those steps ordered by the Engineer. The decision of the Engineer in this respect shall be final and conclusive. Any claims for compensation made by the Contractor on account of emergency work shall be determined as specified in Section 2.07.

(h) Except as provided by Government Code section 4215, the Contractor shall be responsible for the removal, relocation and protection of all public and private utilities, including irrigation facilities in the nature of utilities, located on the site of the construction project if and to the extent that the same are identified in the Contract Documents, and the Contractor shall not be entitled to any extension of time or claim for damages for extra compensation in connection therewith. If and to the extent that such utilities or facilities are not identified in the Contract Documents, as between the Contractor and the City, the City will be responsible for the cost of their removal, relocation or protection, as the case may be, but the Contractor shall perform any such work in conformance with applicable provisions of Sections 2.06 and 2.07, if so directed by the Engineer. In such situations the Contractor shall not be responsible for delay in completion of the project caused by the failure of the City or the owner of the utility to provide for such removal or relocation. If the Contractor, while performing the Contract, discovers utility or irrigation facilities not identified by the City in the Contract Documents, the Contractor shall immediately notify the Engineer in writing.

(i) Subject to the provisions of this section, where the Work to be performed under the Contract crosses or otherwise interferes with existing streams, watercourses, canals, farm ditches, pipelines, drainage channels, or water supplies, the Contractor shall provide for such watercourse or pipelines and shall perform such construction during the progress of the Work so that no damage will result to either public or private interests, and the Contractor shall be liable for all damage that may result from failure to so provide during the progress of the Work.

## **5.27. ACCIDENTS**

(a) The Contractor shall provide and maintain, in accordance with Labor Code section 6708 and OSHA requirements, adequate emergency first-aid treatment for its employees and anyone else who may be injured in connection with the Work.

(b) The Contractor shall promptly report in writing to the Engineer all accidents whatsoever arising out of or in connection with, the performance of the Work, whether on or adjacent to the site, which caused death, personal injury, or property damage, giving full details and statements of witnesses. In addition, if death or serious injury or serious damage are caused, the accident shall be reported immediately by telephone or messenger to the City and the Engineer.

(c) If any claim is made by anyone against the Contractor or any Subcontractor on account of any accident, the Contractor shall promptly report the facts in writing to the Engineer, giving full details of the claim.

**5.28. NO PERSONAL LIABILITY**

Neither the City, the Engineer, nor any of their other officers, agents, or employees shall be personally responsible for any liability arising under the Contract, except such obligations as are specifically set forth herein.

## **SECTION 6**

### **PROGRESS AND COMPLETION OF WORK**

#### **6.01. PROGRESS SCHEDULE**

The Contractor shall submit within ten (10) days after execution of the Contract a detailed work schedule(s) which shall detail the actions of the Contractor and Subcontractors working at the Site. This schedule(s) shall both show the dates at which the Contractor will start and complete and conform to the completion time specified in the Contract. The controlling operation, defined as the least float path, if any, shall be identified.

The Contractor shall review, revise and resubmit the progress schedule at least once a month to reflect progress. In any event, Contractor shall submit, at any time during the contract period, a current schedule to the Engineer at the Engineer's request.

No progress payments will be made for any work performed until a satisfactory schedule has been submitted and approved by the Engineer. An updated schedule shall be required from the Contractor if the project falls ten (10) working days behind schedule.

If the Work falls behind the accepted schedule, the Contractor shall promptly take whatever actions are necessary to put the project back on schedule. For delays or portions of delays for which the Contractor is responsible, no payment will be made or time extension allowed for increase in work force, equipment, and working hours needed to put the project on schedule.

#### **6.02. COMMENCEMENT AND PROGRESS OF THE WORK AND TIME OF COMPLETION**

##### **(a) Commencement**

The Contractor shall begin the Work after receiving a Notice to Proceed within the period of time set forth in the Contract Provisions. Thereafter, Contractor shall diligently prosecute the Work to completion as specified in the Contract Documents. The Engineer shall have the right to specify the locations where Contractor shall start and proceed with the Work.

A preconstruction conference will be convened after the Contractor has delivered the necessary bonds, insurance certificates and signed agreement in proper form as required in the invitation to bid, Bid proposal and general conditions of these specifications. Prior to any work, the Contractor shall provide the Engineer with a list of key personnel assigned to the project and the telephone numbers where they may be reached at any time. The list shall be made available in sufficient copies and presented at the preconstruction conference.

Notwithstanding any other provisions of the Contract, the City shall not be obligated to accept or pay for any work furnished by the Contractor prior to the issuance of the Notice to Proceed whether or not the City has knowledge of the furnishing of such work. The Contractor shall not commence with work on this project until its Contract bonds and evidence of insurance comply with all Contract requirements and a Notice to Proceed has been issued.

The Contractor shall notify the Engineer in writing two (2) working days (48 hours) prior to commencement of work on the Project or scheduling work for a Saturday, Sunday, or City Holiday. Failure to provide said notification will void the City's obligation to provide inspection. Any work done in the absence of the City's Inspector shall be subject to rejection.

(b) Completion

All work under this Contract shall be completed within the period of time set forth in the Contract Provisions. The Contract shall be deemed completed when the Engineer has certified the completion of the Project as provided in Section 9.07 of these General Conditions.

**6.03. SUSPENSION OF WORK**

(a) The Engineer may at any time, by notice in writing to the Contractor, suspend any part of the Work for such period of time as may be necessary to prevent improper execution of the Work on the project by the Contractor, its Subcontractors or agents, and the Contractor shall have no claim for damages or additional compensation on account of any such suspension.

(b) The City may at any time suspend any part or all of the Work upon ten (10) days written notice to the Contractor, who shall thereupon discontinue all work suspended except for all operations to prevent loss or damage to work already executed as may be directed by the Engineer. Work shall be resumed by the Contractor after such suspension on written notice from the City.

(c) In the event of any suspension of the Work in whole or in part under subsection (B) above, the Contractor shall be entitled to an extension of time wherein to complete the Work to the extent of the delay caused to the Contractor thereby.

(d) In the event the entire work shall be suspended by order of the City, as herein above provided, and shall remain so suspended for a period of sixty (60) consecutive days, through no fault of the Contractor, and notice to resume the Work shall not have been served on the Contractor as herein above provided, Contractor may, at its option, by written notice to the City, terminate the Contract in the same manner as if the termination had been initiated by the City, and the City shall have no claim for damages because of such termination of the Contract.

**6.04. DELAY IN THE WORK – TIME EXTENSIONS**

The Contractor shall at all times employ such force, plant, materials, and tools as will be sufficient, in the opinion of the Engineer, to prosecute the Work at not less than the rates fixed under the terms of the Contract and to complete the Work thereof within the time limits fixed therein. If the Contractor refuses or fails to prosecute the Work, or any separable part thereof, with such diligence as will ensure the completion within the time specified in the Contract, or any extension thereof, or fails to complete said work within such time, the City may exercise the termination provisions set forth in Section 6.05, below.

(a) Excusable Delays. Excusable delays shall be delays in the controlling operation of the Contractor's work due to strikes, lockouts by others, fire, unusual delay in transportation, unavoidable casualties, adverse weather conditions which could not have been reasonably anticipated, or any other act(s) of God beyond the Contractor's control, or by delay authorized by the City, or by any cause which the City shall decide to justify the delay. Except as provided in Section 6.04(f), below, in the event of an excusable delay, the time of completion shall be extended for such reasonable time as the City may decide. The Contractor's right to an extension of time for an excusable delay is expressly subject to Contractor's giving written notice of such claim within ten (10) days following the date the Contractor knew or should have known of the delay. Failure to give such notice shall be construed as a waiver of such right. It is understood and agreed that extensions of time shall be the Contractor's sole and exclusive remedy for excusable delays.

(b) Compensable delays. Compensable delays shall be delays in the controlling operating of the Contractor's work due to acts or neglect of the City, its employees or those under it by contract or otherwise, or by changes ordered in the work. In the event of a compensable delay, the time of completion shall be extended for such reasonable time as the City may decide. In addition, the Contractor may recover its direct costs as provided in Section 6.05. The Contractor's remedies for compensable delays are expressly subject to Contractor's giving ten (10) days written notice of such claim from the date the Contractor knew or should have known of the delay. It is understood and agreed that the Contractor's sole and exclusive remedies for compensable delays shall be an extension of the time and recovery of its direct costs as compensable hereunder, but only in accordance with the provisions of the Contract Documents.

(c) Contractor and City understand and agree that the Contract time for the completion of this project is a very important part of the contract. Extensions of time will only be granted as provided above when events actually cause the Contractor to be delayed in the performance of that schedule activity which is the controlling operation as of the time of the delay. When acts or omissions occur which could cause delay, Contractor will take all reasonable means in order to be able to continue to work as scheduled without any delay, or as short a delay as possible. Additionally, if inclement weather causes accumulation of standing water on the work site or other conditions which might cause delay, Contractor shall take all measures reasonably necessary to permit work to continue as quickly as possible.

(d) If adverse weather conditions are the basis for a claim for additional time, such claim shall be documented by date substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction. Adverse weather conditions shall be considered only as those conditions that exceed the average annual number of rain days and rain quantities as established by the Annual Local Climatological Summary and NOAA National Technical Memorandum NWS WR-65 (Revised) as published by the United States Government, National Weather Service, National Climate Center, Asheville, North Carolina.

(e) The Engineer shall be responsible for determining when adverse weather conditions result in non-workable days. It shall be the Contractor's duty to stay informed of such determinations by the Engineer. The Contractor may object to such adverse weather determinations by filing with the Engineer a written notice of objection. The notice of objection shall state the basis of the objection and provide supporting documentation, which substantiates that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction. All such notices of objection shall be filed within three (3) days of the day in dispute. It is hereby agreed that the Contractor's failure to submit a written notice of objection within three (3) days of the Engineer's adverse weather determination shall constitute a waiver by the Contractor of all its rights to further protest, judicial or otherwise.

(f) The Engineer will, within a reasonable period of time, issue a ruling on the Contractor's notice of objection. All such rulings by the Engineer shall be final, unless the Contractor files a written protest within fifteen (15) days of the Engineer's ruling. This protest shall clearly state the basis of the dispute. Such protest will be forwarded promptly to the City, which will issue a decision on each such protest. The City decision will be final. Pending the City decision, the Contractor shall proceed with its work in accordance with the Engineer's ruling and/or instructions. It is hereby agreed that the Contractor's failure to file a protest within fifteen days (15) of the Engineer's ruling shall constitute a waiver by the Contractor of all its rights to further protest, judicial or otherwise.

(g) The number of days that are anticipated to be non-workable due to adverse weather conditions shall be as set forth in Section 4.0 of the Special Conditions. Days deemed non-workable by the Engineer in excess of such anticipated number shall be considered excusable delays.

(h) Unexcused delays shall be delays in the Contractor's work due to acts or neglect of the Contractor, its employees, Subcontractors or those under it by contract or otherwise. In the event of an unexcused delay, the Contractor expressly agrees that it shall not be entitled to either an extension of time or recovery of its costs.

(i) A request for an extension of time, or the granting of an extension of time, shall not constitute a basis for any claim against the City for additional compensation or damages unless caused by the City or another Contractor employed by the City.

#### **6.05. DAMAGES FOR DELAY**

In the event of compensable delay, the City shall only be liable for idle equipment, idle workers and the necessary costs of transporting equipment. The City shall be liable to the extent that the compensable delay is concurrent with excusable delays or Contractor caused delays to the controlling operation. The allowable costs shall be as for force account work under Section 2.04 with the following exceptions:

(a) The Delay Factor in the Labor Surcharge and Equipment Rental Rules applies to each equipment rental rate;

(b) The daily number of payable hours shall equal the normal working hours during the delay, not to exceed eight (8) hours per day; and

(c) No markups will be added.

#### **6.06. TERMINATION FOR CONVENIENCE**

If at any time before completion of the Work, the City determines that it is either impossible or against the interests of the City to complete the Work, or if the Work is stopped by an injunction of a court of competent jurisdiction or by order of any competent authority, the City may, upon ten (10) days written notice to the Contractor, discontinue the Work and terminate the Contract. Upon service of such notice of termination, the Contractor shall discontinue the Work in such manner, sequence, and at such times as described below. The Contractor shall have no claim for damages for such discontinuance or termination, nor any claim for anticipated profits on the Work thus dispensed with, nor any other actually performed up to the time of discontinuance, including any Extra Work ordered by the Engineer to be done, nor for any claim for liquidated damages.

Termination of the Contract for convenience and the total compensation payable to the Contractor in the event of termination shall be governed by the following:

(a) The Engineer will issue the Contractor a written notice signed by the Engineer, specifying that the Contract is to be terminated. Upon receipt of said written notice and, except as otherwise directed in writing by the Engineer, the Contractor shall:

(1) Stop all Work under the Contract except that specifically directed to be completed prior to Acceptance.

(2) Perform Work the Engineer deems necessary to secure the project for termination.

(3) Remove equipment from the site of the Work.

(4) Take such action as is necessary to protect materials from damage.

(5) Notify all Subcontractors and suppliers that the Contract is being terminated and that their contracts or orders are not to be further performed unless otherwise authorized in writing by the Engineer.

(6) Provide the Engineer with an inventory list of all material previously produced, purchased or ordered from suppliers for use in the Work and not yet used in the Work, including its storage location, and such other information as the Engineer may request.

(7) Dispose of material not yet used in the Work as directed by the Engineer.

It shall be the Contractor's responsibility to provide the City with good title to all materials purchased by the City hereunder, including material for which partial payment has been made and with bills of sale or other documents of title for such materials.

(8) Subject to the prior written approval of the Engineer, settle all outstanding liabilities and all claims arising out of subcontracts or orders for material terminated hereunder. To the extent directed by the Engineer, the Contractor shall assign to the City all the right, title and interest of the Contractor under subcontracts or orders for materials terminated hereunder.

(9) Furnish the Engineer with the documentation required to be furnished by the Contractor under the provisions of the Contract including, on projects as to which Federal funds are involved, all documentation required under the Federal requirements included in the Contract.

(10) Take such other actions as the Engineer may direct.

(b) Termination of the Contract shall not relieve the Contractor of responsibility for damage to materials except as follows:

(1) The Contractor's responsibility for damage to materials for which partial payment has been made and for materials furnished by the City for use in the Work and unused shall terminate when the Engineer certifies that such materials have been stored in the manner and at the locations he or she has directed.

(2) The Contractor's responsibility for damage to materials purchased by the City subsequent to the issuance of the notice that the Contract is to be terminated shall terminate when title and delivery of such materials has been taken by the City.

(3) When the Engineer determines that the Contractor has completed the Work under the Contract directed to be completed prior to termination and such other Work as may have been ordered to secure the project for termination, he or she will recommend that the Engineer formally accept the Contract, and immediately upon and after such Acceptance by the Engineer, the Contractor will not be required to perform any further Work thereon and shall be relieved of his or her Contractual responsibilities for injury to persons or damage to property which occurs after the formal Acceptance of the project by the Engineer.



(c) The total compensation to be paid to the Contractor shall be determined by the Engineer on the basis of the following:

(1) The reasonable cost to the Contractor, without profit, for all Work performed under the Contract, including mobilization, demobilization and Work done to secure the project for termination. Reasonable cost will include a reasonable allowance for project Overhead and general administrative Overhead not to exceed a total of seven (7%) percent of Direct Costs of such Work.

(2) A reasonable allowance for profit on the cost of the Work performed as determined under Section 2.04(a) above, provided the Contractor establishes to the satisfaction of the Engineer that it is reasonably probable that he or she would have made a profit had the Contract been completed and provided further, that the profit allowed shall in no event exceed four (4%) percent of said cost.

(3) The reasonable cost to the Contractor of handling material returned to the vendor, delivered to the City or otherwise disposed of as directed by the Engineer.

(4) A reasonable allowance for the Contractor's administrative costs in determining the amount payable due to termination of the Contract.

All records of the Contractor and the Subcontractors, necessary to determine compensation in accordance with this section shall be open to inspection or audit by representatives of the City at all times after issuance of the notice that the Contract is to be terminated and for a period of three (3) years, and such records shall be retained for that period.

After Termination of the Work by the Engineer, the Engineer may make payments on the basis of interim estimates pending issuance of the Final Statement, when in his or her opinion the amount thus paid, together with all amounts previously paid or allowed, will not result in total compensation in excess of that to which the Contractor will be entitled.

All payments, including payment upon the Final Statement, shall be subject to deduction for prior payments and amounts, if any, to be kept or retained under the provisions of the Contract.

(d) The provisions of this section shall be included in all subcontracts.

#### **6.07. TERMINATION FOR DEFAULT**

(a) In the event of any default by the Contractor as described below, the City may, after giving ten (10) days' written notice to the Contractor, terminate the Contractor's right to proceed with the Work or any part of the Work in the City's sole discretion. Events of default include:

(1) Failure or refusal to prosecute the Work, or any separable part thereof, with such diligence as will ensure the completion within the time specified in the Contract, or any extension thereof, or failure to complete said work within such time.

(2) Filing of bankruptcy by the Contractor, or the making of a general assignment for the benefit of its creditors, or appointment of a receiver on account of Contractor's insolvency without discharge of the receiver within ten (10) days after its appointment.

(3) Failure to make prompt payments to Subcontractors or suppliers.

(4) Persistent disregard of laws, ordinances, or the instructions of the Engineer, or other substantial violation of any provision of the Contract.

(b) In the event the right of the Contractor to proceed with the Work, or any portion thereof, has been terminated because of the default of the Contractor and the Contractor has been given ten (10) days' notice to cure such fault and has not done so, the City may take over the Work and prosecute the same to completion by contract or any other method the City deems expedient, and may take possession of and utilize in completing the Work such materials, appliances, equipment and plant as may be on the site of the Work and necessary therefore. In such event, the Contractor and its sureties shall be liable for all damages including costs of managerial and administrative services, engineering, legal and other consultant fees, and liquidated damages sustained or incurred by the City.

(c) Upon termination, the Contractor shall not be entitled to receive any further payment until the Work is finished. If upon completion of the Work the total cost to the City, including engineering, legal and other consultant fees, costs of managerial and administrative services, construction costs, and liquidated damages shall be less than the amount which would have been paid if the Work had been completed by the Contractor in accordance with the terms of the Contract, then the difference shall be paid to the Contractor in the same manner as the final payment under the Contract. If the total cost incurred by the City on account of termination of the Contract and subsequent completion of the Work by the City by whatever method the City may deem expedient shall exceed said amount which the Contractor would otherwise have been paid, the Contractor and its sureties shall be liable to the City for the full amount of such excess expense.

(d) The rights and remedies of the City provided in this section are in addition to any of the rights and remedies provided by the law or under this Contract.

#### **6.08. FAILURE TO TIMELY COMPLETE THE WORK – LIQUIDATED DAMAGES**

(a) Liquidated Damages

(1) It is agreed by the parties to this Contract that time is of the essence. In the event all the Work is not completed before or upon the expiration of the time limit as set in the Bid, Contract and/or Progress Schedule, or within any time extensions that may have been granted, damage will be sustained by the City; and that it may be impracticable to determine the actual amount of damage by reason of such delay. Accordingly, it is agreed that the Contractor shall pay to the City as damages the amount set forth for each and every day's delay in finishing the Work in excess of the number of days specified. Liquidated damages shall be paid at a rate of one thousand dollars (\$1,000.00) per day unless otherwise stated in the Contract Documents. The parties expressly agree that the liquidated damage clause found in the Contract Documents is reasonable under the circumstances existing at the time the Contract was made. The City shall have the right to deduct the amount of liquidated damages from any money due or to become due the Contractor.

(2) In addition, the City shall have the right to charge to the Contractor and to deduct from the final or progress payments for the Work the actual cost to the City of legal, engineering, inspection, superintendence, and other expenses, which are directly chargeable to the Contract and which accrue during the period of such delay, except that the cost of final inspection and preparation of the final estimate shall not be included in the charges.

(b) Exclusions

Notwithstanding the provisions of Section 2.06(a), the Contractor shall not be liable for liquidated damages or delays caused by the removal or relocation of utilities when such removal or relocation is the responsibility of the City or the owner of the utility under Government Code section 4215.

**6.09. CLEAN-UP**

During the progress of the Work, the Contractor shall maintain the Site and related structures and equipment in a clean, orderly condition and free from unsightly accumulation of rubbish. All waste materials shall be removed daily from the Site and disposed of by the Contractor by any proper means at its own expense unless designated otherwise on the plans. No waste materials shall be placed in the public street right-of-way. Unless otherwise specified, all existing piping, materials and/or equipment removed pursuant to this Contract shall become the Contractor's property.

Upon completion of the Work and before the final estimate is submitted, the Contractor shall, at its own cost and expense, remove from the vicinity of the Work all plants, buildings, rubbish, unused work materials, concrete forms, and temporary bridging and other like materials, belonging to the Contractor or used under the Contractor's direction during the construction, and in the event of the Contractor's failure to do so, the same may be removed by the City after ten (10) calendar days' notice to the Contractor. Such removal shall be at the expense of the Contractor.

The Contractor shall use care in the removal of materials and equipment so as not to cause damage to existing facilities and structures. Contractor shall assume liability for all such damage. Where the construction has crossed yards or driveways, restoration shall be by the Contractor to the complete satisfaction of the Engineer, at the Contractor's expense.

The Contractor shall make its own arrangements for the disposal of waste materials. If the Contractor elects to dispose of such materials on private property, Contractor shall obtain written permission from all property owners involved.

## **SECTION 7**

### **MEASUREMENT AND PAYMENT**

#### **7.01. MEASUREMENT OF QUANTITIES**

(a) Where the Contract provides for payment on a lump sum price basis, no measurement of quantity will be made. Where the Contract provides for payment on a unit price basis, the quantities of work performed will be computed by the Engineer on the basis of measurements taken by the Engineer, and these measurements shall be final and conclusive.

(b) All quantities of work computed under the Contract shall be based upon measurements by the Engineer according to United States Measurements and Weights.

(c) Methods of measurement are specified herein and in the Technical Specifications.

(d) Mobilization shall be measured and payment issued according to Section 11 of the State Standard Specifications.

#### **7.02. SCOPE OF PAYMENT**

(a) The Contractor shall accept the compensation provided in the Contract as full payment for furnishing all labor, materials, tools, equipment, and incidentals necessary to the completed work and for performing all work contemplated and embraced under the Contract; also for loss or damage arising from the nature of the work, or from the action of the elements, or from any unforeseen difficulties which may be encountered during the prosecution of the Work until the Acceptance by the City and for all risks of every description connected with the prosecution of the Work, also for all expenses incurred in consequence of the suspension or discontinuance of the work as provided in the Contract; and for completing the Work according to the Specifications and Plans. Neither the payment of any estimate nor of any retained percentage shall relieve the Contractor of any obligation to make good any defective work or material.

(b) No compensation will be made in any case for loss of anticipated profits. Increased or decreased work involving supplemental agreements will be paid for as provided in such agreements.

(c) The Work includes the preparatory work and operations needed for mobilization and demobilization of the Project. The Work, however, does not include establishing the Engineer's field facility(s) of utility work and connections needed for these facilities.

#### **7.03. PROGRESS ESTIMATE**

For each calendar month of Contract work, the Engineer will prepare a progress estimate of all work performed under the Contract. Within the first ten (10) days of each succeeding calendar month, the Engineer will prepare in writing an estimate which in the Engineer's opinion is a fair approximation of the value of all work done under the Contract, including any amounts due the Contractor for Extra Work and Change Orders. In arriving at the value of the Work done, the Engineer will give consideration to the value of labor and materials which have been incorporated into the permanent work by the Contractor during the preceding month. Consideration will not be given to preparatory work done or for materials or equipment on hand.

In order to assist the Engineer, the Contractor shall furnish the Engineer with copies of invoices for all such items delivered to the job site.

#### **7.04. PROGRESS PAYMENTS**

(a) The City will pay the Contractor ninety-five percent (95%) of the amount of each progress estimate within thirty (30) days after receipt of an undisputed and properly submitted progress estimate from the Contractor, unless the City has made a finding prebid pursuant to Public Contract Code section 7201(b)(4) justifying a larger retention. If the City fails to pay an undisputed progress estimate within the allotted thirty (30) days, the City shall pay interest to the Contractor equivalent to the legal rate set forth in subdivision (A) of section 685.010 of the Code of Civil Procedure. Five percent (5%) of the amount of each estimate shall be retained by the City until final completion and Acceptance of all work under the Contract.

(b) Upon receipt of a payment request, the City shall act in accordance with both of the following:

(1) Each payment request shall be reviewed by the City as soon as practicable after receipt for the purpose of determining that the progress estimate is a proper payment request.

(2) Any payment request determined not to be a proper payment request suitable for payment shall be returned to the Contractor as soon as practicable, but not later than seven (7) days, after receipt. A request returned pursuant to this section shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

(c) The number of days available to the City to make a payment without incurring interest pursuant to this section shall be reduced by the number of days by which the City exceeds the seven-day return requirement set forth in paragraph (2) of subdivision (b).

(d) The Contractor may, in accordance with the provisions of Public Contracts Code section 22300, substitute securities for any monies which the City may withhold to insure performance under the Contract.

(e) When, in the judgment of the Engineer, the Work is not proceeding in accordance with the provisions of the Contract, or when in the Engineer's judgment the total amount of the Work done since the last estimate amounts to less than one thousand dollars (\$1,000.00), no pay estimate will be prepared and no progress payment will be made.

(f) No progress estimate or payment shall be considered to be an approval or Acceptance of any work, materials or equipment. Estimated amounts and values of work done and materials and equipment furnished will be conformed with actual amounts and values as they become available in subsequent progress estimates, progress payments and the final estimate and payment. All estimates and payments will be subject to correction in subsequent progress estimates and payments and the final estimate and payment.

(g) It is mutually agreed between the parties to the Contract that no payments made under the Contract, including progress payments and the final payment shall be evidence of the performance of the Contract, either wholly or in part, and no payment shall construed to be an Acceptance of any defective or incomplete work or improper materials.

#### **7.05. PROMPT PROGRESS PAYMENT TO SUBCONTRACTORS**

A prime Contractor or Subcontractor shall pay any Subcontractor not later than seven (7) days of receipt of each progress payment in accordance with the provisions in Section 7108.5 of the California Business and Professions Code concerning prompt payment to Subcontractors. The seven (7) days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30 days may take place only for good cause and with the City's prior written approval. Any violation of Section 7108.5 shall subject the violating Contractor or Subcontractor to the penalties, sanctions and other remedies of that section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or Subcontractor in the event of a dispute involving late payment or nonpayment by the prime Contractor, deficient subcontract performance, or noncompliance by a Subcontractor. This provision applies to both DBE and non-DBE Subcontractors.

#### **7.06. LIENS AND STOP NOTICES**

The Contractor agrees to keep the Work, the site of the Work and all monies held by the City free and clear of all liens and stop notices related to labor and materials furnished in connection with the Work, if permitted by law. Furthermore, the Contractor waives any right it may have to file any type of lien or stop notice in connection with the Work. Notwithstanding anything to the contrary contained in the Contract Documents, if any such lien or stop notice is filed or there is evidence to believe that lien or stop notice may be filed at any time during the progress of the Work or within the duration of this Contract, the City may refuse to make any payment otherwise due the Contractor or may withhold any payment due the Contractor a sum sufficient in the opinion of the City to pay all obligations and expenses necessary to satisfy such lien or stop notice. The City may withhold such payment unless or until the Contractor, within ten days after demand therefor by the City, shall furnish satisfactory evidence that the indebtedness and any lien or stop notice in respect thereof has been satisfied, discharged and released of record, or that the Contractor has legally caused such lien or stop notice to be released of record pending the resolution of any dispute between the Contractor and any person or persons filing such lien or stop notice. If the Contractor shall fail to furnish such satisfactory evidence within ten days of the demand therefor, the City may discharge such indebtedness and deduct the amount thereof, together with any and all losses, costs and damages suffered or incurred by the City from any sum payable to the Contractor under the Contract Documents, including but not limited to final payment and retained percentage. This section shall be specifically included in all Subcontracts and purchase orders entered into by the Contractor.

#### **7.07. FINAL ACCEPTANCE AND DATE OF COMPLETION**

Whenever the Contractor shall deem all Work under this Contract to have been completed in accordance therewith, the Contractor shall so notify the Engineer in writing, and the Engineer shall promptly ascertain whether the Work has been satisfactorily completed and, if not, shall advise the Contractor in detail and in writing of any additional work required. When all the provisions of the Contract have been fully complied with, to the satisfaction of the Engineer, the Engineer shall proceed with all reasonable diligence to determine accurately the total value of all Work performed by the Contractor at the prices set forth in the Contract or fixed by Change Orders, and the total value of all extra work, all in accordance with the Contract. The Engineer will then certify to said final estimate and to the completion of the Work, and will file copies thereof with the City and the Contractor, and shall cause of Notice of Completion to be filed with the Yolo County Clerk-Recorder. The date of completion shall be the date of filing of the Notice of Completion. All guarantees, warranties, and securities securing said guarantees and warranties, shall commence on said date.

## **7.08. RIGHT TO WITHHOLD PAYMENTS**

(a) In addition to all other rights and remedies of the City hereunder and by virtue of the law, the City may withhold or nullify the whole or any part of any partial or final payment to such extent as may reasonably be necessary to protect the City from loss on account of:

- (1) Defective work not remedied, irrespective of when any such work be found to be defective;
- (2) Claims or liens filed or reasonable evidence indicating probable filing of claims or liens including, but not limited to claims under Sections 1775, 1776, or 1777.7 of the Labor Code;
- (3) Failure of the Contractor to make payments properly for labor, materials, equipment, or other facilities, or to Subcontractors and/or suppliers;
- (4) A reasonable doubt that the Work can be completed for the balance then unearned;
- (5) A reasonable doubt that the Contractor will complete the Work within the agreed time limits;
- (6) Costs to the City resulting from failure of the Contractor to complete the Work within the proper time; or
- (7) Damage to work or property.

(b) Whenever the City shall, in accordance herewith, withhold any monies otherwise due the Contractor, written notice of the amount withheld and the reasons therefor will be given the Contractor. After the Contractor has corrected the enumerated deficiencies, the City will promptly pay to the Contractor the amount so withheld. When monies are withheld to protect the City against claims or liens of mechanics, material men, Subcontractors, etc., the City may at its discretion permit the Contractor to deliver a surety bond in terms and amount satisfactory to the City, indemnifying the City against any loss or expense, and upon Acceptance thereof by the City, the City shall release to the Contractor monies so withheld.

## **7.09. FINAL PAYMENT**

Within ten (10) days after the date of completion, the City will file in the Office of the County Recorder, a Notice of Completion of the Work herein agreed to be done by the Contractor. Within sixty (60) days of completion defined in Public Contract Code section 7107, the difference between said final estimate and all payments theretofore made to the Contractor shall be due and payable to the Contractor, subject to any requirements concerning the furnishings of a maintenance bond, and excepting only such sum or sums as may be withheld or deducted in accordance with the provisions of this Contract. All prior certifications upon which partial Payments may have been made, being merely estimates, shall be subject to correction in the final certificate.

## **7.10. FINAL RELEASE**

Final payment to the Contractor in accordance with the final estimate is contingent upon the Contractor furnishing the City with a signed written release of all claims against the City arising by virtue of the Contract. Disputed Contract claims in stated amounts may be specifically

excluded by the Contractor from the operation of the release. The release shall be in substantially the form specified in California Civil Code section 8138.



**PART 3 SUPPLEMENTAL CONDITIONS  
(SPECIAL PROVISIONS)**

## SUPPLEMENTAL CONDITIONS (SPECIAL PROVISIONS)

Except as modified by these Supplemental Conditions, the work shall be performed in accordance with Part 3 General Conditions. The numbering of these Supplemental Conditions coincides to the numbering in the General Conditions. The existence of a section in these Supplemental Conditions means that a corresponding section in the General Conditions is modified in some respect. Under these contract documents, Supplemental Conditions and Special Provisions have the same meaning.

The following Supplemental Conditions , if any, shall be used in conjunction with the City of West Sacramento Standard Specifications current edition including Standard Details and all revisions, and the current State of California Department of Transportation (Caltrans) Standard Specifications, in that order.

The following provisions apply to use of or reference to the Caltrans Standard Specifications:

1. None of the “General Provisions” of the Caltrans Standard Specifications, i.e., Sections 1 through 9, applies to these Contract Documents with the exception of any specific provisions, if any, which are expressly stated to apply to these Contract Documents. The City’s “General Conditions” shall govern.
2. If there is a conflict or inconsistency between any provision in the Caltrans Standard Specifications and a provision of these Contract Documents, the provision in the Contract Documents will govern.
3. Any reference to the “Engineer” in the Caltrans Standard Specifications is deemed to mean “City”, “Owner” or “Architect/Engineer” or Owner’s designated representative.
4. Any reference to the “State” in the Caltrans Standard Specifications is deemed to mean “City” or “Owner.”

City Standard Specifications are available online at:

<http://cityofwestsacramento.org/city/depts/comdev/engineering/specs/default.asp>

Bound hardcopies may be purchased from City Hall at:

1110 West Capitol Avenue, 2<sup>nd</sup> Floor  
West Sacramento, California 95691  
or by calling (916) 617-4645 for purchase by mail.

State Standard Specifications are available online at:

<http://www.dot.ca.gov/hq/esc/oe/standards.php>

## **PART 4 TECHNICAL SPECIFICATIONS**

The work shall be performed in accordance with the latest edition of the City of West Sacramento Standard Specifications – Division IV: Standard Construction Specifications and Caltrans Standard Specifications 2015, except as modified by these Technical Specifications. Section numbering of these Technical Specifications does not conform to the City’s Standard Specifications.

Contractor shall provide submittals (shop drawings) for all materials to be installed or used on the project.

[Technical Specifications]

**PROJECT BID**

**Bay Area Concretes**  
 5637 La Ribera Street,  
 Suite B  
 Livermore, CA 94550  
 (925) 245-8900

**Estimator**  
 Dan Chance  
 (925) 787-1404  
 dc@bayareaconcretes.com



**City of West Sacramento -**  
**1110 W Capitol Ave**  
**West Sacramento, CA 95691**  
**Phone: Email:**

<b>Estimate #</b>	23-E10834
<b>Date</b>	9/25/2023

**Project Information**

**Job Name: RECREATION CENTER POOL DECK REPAIR**  
**1110 W Capitol Ave,**  
**West Sacramento, CA 95691**  
**Estimated Start Date: -**  
**Project Architect:**

Description	Qty	Price	Amount
<b>Pool Deck Resurfacing</b>			
Prep Existing Concrete to receive Ardex CD Coating. Patch Large cracks and spawls with Adex CP using sand in the largest of voids.	16,000.00	\$12.48	\$199,680.00
Install Ardex CD over 16,000 SF with Broom finish over Ardex EP2000 Primer. Finish with 2 coats of Ardex Concrete Guard.			

**Terms and Conditions**

**Concrete Scope Includes:**

- (1) - Expertise, management, skill & supervision required to install architectural concrete form, place & finish applications as stated.
- (2) - Material by BAC, pour, place & finish and final architectural finish by BAC.
- (3) - All Form types\*, reinforcing\*, expansion\* and dowels\* are by BAC. (\*if required)
- (4) - All pricing assumes regular wage rate Monday-Friday work hours of 7:00AM - 3:30 PM, eight (8) hour shifts, unless noted otherwise above. Please ask to see Disclaimers that are part of this Bid.
- (5) - Prices includes single mobilization to install work scope in a single on-going non weekend and non holiday continuous phase.
- (6) - Includes concrete pumps as required.
- (7) - Includes all union labor.

Note: While every effort is made to color match "patch material" no guarantee is expressed or implied.

Description	Qty	Price	Amount
<p>Concrete Scope Excludes:</p> <p>Permits, payment/performance bonds, all demo, caulking, hoisting, cartage, scanning, x-ray, expansion mastic, testing, inspection costs, flagmen, pedestrian traffic control, pump washout, mastic sealant, water, power, barricades or barriers, waterproofing, full dust control, shop drawings, drain rock, base rock, grading, sub-base, waterproofing, sawcutting (Unless Noted Otherwise), drug testing, overtime Unless Noted Otherwise), welding, drain pipe, surveying, pavers (Unless Noted Otherwise), shoring, construction fencing or temporary restrooms, dumpsters, SWPPP preparation or erosion control, filter fabric, excavation, off haul, electrical scope, plumbing, epoxy (Unless Noted Otherwise), asphalt, AC patch back, landscaping scope, embeds, irrigation, hazardous material handling, metal hardware including mounting hardware for hand rails, stone work, and stone products. and other work not mentioned in the above "Includes".</p> <p>Note: Concrete will likely crack regardless of the safeguards and forethought. The goal is always to direct or try and control the cracks. No warranty or guarantee is implied or expressed with respect to concrete cracking.</p> <p>Note: In the event legal proceedings are commenced to enforce payment to BAC under this contract, Contractor agrees to pay all costs and reasonable Attorney's Fees for whatever remedy BAC elects to exercise. Any agreements, statements or representations by any agent of either party not included in this contract shall have no further force or effect.</p> <p>Bay Area Concretes, Inc signatory to the Cement Masons, Laborers and Carpenters Unions. BAY AREA CONCRETES is a MINORITY / SMALL Business Enterprise (MBE/SBE), CERTIFIED with the CITY and COUNTY of San Francisco Human Rights Commission - CERTIFICATION # HRC071015130.</p>			

Quotes generated using facts and information provided by the client including square footage, condition of the existing concrete, and logistical information are subject to verification. Should any of the information provided by the client be in error, a revised quote will be provided prior to commencement of work. Quote assumes work to be performed during normal business hours (M-F 6am - 5pm) unless stated otherwise.

\*\*Approved proposal acknowledges receipt of and approval of current BAC insurance. \*\*The Bid Documents consist of this Bid and Attachments (if applicable). The use of a "paid when paid" or "paid if paid" contract clause is not acceptable nor approved by Bay Area Concretes Inc. Approval and directive to start scope concludes that there are no misunderstandings, as to the content, includes, excludes, terms or conditions of this bid. The approval shall also signal authorization for the completion of work based upon the above criteria. If there are any misunderstandings, please call immediately.

**Payment Terms:**

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

Name (Printed): \_\_\_\_\_

<b>Sub Total</b>	\$199,680.00
<b>Total</b>	\$199,680.00

**BID PROPOSAL**

Proposal to: Ariana Adame, Director of Public Works  
City of West Sacramento  
1110 West Capitol Avenue, 1st Floor  
West Sacramento, CA 95691

The undersigned Bidder hereby proposes to furnish and deliver all necessary labor, tools, equipment, and other means of construction to perform the work required for the completion of the project entitled "RECREATION CENTER POOL DECK REPAIR PHASE II" in accordance with the intent of all plans, specifications, and Addenda issued by the City of West Sacramento prior to the opening of the Bid proposals.

Bidder has read the accompanying instructions to Bidders, has carefully examined the location(s) of the proposed work, and has examined all Contract Documents, drawings and Addenda issued by the City and will contract with the City to construct the project, complete and in satisfactory condition.

The Bidder further agrees to complete all work required under the Contract within [30] [(Thirty)] working days from the date designated in the Notice to Proceed, and to accept in full payment therefore the price indicated on the Bid Schedule.

The Bidder acknowledges that it understands that a waiting period from time of Bid opening until award may be sixty (60) days during which time Bidder may not withdraw its bid. The Bidder further acknowledges that it has adjusted its Bid price to include all possible items which may influence the proposal during the waiting period. Requests for Bid price change due to the delay shall not be agreed to by the City.

Company Name: Bay Area Concretes, Inc  
Bidder's Name (Printed): Dan Chance  
Bidder's Title: Project Manager / Estimator  
Bidder's Signature:   
Date: 10-12-23  
Address: 5637 La Ribera St Ste B  
Livermore, CA 94550  
Phone Number: 925.245.8900  
Contractor's License Number: 242104  
Classification: C-8  
Expiration Date: 4-30-25  
Public Works Contractor  
Registration Number: \_\_\_\_\_

1751480.1 7203-001

Recreation Center Pool Deck Repair – Phase II

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**BID SCHEDULE**

The following quantities are approximate only and are given for the purpose of comparing proposals. The City does not expressly or by implication agree that the actual amount of work will correspond with quantities given herein, but reserves the right to increase or decrease the amount of any class or portion of the work as may be deemed necessary or advisable by the Engineer. Payment will be based upon the actual quantities installed or constructed, unless otherwise specified.

ITEM NO.	DESCRIPTION	UNIT	ESTIMATED QUANTITY	UNIT PRICE (\$)	TOTAL (\$)
1.	Overlay Installation	SF	16000	12.48	199,680.00
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					
13.					
14.					
15.					
16.					
17.					
18.					
19.					
20.					
21.					
22.					
23.					
24.					
25.					
<b>TOTAL BID PRICE \$</b>					<b>199,680.00</b>

In the case of discrepancy between unit prices and totals, unit prices will prevail and the City will recalculate the Bid total based on the unit prices and estimated quantities. In case of discrepancy between words and figures, words will prevail.

**Note:**      LS = Lump Sum                      FL = Linear Feet                      EA = Each  
                   SY = Square Yard                      SF = Square Feet

**BID SECURITY**

THAT WE, THE UNDERSIGNED, Bay Area Concretes, Inc., as principal; and Harco National Insurance Company, as Surety, are hereby held and bound unto the CITY OF WEST SACRAMENTO, hereinafter "City", in the sum of Ten Percent of the Total Amount Bid dollars (\$10%), which sum is equal to at least ten percent (10%) of the total amount of the Bid for the work, payment of which sum, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

The condition of the above obligation is such that whereas the Principal has submitted to the City a certain Bid, attached hereto and made a part hereof, to enter into a Contract, in writing, for the construction of: **RECREATION CENTER POOL DECK REPAIR – PHASE II** NOW, THEREFORE,

- a) If the Bid is rejected, or in the alternative,
- b) If the Bid is accepted and the Principal shall sign and deliver a Contract, in the form of a Contract attached hereto (all completed in accordance with said Bid and Contract), and shall in all other respects perform the agreement created by the Acceptance of said Bid;

Then, this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all default of the Principal hereunder shall be the amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no way impaired or affected by any extension of the time within which the City may accept such bid, and said Surety does hereby waive notice of any such extension.

IN WITNESS THEREOF, the above-bounded parties have executed this instrument under their several seals this 26th day of September, 2023, the name and corporate seal of each corporate party being hereto affixed and those present duly signed by its undersigned representative, pursuant to authority of its governing body.

IN PRESENCE OF:

_____	_____ Affix
(Address)	(Individual Principal)
_____	_____
(Address)	(Business Address)
_____	_____
(Address)	(Individual Principal)
_____	_____
(Address)	(Business Address)
_____	_____
<u>Melissa Brown</u>	<u>Bay Area Concretes, Inc.</u>
_____	_____
(Corporate Seal)	(Corporate Principal)
_____	557 La Ribera Street, Suite B, Livermore, CA 94550
_____	(Business Address)
_____	_____ Affix
ATTEST:	(Corporate Seal)
_____	Harco National Insurance Company
_____	_____
_____	(Corporate Surety) <u>John J. Daley, Attorney-in-Fact</u>
_____	(Business Surety)
_____	_____ Affix
<u>Kenneth J. Goodwin, Witness</u>	(Corporate Seal)

The rate of premium on this bond is First @100,000 @ \$3.68 per thousand . Total amount of premium charged \$ n/a Next \$400,000 @ \$9.12 per thousand

1751480.1 7203-001



# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

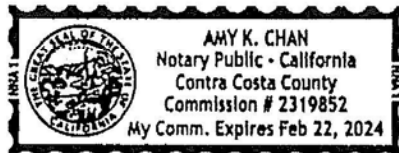
State of California

County of Contra Costa

On September 26, 2023 before me, Amy K. Chan, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared John J. Daley  
Name(s) or Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature   
Signature of Notary Public

Place Notary Seal Above

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document*

### Description of Attached Document

Title or Type of Document City of West Sacramento

Document Date: September 26, 2023 Number of Pages: One(01)

Signer(s) Other Than Named Above! N/A

### Capacity(ies) Claimed by Signer(s)

Signer's Name: John J. Daley

- Individual
- Corporate Officer --Title(s): \_\_\_\_\_
- Partner  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: Harco National Insurance Company

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer --Title(s): \_\_\_\_\_
- Partner  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

**POWER OF ATTORNEY**  
**HARCO NATIONAL INSURANCE COMPANY**  
**INTERNATIONAL FIDELITY INSURANCE COMPANY**

Bond # N/A

Member companies of IAT Insurance Group, Headquartered: 4200 Six Forks Rd, Suite 1400, Raleigh, NC 27609

KNOW ALL MEN BY THESE PRESENTS: That HARCO NATIONAL INSURANCE COMPANY, a corporation organized and existing under the laws of the State of Illinois, and INTERNATIONAL FIDELITY INSURANCE COMPANY, a corporation organized and existing under the laws of the State of New Jersey, and having their principal offices located respectively in the cities of Rolling Meadows, Illinois and Newark, New Jersey, do hereby constitute and appoint

**AMY CHAN, JOHN J. DALEY, KENNETH J. GOODWIN**

Walnut Creek, CA

their true and lawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise, and the execution of such instrument(s) in pursuance of these presents, shall be as binding upon the said HARCO NATIONAL INSURANCE COMPANY and INTERNATIONAL FIDELITY INSURANCE COMPANY, as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by their regularly elected officers at their principal offices.

This Power of Attorney is executed, and may be revoked, pursuant to and by authority of the By-Laws of HARCO NATIONAL INSURANCE COMPANY and INTERNATIONAL FIDELITY INSURANCE COMPANY and is granted under and by authority of the following resolution adopted by the Board of Directors of INTERNATIONAL FIDELITY INSURANCE COMPANY at a meeting duly held on the 13th day of December, 2018 and by the Board of Directors of HARCO NATIONAL INSURANCE COMPANY at a meeting held on the 13th day of December, 2018.

"RESOLVED, that (1) the Chief Executive Officer, President, Executive Vice President, Senior Vice President, Vice President, or Secretary of the Corporation shall have the power to appoint, and to revoke the appointments of, Attorneys-in-Fact or agents with power and authority as defined or limited in their respective powers of attorney, and to execute on behalf of the Corporation and affix the Corporation's seal thereto, bonds, undertakings, recognizances, contracts of indemnity and other written obligations in the nature thereof or related thereto; and (2) any such Officers of the Corporation may appoint and revoke the appointments of joint-control custodians, agents for acceptance of process, and Attorneys-in-fact with authority to execute waivers and consents on behalf of the Corporation; and (3) the signature of any such Officer of the Corporation and the Corporation's seal may be affixed by facsimile to any power of attorney or certification given for the execution of any bond, undertaking, recognizance, contract of indemnity or other written obligation in the nature thereof or related thereto, such signature and seals when so used whether heretofore or hereafter, being hereby adopted by the Corporation as the original signature of such officer and the original seal of the Corporation, to be valid and binding upon the Corporation with the same force and effect as though manually affixed."

IN WITNESS WHEREOF, HARCO NATIONAL INSURANCE COMPANY and INTERNATIONAL FIDELITY INSURANCE COMPANY have each executed and attested these presents on this 31st day of December, 2022



STATE OF NEW JERSEY  
County of Essex

Kenneth Chapman

Executive Vice President, Harco National Insurance Company  
and International Fidelity Insurance Company

STATE OF ILLINOIS  
County of Cook



On this 31st day of December, 2022, before me came the individual who executed the preceding instrument, to me personally known, and, being by me duly sworn, said he is the therein described and authorized officer of HARCO NATIONAL INSURANCE COMPANY and INTERNATIONAL FIDELITY INSURANCE COMPANY; that the seals affixed to said instrument are the Corporate Seals of said Companies; that the said Corporate Seals and his signature were duly affixed by order of the Boards of Directors of said Companies.



IN TESTIMONY WHEREOF, I have hereunto set my hand affixed my Official Seal, at the City of Newark, New Jersey the day and year first above written.

Cathy Cruz a Notary Public of New Jersey  
My Commission Expires April 16, 2024

**CERTIFICATION**

I, the undersigned officer of HARCO NATIONAL INSURANCE COMPANY and INTERNATIONAL FIDELITY INSURANCE COMPANY do hereby certify that I have compared the foregoing copy of the Power of Attorney and affidavit, and the copy of the Sections of the By-Laws of said Companies as set forth in said Power of Attorney, with the originals on file in the home office of said companies, and that the same are correct transcripts thereof, and of the whole of the said originals, and that the said Power of Attorney has not been revoked and is now in full force and effect.

IN TESTIMONY WHEREOF, I have hereunto set my hand on this day, September 26, 2023.

A01875

270

  
Irene Martins, Assistant Secretary



**EXPERIENCE & QUALIFICATIONS**

The Bidder has been engaged in the contracting business under the present business name for 50 years. Experience in work of a nature similar to that covered in the proposal extends over a period of 50 years.

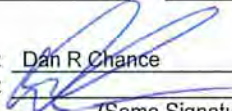
The Bidder, as a Contractor, has never failed to satisfactorily complete a Contract awarded to it, except as follows:

The following contracts have been satisfactorily completed in the last three (3) years for the persons, firm or authority indicated, and to whom reference is made:

Year	Type of Work	Contract Amount	Owner/Agency for Whom Work was Performed
<u>23</u>	<u>Pool Overlay</u>	<u>30K</u>	<u>Fairfield Suites</u>
<u>23</u>	<u>Pool Overlay</u>	<u>28K</u>	<u>Best Western</u>
<u>23</u>	<u>Overlay</u>	<u>200k</u>	<u>Intel</u>

The following is a list of plant and equipment owned by the Bidder, which is available for use on the proposed work as required.

Quantity	Name, Type and Capacity	Condition	Location

Bidder's Name (Printed): Dan R Chance  
 Bidder's Signature:   
 (Same Signature as on Proposal)  
 Bidder's Title: Project Manager/ Estimator  
 Date: 10/12/23

**DESIGNATION OF SUBCONTRACTORS**

In compliance with Sections 4100-4114 of the California Public Contract Code each Bidder shall submit the name, Contractor license number, public works Contractor registration number, and business location of each Subcontractor who will perform work or labor or render service to the Contractor for the construction of the work performed under these specifications in excess of one-half of one percent of the prime Contractor's total bid, or, in the case of bids or offers for the construction of streets or highways, including bridges, in excess of one-half of 1 percent of the prime Contractor 's total Bid or ten thousand dollars (\$10,000.00), whichever is greater. If the Contractor fails to specify a Subcontractor for any portion of the work to be performed under the Contract, it shall be deemed to have agreed to perform such portion itself, and it shall not be permitted to subcontract that portion of the work except under the conditions hereinafter set forth. (Attach additional forms as necessary)

Name Subcontractor	Street Address of Shop, Mill or Office	Types of Work/Category of Contract	\$ Value of Work to be Performed	Subcontractor's License Number	License Type/Exp. Date	Public Works Contractor Registration Number

If no Subcontractors will be used, write "None" here: NONE

I declare under penalty of perjury that the foregoing is true and correct and this Declaration is executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in West Sacramento, CA 95691.

By:    Dan Chance     
Contractor Company Name: Bay Area Concretes, Inc

**SUBCONTRACTOR FORM MUST BE RETURNED WITH BID**



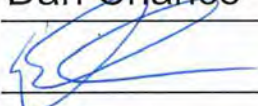
**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This certification is required by the regulations implementing Executive Order 12549 and Code of Federal Regulation 2CFR 200.213, Debarment and Suspension. Copies of the regulations are available from the City's Department of Finance and Technology.

The prospective primary participant certifies to the best of its knowledge and belief that it and its principals:

- a) Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or Agency;
- b) Have not within a three (3) year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph b) of this certification; and
- d) Have not within a three (3) year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.

Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this proposal.

Name of Company:	<u>Bay Area Concretes, Inc</u>
Name of Authorized Representative:	<u>Dan Chance</u>
Signature:	
Title of Authorized Representative:	<u>PM/Estimator</u>
Company Tax ID:	<u>94-1618981</u>
DUNS # or CAGE #:	<u>ATTACHED</u>
Date Signed:	<u>10/12/23</u>

## BAY AREA CONCRETES, INC.

Unique Entity ID <b>C2ABHDCM5F77</b>	Registration Status <input checked="" type="radio"/> Active Registration	Expiration Date Feb 29, 2024
CAGE/NCAGE <b>5ZA72</b>	Purpose of Registration <b>All Awards</b>	
Physical Address <b>5637 La Ribera ST STE B Livermore, California 94550-9276, United States</b>	Mailing Address <b>5637 La Ribera ST, STE B Livermore, California 94550-9276, United States</b>	

### ■ ENTITY TYPES

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#### Business Types

Entity Structure  
**Corporate Entity (Not Tax Exempt)**

Entity Type  
**Business or Organization**

Organization Factors  
**Subchapter S Corporation**

Profit Structure  
**For Profit Organization**

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#### Socio-Economic Types

**Minority Owned Business, Self Certified Small Disadvantaged Business, Hispanic American Owned**

Check the registrant's Reps & Certs, if present, under FAR 52.212-3 or FAR 52.219-1 to determine if the entity is an SBA-certified HUBZone small business concern. Additional small business information may be found in the SBA's Dynamic Small Business Search if the entity completed the SBA supplemental pages during registration.

**PART 5 APPENDIX**



**PART 6 CONTRACT DRAWINGS  
(BOUND SEPARATELY)**

# Notice of Exemption

## Appendix E

**To:** Office of Planning and Research  
P.O. Box 3044, Room 113  
Sacramento, CA 95812-3044

County Clerk

County of: Yolo

625 Court Street

Woodland, CA 95695

**From:** (Public Agency): City of West Sacramento

1110 West Capital Avenue

West Sacramento, CA 95691

(Address)

Project Title: Recreation Center Pool Deck Repair Phase- II

Project Applicant: City of West Sacramento

Project Location - Specific:

2801 Jefferson Blvd, West Sacramento, Ca 95691

Project Location - City: West Sacramento

Project Location - County: Yolo

Description of Nature, Purpose and Beneficiaries of Project:

Re-Surface competition pool deck

Name of Public Agency Approving Project: City of West Sacramento

Name of Person or Agency Carrying Out Project: Christopher Dority

Exempt Status: **(check one):**

Ministerial (Sec. 21080(b)(1); 15268);

Declared Emergency (Sec. 21080(b)(3); 15269(a));

Emergency Project (Sec. 21080(b)(4); 15269(b)(c));

Categorical Exemption. State type and section number: Class 1, Section 15301

Statutory Exemptions. State code number: \_\_\_\_\_

Reasons why project is exempt:

Class 1 Categorical Exemption, under California Code of Regulations, Title 14, Division 6, Chapter 3, Section 15301 and find that the Class 1 Categorical Exemption determination represents the independent judgment of the City. There will be no expansion or enlargement of the original footprint of the facility.

Lead Agency

Contact Person: Christopher Dority

Area Code/Telephone/Extension: (916) 617-4591

**If filed by applicant:**

1. Attach certified document of exemption finding.

2. Has a Notice of Exemption been filed by the public agency approving the project? Yes No

Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Title: Project Manager

▪ Signed by Lead Agency ▪ Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.  
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: \_\_\_\_\_

MEETING DATE: November 15, 2023

ITEM # 6

**SUBJECT:**

**CONSIDERATION OF AFFORDABLE HOUSING AGREEMENT WITH  
R1P2, LLC, FOR THE RIVER ONE PHASE 2 PROJECT**

**INITIATED OR REQUESTED BY:**

[ ] Council [X] Staff

[ ] Other

**REPORT COORDINATED OR PREPARED BY:**Elijah Ortega, Community Investment Planner  
Economic Development & Housing

**ATTACHMENT** [X] Yes [ ] No [ ] Information [ ] Direction [X] Action

**OBJECTIVE**

The objective of this report is to facilitate the Council's consideration of an Affordable Housing Agreement with R1P2, LLC, for a 95-unit multifamily residential development located in the Washington District.

**RECOMMENDED ACTION**

Staff respectfully recommends that the Council:

- 1) Approve the Affordable Housing Agreement with R1P2, LLC, in substantially the form included as Attachment 1 for the River One Phase 2 project (Agreement); and
- 2) Authorize the City Manager or his designee to execute the Agreement and make non-substantive corrections or modifications with the approval of the City Attorney.

**BACKGROUND**

The City's current Inclusionary Housing (IH) Ordinance (Ordinance 14-4) was adopted in 2014 and is codified in Chapter 15.40 of the Municipal Code. The IH Ordinance implements Program 1.2 of the Housing Element and requires new residential developments to make ten percent of total dwelling units affordable to low and very low-income households at an affordable price or rent. For a multifamily rental project, this requirement is satisfied by providing five percent of units affordable at 50 percent of Area Median Income (AMI); and five percent of units affordable at 60 percent of AMI. The rental restrictions for a one-bedroom unit at 50 and 60 percent AMI are currently \$1,140 and \$1,368 per month, respectively.

As an alternative to providing affordable units the IH Ordinance allows developers to seek City Council approval for participation in the Housing Trust Fund Program (HTFP) through payment of an in-lieu fee. The in-lieu fee is a per-unit fee that is proportional to the amount determined by the City to be necessary to provide gap financing to an affordable housing project. The revenue received by the City from the in-lieu fee payment is deposited into the Housing Trust Fund to be used to promote and assist the development of affordable housing projects. The HTFP effectuates several Housing Element goals including:

- Focusing the City's affordable housing efforts on the lower end of the income spectrum (i.e., 50 percent AMI and below).
- Reducing the IH Ordinance's financial impact on market-rate housing production in the SACOG Blueprint urban infill areas.
- Reducing the IH Program's impact on staff resources.
- Promoting urban densities consistent with the City's Climate Action Plan.
- Incentivizing investment and residential development in the City's urban infill areas.

**ANALYSIS**

On September 27, 2023, the City Council approved the design review for the River One Phase 2 project. The project will develop a five-story apartment building with 95 units at 721 3<sup>rd</sup> Street in the Washington District (see Attachment 2, location map). The apartment building will be located above 61 spaces of podium parking and will contain a mix of studio, one- and two-bedroom units ranging from 500 to 1,100 square feet. A pedestrian walkway on the northern boundary of the project will provide public access from 3<sup>rd</sup> Street to the River Walk.

Under the IH Ordinance, the developer is required to produce, within the development, ten (10) affordable units to low- and very low-income households (60 percent and 50 percent AMI, respectively). Maximum income at 60 percent AMI for a four-person household in Yolo County is \$69,400 and maximum income at 50 percent AMI for a four-person household is \$57,000. A copy of the Yolo County Income Limits is included in this report as Attachment 3. The developer has requested City Council approval to provide an in-lieu fee rather than produce

affordable units in this development. If approved, the developer will be required to pay a total in-lieu fee of \$143,469 (see Attachment 4 for calculation).

The in-lieu fee amount accounts for an 80% reduction pursuant to the Urban Infill Area Incentive of the Housing Trust Fund Program. The Urban Infill Area Incentive was established to incentivize the development of high-density, transit-oriented residential projects in the City's Urban Infill Area (i.e., the Bridge District, Riverfront, and Central Business District). Projects in the Urban Infill Area face unique barriers to development including higher land costs, complex site preparation and foundation requirements, structured and podium parking, and significant infrastructure and offsite improvement requirements. The River One Phase 2 project qualifies for this incentive through a combination of a high-density of dwelling units, podium parking, and public access areas.

In-lieu fees collected from the River One Phase 2 project will be programmed to support a future affordable housing project at the Grand Gateway development site. A proposal solicitation effort is currently underway for the Grand Gateway Master Plan area, which is located at the intersection of Grand Street and Tower Bridge Gateway (also included in Attachment 2, Location Map). It is anticipated that City Housing Trust Funds will be necessary to support the development of a ± 170-unit affordable housing project included as part of the project.

#### Environmental Considerations

An EIR was prepared and adopted for the Raley's Landing project (SCH#2005042083). In that document, the River One area was proposed to be developed with a mixture of commercial, residential, and retail uses, including approximately 245,000 square feet of office space, 42,000 square feet of retail/restaurant uses, and one of the following two scenarios: 200 multifamily residential units or 150 multi-family residential units and a 100- to 300-room hotel with a 7,000 to 15,000-square foot conference center. This action does not propose any changes to the proposed River One Phase 2 project that would cause it to fall within any of the categories requiring a subsequent or supplemental EIR as required by the CEQA statute or guidelines.

#### Commission Recommendation

No commission recommendation was solicited for this staff report.

#### Strategic Plan Integration

The recommended action supports the Council's 2023 Strategic Management priorities of "Grand Gateway Development" and "Homelessness & Communitywide Impact Management" by approving funding to support the development of affordable housing in the Grand Gateway Master Plan area.

#### Alternatives

The Council's primary alternatives to the recommended action are as follows:

1. Decline to approve the Affordable Housing Agreement; or
2. Propose a different alternative for the developer to meet its IH obligations.

#### Coordination and Review

The proposed Affordable Housing Agreement was coordinated with Planning Division staff and the City Attorney's office.

#### Budget/Cost Impact

The net budget impact of approving the Agreement is additional revenue of \$143,469 to the City Housing Trust Fund when the River One Phase 2 project is issued a building permit.

#### **ATTACHMENTS**

1. Proposed Affordable Housing Agreement
2. Location Map
3. 2023 Yolo County Income Limits
4. In-Lieu Fee Calculation

## AFFORDABLE HOUSING AGREEMENT

### RIVER ONE PHASE 2 PROJECT

This AFFORDABLE HOUSING AGREEMENT ("Affordable Housing Agreement" or "Agreement") is made and entered into this 15<sup>th</sup> day of November 2023 ("Effective Date"), among the CITY OF WEST SACRAMENTO, a municipal corporation ("City"), and R1P2, LLC, a California limited liability company ("River One Phase 2"). City and River One Phase 2 are referred to collectively as "Parties" or individually as "Party."

#### RECITALS

A. River One Phase 2 intends to develop a total of Ninety-Five (95) market-rate residential units known as "River One Phase 2 Apartments" (the "Project") at a site located at 999 Riverfront Street. The Project property (the "Identified Property") is located in the City of West Sacramento, County of Yolo, State of California, and is more particularly described in the legal description attached hereto as Exhibit A and incorporated herein by this reference.

B. Chapter 15.40 of the West Sacramento Municipal Code ("Chapter 15.40"), which implements Program 1.2 of the City's Housing Element, requires that developers of new housing projects contribute to the production of affordable housing. Chapter 15.40 allows a developer to satisfy this "inclusionary housing" obligation by either making a percentage of new units affordable ("Inclusionary Units"), or, if approved by the City Council, through the payment of a fee in-lieu of producing affordable units ("Inclusionary Housing Payment"). Collectively, the policies, programs, and procedures governing the development, rental, and occupancy of affordable housing that are set forth in the City's Housing Element and Chapter 15.40, together with any amendments or revisions to the foregoing, are referred to herein as the City's "Affordable Housing Program."

C. Based on the Ninety-Five (95) market-rate residential units proposed for the Project, River One Phase 2 is required to make Ten (10) of the units in the project available at a housing cost affordable to Low- and Very Low-Income households (the Project's "Inclusionary Obligation").

D. River One Phase 2 has requested that it be permitted to substitute the payment of fees pursuant to Chapter 15.40 in-lieu of producing the Inclusionary Units, and City has agreed to permit this substitution.

E. Providing Inclusionary Units pursuant to this Agreement is consistent with the Housing Element and in accordance with the public purposes and provisions of the Affordable Housing Program.

#### AGREEMENT

NOW, THEREFORE, based upon the foregoing Recitals, which are incorporated herein by this reference, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Definitions. Every term used herein shall have the meaning ascribed to that term in Chapter 15.40 unless another meaning is apparent from the context in which the term appears or the term is specifically defined in this Agreement.

2. Inclusionary Obligation.

2.1 Project Inclusionary Obligation. Based on the Ninety-Five (95) market-rate units to be constructed in the Project, the Inclusionary Obligation is Ten (10) affordable units, all low income apartment units.

2.2 Satisfaction of Inclusionary Obligation for the Project.

2.2.1 Payment of Gap Financing Contribution for the Project. River One Phase 2 shall provide the City with Inclusionary Housing Payments representing the amount determined by City to be necessary to provide gap financing for the construction of Ten (10) Inclusionary Units required for the Project. Prior to the City issuing any building permit for the Ninety-Five (95) market-rate units to be constructed in the Project, River One Phase 2 shall provide the City with an Inclusionary Housing Payment in the amount of Seven Thousand Five Hundred and Fifty-One Dollars (\$7,551) for each market-rate unit in the project. If the number of market-rate units to be constructed is decreased for any reason, the City shall be owed only the Inclusionary Housing Payment amount for units to be constructed. A table summarizing the Inclusionary Housing Payment is found in Exhibit "B," attached hereto and incorporated herein. City agrees to deposit these funds into the City's Housing Trust Fund to be used for future affordable housing activities.

2.2.2 Satisfaction of Inclusionary Obligation. City acknowledges and agrees that, pursuant to the Affordable Housing Program, upon receipt by the City of River One Phase 2's payment pursuant to Section 2.2.1 above, the Inclusionary Obligation of the Project will be satisfied and River One Phase 2 will be entitled to construct a total of Ninety-Five (95) market-rate units on the Project Property, as that amount may have been decreased in accordance with Section 2.2.1 above.

2.2.3 Additional Inclusionary Housing Obligation. Notwithstanding the number of Regulated Units actually constructed within the Project, River One Phase 2 or its assignees (subject to Section 14 below), shall be entitled pursuant to Section 2.2.1 above to construct up to a total of Ninety-Five (95) market-rate units on the Project Property; provided, however, if the number of market-rate units constructed on the Project Property exceeds Ninety-Five (95) units, any additional Inclusionary Obligation with respect to the additional units must be satisfied in compliance with the Affordable Housing Program.

2.2.4 Option to Construct. City acknowledges and agrees that River One Phase 2 shall have the right, at its option, to come back to City Council for approval to construct the Ten (10) affordable units, in lieu of payment.

2.3 Compliance with Other Development Requirements. Compliance with the Inclusionary Housing Obligation requirements described in Section 2.2 does not relieve River One Phase 2 or its assignees from the obligation to comply with City requirements related to the development of the Project other than the Inclusionary Obligation for the Project.

3. Future Lot Line Adjustment. River One Phase 2 intends to amend the boundaries of the Project parcel with a future lot line adjustment in the area shown on Exhibit "C", attached hereto and incorporated herein. This proposed future lot line adjustment should qualify the Project for the maximum incentive under the Urban Infill Area Incentive of the Housing Trust Fund Program, as shown in Exhibit B. In the event that the lot line adjustment is not completed, the amount of the Urban Infill Area Incentive will not apply and the inclusionary housing payment will be recalculated prior to the issuance of first building permit.

4. Recalculation of Inclusionary Housing Payment. In the event that no building permit has been issued for the Project by November 15, 2026, the Inclusionary Housing Payment shall automatically be recalculated under the then-current in-lieu fee rate for each market-rate unit in the Project. The recalculation will occur on November 15, 2026. The difference in the Inclusionary Housing Payment shall be collected upon issuance of the first building permit for the Project.

5. Time of the Essence. Time is of the essence in the performance of this Agreement.

6. Recordation of Memorandum of Agreement. Upon execution of this Agreement by all Parties, the Parties shall execute, notarize (where applicable), and record or cause to be recorded in the Office of the Yolo County Recorder against the Project Property a Memorandum of Agreement substantially in the form attached herein as Exhibit "D." Upon satisfaction of River One Phase 2's obligations under this Agreement, and at the request of River One Phase 2, the City will execute an instrument in a recordable form confirming that River One Phase 2 has satisfied the obligations under this Agreement.

7. Covenants Run with the Land. This Agreement shall run with the land. The burdens of this Agreement bind, and the benefits of the Agreement inure to, the successors-in-interest of the Parties.

8. Due Diligence. River One Phase 2 agrees to proceed in good faith and in a reasonable and diligent manner to implement the provisions of this Agreement.

9. Amendments. Except as otherwise provided herein, this Agreement may be amended only by mutual written consent of the Parties or their successors-in-interest. A memorandum of any such amendment shall be recorded against the Identified Property in the Office of the Yolo County Recorder.

10. No Waiver. The failure by a Party to exercise its rights under this Agreement does not waive any claim or defect in performance by any other Party.

11. Notices. All notices required by this Agreement or state law shall be in writing and delivered in person or sent by U.S. mail, first class postage prepaid, return receipt requested, to the following addresses, which may be changed by giving notice in writing:

River One Phase 2: R1P2, LLC  
a California limited liability company  
Address: 1530 J St, Suite 200  
ATTN: Gurjeet Toor

City: City of West Sacramento  
1110 West Capitol Avenue  
West Sacramento, CA 95691  
ATTN: City Manager

with copy to: Kronick, Moskovitz, Tiedemann & Girard  
1331 Garden Highway, 2<sup>nd</sup> Floor  
Sacramento, CA 95833  
ATTN: Jeffrey Mitchell

12. Attorneys' Fees. If any Party brings legal action against another for breach of this Agreement or to compel performance of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

13. Venue. Any action arising out of this Agreement shall be brought in Yolo County, California, regardless of where else venue may lie.

14. Non-Fault Termination. By unanimous written consent of all Parties, this Agreement may be terminated for any reason other than a default hereunder. After a termination pursuant to this Section 12, any costs incurred by a Party in connection with this Agreement shall be completely borne by such Party and no Party shall have any rights against or liability to the others, except with respect to those provisions of this Agreement that recite that they survive termination of this Agreement.

15. Integration. This is an integrated agreement, and contains all of the terms, considerations, understandings, and promises of the Parties. It shall be read as a whole.

16. Assignment. River One Phase 2 shall not assign or transfer any right or interest in or arising from this Agreement without the prior written consent of the City, which shall not be unreasonably withheld. Upon such transfer of title, River One Phase 2 is hereby released of all rights, obligations and duties under this Agreement.

17. Counterparts. This Agreement may be executed in any number of counterparts and by the Parties in separate counterparts (including copies sent to a Party by facsimile transmission or in portable document format (pdf)), each of which when executed and delivered will be deemed an original and all of which counterparts taken together will constitute one and the same instrument.

18. Exhibits. This Agreement contains the following exhibits, all of which are incorporated herein by this reference:

- A. Legal Description of the Identified Property
- B. Calculation of Inclusionary Housing Payment
- C. Proposed Lot Line Adjustment
- D. Memorandum of Agreement

*(Signatures on Next Page)*



IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their authorized representatives, as of the date first above written.

**CITY:**

CITY OF WEST SACRAMENTO,  
a municipal corporation

By: \_\_\_\_\_  
Aaron Laurel, City Manager

Attest:

By: \_\_\_\_\_  
Jennifer Cusmir, City Clerk

Approved as to form:

\_\_\_\_\_  
Jeffrey Mitchell, City Attorney

**River One Phase 2:**

R1P2, L.L.C,  
a California limited liability company

By: R1P2, LLC, a California limited liability company,  
Its General Partner

By: \_\_\_\_\_  
Mark L. Friedman, President

**EXHIBIT "A"**

LEGAL DESCRIPTION(S) OF THE RIVER ONE PHASE 2 PROPERTY

**EXHIBIT "B"**

CALCULATION OF INCLUSIONARY HOUSING PAYMENT

Project Market Rate Units (MRU)	95
Housing Trust Fund Program (HTFP) Fee per MRU	\$7,551
HTFP Payment (95 x \$7,551)	\$717,345
Urban Infill Incentive (if applicable)	-\$573,876
<b>Total HTFP Payment</b>	<b>\$143,469</b>

**EXHIBIT "C"**

**PROPOSED LOT LINE ADJUSTMENT**

**EXHIBIT "D"**

(SEE ATTACHED MEMORANDUM OF AGREEMENT)

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

City of West Sacramento  
1110 West Capitol Avenue  
West Sacramento, CA 95691

No recording fee required pursuant to  
Government Code Section 27383.

---

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**MEMORANDUM OF AFFORDABLE HOUSING AGREEMENT**

THIS MEMORANDUM OF AFFORDABLE HOUSING AGREEMENT is made this 15<sup>th</sup> day of November 2023 by and among the CITY OF WEST SACRAMENTO, a municipal corporation ("City"), R1P2, LLC, a California limited liability company ("River One Phase 2").

City and River One Phase 2 are parties to that certain Affordable Housing Agreement dated as of November 15, 2023, the terms and conditions of which are hereby incorporated by this reference as if set forth in full herein. The Affordable Housing Agreement controls the development and use of that certain real property, including improvements thereto, situated in the County of Yolo, State of California, and more particularly described in Attachment 1.

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the date first above written.

**CITY:**

City of West Sacramento,  
a California municipal corporation

**BY:**

\_\_\_\_\_  
**Aaron Laurel**, City Manager

**River One Phase 2:**

R1P2, LLC,  
a California limited liability company

By: R1P2, LLC,  
a California limited liability company,  
Its General Partner

By: \_\_\_\_\_  
Mark L. Friedman, President



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

**ACKNOWLEDGMENT**

State of California }

County of \_\_\_\_\_ }

On \_\_\_\_\_, 2023, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

[SEAL]

---

NOTARY PUBLIC

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

**ACKNOWLEDGMENT**

State of California }

County of \_\_\_\_\_ }

On \_\_\_\_\_, 2023, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

[SEAL]

---

NOTARY PUBLIC

**ATTACHMENT 1 TO MEMORANDUM OF AFFORDABLE HOUSING AGREEMENT**

**LEGAL DESCRIPTION**

Vicinity Map



<b>Yolo County Income Limits – 2023</b>				
<b>Household Size</b>	<b>1 – Person</b>	<b>2 – Person</b>	<b>3 – Person</b>	<b>4 – Person</b>
<b>Very Low (50% AMI)</b>	\$39,900	\$45,600	\$51,300	\$57,000
<b>Low (60% AMI)</b>	\$47,880	\$54,720	\$61,560	\$68,400
<b>Median (100% AMI)</b>	\$79,800	\$91,200	\$102,600	\$114,000

CALCULATION OF INCLUSIONARY HOUSING PAYMENT

Project Market Rate Units (MRU)	95
Housing Trust Fund Program (HTFP) Fee per MRU	\$7,551
HTFP Payment (95 x \$7,551)	\$717,345
Urban Infill Area Incentive (if applicable)	-\$573,876
<b>Total HTFP Payment</b>	<b>\$143,469</b>

MEETING DATE: November 15, 2023

ITEM # 7

**SUBJECT:**

**CONSIDERATION OF AFFORDABLE HOUSING AGREEMENT WITH SMART GROWTH INVESTORS II, LP, FOR THE BRIDGE DISTRICT PHASE VI PROJECT**

**INITIATED OR REQUESTED BY:**

Council     Staff  
 Other

**REPORT COORDINATED OR PREPARED BY:**

Elijah Ortega, Community Investment Planner  
**Economic Development & Housing**

**ATTACHMENT**    Yes     No     Information     Direction     Action

**OBJECTIVE**

The objective of this report is to facilitate the Council's consideration of an Affordable Housing Agreement with Smart Growth Investors II, LP, for a 260-unit multifamily residential development located in the Bridge District.

**RECOMMENDED ACTION**

Staff respectfully recommends that the Council:

- 1) Approve the Affordable Housing Agreement with Smart Growth Investors II, LP, in substantially the form included as Attachment 1, for the Bridge District Phase VI Project (Agreement); and
- 2) Authorize the City Manager or his designee to execute the Agreement and make non-substantive corrections or modifications with the approval of the City Attorney.

**BACKGROUND**

The City's current Inclusionary Housing (IH) Ordinance (Ordinance 14-4) was adopted in 2014 and is codified in Chapter 15.40 of the Municipal Code. The IH Ordinance implements Program 1.2 of the Housing Element and requires new residential developments to make ten percent of total dwelling units affordable to low- and very low-income households at an affordable price or rent. For a multifamily rental project, this requirement is satisfied by providing five percent of units affordable at 50 percent of Area Median Income (AMI); and five percent of units affordable at 60 percent of AMI. The rental restrictions for a one-bedroom unit at 50 and 60 percent AMI are currently \$1,140 and \$1,368 per month, respectively.

As an alternative to providing affordable units the IH Ordinance allows developers to seek City Council approval for participation in the Housing Trust Fund Program (HTFP) through payment of an in-lieu fee. The in-lieu fee is a per-unit fee that is proportional to the amount determined by the City to be necessary to provide gap financing to an affordable housing project. The revenue received by the City from the in-lieu fee payment is deposited into the Housing Trust Fund to be used to promote and assist the development of affordable housing projects. The HTFP effectuates several Housing Element goals including:

- Focusing the City's affordable housing efforts on the lower end of the income spectrum (i.e., 50 percent AMI and below).
- Reducing the IH Ordinance's financial impact on market-rate housing production in the SACOG Blueprint urban infill areas.
- Reducing the IH Program's impact on staff resources.
- Promoting urban densities consistent with the City's Climate Action Plan.
- Incentivizing investment and residential development in the City's urban infill areas.

**ANALYSIS**

On February 17, 2010, the City Council adopted Ordinance 10-4 approving a Development Agreement (DA) with Smart Growth Investors II, LP (Smart Growth) for the development of approximately 46 acres of land in the Bridge District (TBD). As part of that DA, Smart Growth agreed to dedicate 1.04 acres of land at the corner of 5<sup>th</sup> and Bridge Streets for the development of a 70-unit affordable housing project "The Rivermark". The Rivermark opened in 2014 as the first residential project completed by Smart Growth in the Bridge District and contains one-, two- and three-bedroom units of affordable housing for very low- and extremely low-income residents. Per the terms of the DA, construction of The Rivermark entitled Smart Growth to construct a total of 434 market-rate housing units before any additional inclusionary housing obligation is required. The 434-unit limit will be exceeded by construction of TBD Phase VI. To date, Smart Growth has developed a total of 412 market-rate residential units across eight different projects in the Bridge District.

The TBD Phase VI project received design approval from the Community Development Director on January 12, 2023, for the development of a 7-story apartment building and a 5-story mixed-use commercial building containing office and retail. The apartment building will contain 21 ground floor townhome units and 239 apartments ranging in size from studio, one- and two-bedroom units. The residential building will be located above 234 spaces of podium parking. The project is located at 985-999 Riverfront Street in the Bridge District (see Attachment 2, Location Map).

Under the IH Ordinance, the developer is required to produce, within the development, twenty-six (26) affordable units to low-income households (60 percent AMI) and very low-income households (50 percent AMI). Maximum income at 60 percent AMI for a four-person household in Yolo County is \$69,400 and maximum income at 50 percent AMI for a four-person household is \$57,000. A copy of the Yolo County Income Limits is included in this report as Attachment 3. The developer has requested City Council approval to provide an in-lieu fee rather than produce affordable units in this development. If approved, the developer will be required to pay a total in-lieu fee of \$359,427.60 (see Attachment 4 for calculation). This in-lieu fee amount accounts for an 80 percent reduction pursuant to the Urban Infill Area Incentive of the Housing Trust Fund Program and credits Smart Growth with 22 remaining market-rate units allowed by the DA.

In-lieu fees collected from the TBD Phase VI project will be programmed to support a future affordable housing project at the Grand Gateway development site. A proposal solicitation effort is currently underway for the Grand Gateway Master Plan area, which is located at the intersection of Grand Street and Tower Bridge Gateway (also included in Attachment 2, Location Map). It is anticipated that City Housing Trust Funds will be necessary to support the development of a ± 170-unit affordable housing project included as part of the project.

#### Environmental Considerations

The Fulcrum Property Development Environmental Impact Report was prepared in July 2008, circulated and certified by the City Council in February 2009. The Bridge District Specific Plan Supplemental Environmental Impact Report was prepared in March 2009, circulated and certified by the City Council in November 2009. Both of these efforts included the subject property, and no changes are proposed which would trigger the requirements under CEQA for a supplemental or subsequent EIR.

#### Commission Recommendation

No commission recommendation was solicited for this agenda report.

#### Strategic Plan Integration

The recommended action supports the Council's 2023 Strategic Management priorities of "Grand Gateway Development" and "Homelessness & Communitywide Impact Management" by approving funding to support the development of affordable housing in the Grand Gateway Master Plan area.

#### Alternatives

The Council's primary alternatives are as follows:

1. Decline to approve the Affordable Housing Agreement; or
2. Propose a different alternative for the developer to meet its IH obligations.

#### Coordination and Review

The proposed Affordable Housing Agreement was coordinated with Planning Division staff and the City Attorney's office.

#### Budget/Cost Impact

The net budget impact of approving the Agreement is additional revenue of \$359,427.60 to the City Housing Trust Fund when the TBD Phase VI project is issued a building permit.

#### ATTACHMENT(S)

1. Proposed Affordable Housing Agreement
2. Location Map
3. 2023 Yolo County Income Limits
4. In-Lieu Fee Calculation



**AFFORDABLE HOUSING AGREEMENT**  
**TBD PHASE VI APARTMENTS PROJECT**

This AFFORDABLE HOUSING AGREEMENT ("Affordable Housing Agreement" or "Agreement") is made and entered into this 15<sup>th</sup> day of November ("Effective Date"), among the CITY OF WEST SACRAMENTO, a municipal corporation ("City"), and Smart Growth Investors II, LP, a California limited partnership ("TBD Phase VI"). City and TBD Phase VI are referred to collectively as "Parties" or individually as "Party."

**RECITALS**

A. TBD Phase VI intends to develop a total of Two Hundred and Sixty (260) market-rate residential units known as "TBD Phase VI Apartments" (the "Project") at a site located at 999 Riverfront Street. The Project property (the "Identified Property") is located in the City of West Sacramento, County of Yolo, State of California, and is more particularly described in the legal description attached hereto as Exhibit A and incorporated herein by this reference.

B. Chapter 15.40 of the West Sacramento Municipal Code ("Chapter 15.40"), which implements Program 1.2 of the City's Housing Element, requires that developers of new housing projects contribute to the production of affordable housing. Chapter 15.40 allows a developer to satisfy this "inclusionary housing" obligation by either making a percentage of new units affordable ("Inclusionary Units"), or, if approved by the City Council, through the payment of a fee in-lieu of producing affordable units ("Inclusionary Housing Payment"). Collectively, the policies, programs, and procedures governing the development, rental, and occupancy of affordable housing that are set forth in the City's Housing Element and Chapter 15.40, together with any amendments or revisions to the foregoing, are referred to herein as the City's "Affordable Housing Program."

C. On March 19, 2010, the City and Smart Growth Investors II, LLC ("Smart Growth Investors II"), entered into a development agreement that includes the property on which the Project is located ("Development Agreement"). Per Section 9.2.1 of the Development Agreement, the property owner is permitted to construct a total of 434 market rate housing units on the property pursuant to that certain "BRIDGE Affordable Housing Agreement for Land Dedication" approved by the City Council on January 13, 2010 ("2010 Affordable Housing Agreement"). The development of more than 434 market rate housing units on the property requires compliance with the Inclusionary Housing Ordinance. Of the 434 market rate housing units allowed, 412 units have currently been constructed pursuant to the 2010 Affordable Housing Agreement. As a result, the 22 remaining market rate units shall be credited to TBD Phase VI's inclusionary housing obligation.

D. Based on the Two Hundred and Sixty (260) market-rate residential units proposed for the Project, TBD Phase VI is required to make Twenty-Six (26) of the units in the project available at a housing cost affordable to Low- and Very Low-Income households (the Project's "Inclusionary Obligation").

E. TBD Phase VI has requested that it be permitted to substitute the payment of fees pursuant to Chapter 15.40 in-lieu of producing the Inclusionary Units, and City has agreed to permit this substitution.

F. Providing Inclusionary Units pursuant to this Agreement is consistent with the Housing Element and in accordance with the public purposes and provisions of the Affordable Housing Program.

## AGREEMENT

NOW, THEREFORE, based upon the foregoing Recitals, which are incorporated herein by this reference, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Definitions. Every term used herein shall have the meaning ascribed to that term in Chapter 15.40 unless another meaning is apparent from the context in which the term appears or the term is specifically defined in this Agreement.

2. Inclusionary Obligation.

2.1 Project Inclusionary Obligation. Based on the Two Hundred and Sixty (260) market-rate units to be constructed in the Project, the Inclusionary Obligation is Twenty-Six (26) affordable units, all low income apartment units.

2.2 Satisfaction of Inclusionary Obligation for the Project.

2.2.1 Payment of Gap Financing Contribution for the Project. TBD Phase VI shall provide the City with Inclusionary Housing Payments representing the amount determined by City to be necessary to provide gap financing for the construction of Twenty-Six (26) Inclusionary Units required for the Project. Prior to the City issuing any building permit for the Two Hundred and Sixty (260) market-rate units to be constructed in the Project, TBD Phase VI shall provide the City with an Inclusionary Housing Payment in the amount of Seven Thousand Five Hundred and Fifty-One Dollars (\$7,551) for each market-rate unit in the project, minus the twenty-two (22) remaining market-rate unit credits from the March 19, 2010 Development Agreement. If the number of market-rate units to be constructed is decreased for any reason, the City shall be owed only the Inclusionary Housing Payment amount for units to be constructed. A table summarizing the Inclusionary Housing Payment is found in Exhibit "B," attached hereto and incorporated herein. City agrees to deposit these funds into the City's Housing Trust Fund to be used for future affordable housing activities.

2.2.2 Satisfaction of Inclusionary Obligation. City acknowledges and agrees that, pursuant to the Affordable Housing Program, upon receipt by the City of TBD Phase VI's payment pursuant to Section 2.2.1 above, the Inclusionary Obligation of the Project will be satisfied and TBD Phase VI will be entitled to construct a total of Two Hundred and Sixty (260) market-rate units on the Project Property, as that amount may have been decreased in accordance with Section 2.2.1 above. In the event that after making the Inclusionary Housing Payment, the Project is not built, Smart Growth Investors II or its affiliate will be entitled to build up to 260 units in another project on other property subject to the Development Agreement.

2.2.3 Additional Inclusionary Housing Obligation. Notwithstanding the number of Regulated Units actually constructed within the Project, TBD Phase VI or its assignees (subject to Section 14 below), shall be entitled pursuant to Section 2.2.1 above to construct up to a total of Two Hundred and Sixty (260) market-rate units on the Project Property; provided, however, if the number of market-rate units constructed on the Project Property exceeds Two Hundred and Sixty (260) units, any additional Inclusionary Obligation with respect to the additional units must be satisfied in compliance with the Affordable Housing Program.

2.2.4 Option to Construct. City acknowledges and agrees that TBD Phase VI shall have the right, at its option, to come back to City Council for approval to construct the Twenty-Six (26) affordable units, in lieu of payment.

2.3 Compliance with Other Development Requirements. Compliance with the Inclusionary Housing Obligation requirements described in Section 2.2 does not relieve TBD Phase VI or its assignees from the obligation to comply with City requirements related to the development of the Project other than the Inclusionary Obligation for the Project.

3. Recalculation of Inclusionary Housing Payment. In the event that no building permit has been issued for the Project by November 15, 2026, the Inclusionary Housing Payment shall automatically be recalculated under the current in-lieu fee rate for each market-rate unit in the Project, minus the twenty-two (22) remaining market-rate unit credits from the March 19, 2010 Development Agreement. The recalculation will occur on November 15, 2026. The difference in the Inclusionary Housing Payment shall be collected upon issuance of the first building permit for the Project.

4. Time of the Essence. Time is of the essence in the performance of this Agreement.

5. Recordation of Memorandum of Agreement. Upon execution of this Agreement by all Parties, the Parties shall execute, notarize (where applicable), and record or cause to be recorded in the Office of the Yolo County Recorder against the Project Property a Memorandum of Agreement substantially in the form attached herein as Exhibit "C." Upon satisfaction of TBD Phase VI's obligations under this Agreement, and at the request of TBD Phase VI, the City will execute an instrument in a recordable form confirming that TBD Phase VI has satisfied the obligations under this Agreement.

6. Covenants Run with the Land. This Agreement shall run with the land. The burdens of this Agreement bind, and the benefits of the Agreement inure to, the successors-in-interest of the Parties.

7. Due Diligence. TBD Phase VI agrees to proceed in good faith and in a reasonable and diligent manner to implement the provisions of this Agreement.

8. Amendments. Except as otherwise provided herein, this Agreement may be amended only by mutual written consent of the Parties or their successors-in-interest. A memorandum of any such amendment shall be recorded against the Identified Property in the Office of the Yolo County Recorder.

9. No Waiver. The failure by a Party to exercise its rights under this Agreement does not waive any claim or defect in performance by any other Party.

10. Notices. All notices required by this Agreement or state law shall be in writing and delivered in person or sent by U.S. mail, first class postage prepaid, return receipt requested, to the following addresses, which may be changed by giving notice in writing:

TBD Phase VI:	Smart Growth Investors II, LP a California limited partnership Address: 1530 J St, Suite 200 ATTN: Gurjeet Toor
City:	City of West Sacramento 1110 West Capitol Avenue West Sacramento, CA 95691 ATTN: City Manager
with copy to:	Kronick, Moskovitz, Tiedemann & Girard 1331 Garden Highway, 2 <sup>nd</sup> Floor Sacramento, CA 95833 ATTN: Jeffrey Mitchell

11. Attorneys' Fees. If any Party brings legal action against another for breach of this Agreement or to compel performance of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

12. Venue. Any action arising out of this Agreement shall be brought in Yolo County, California, regardless of where else venue may lie.

13. Non-Fault Termination. By unanimous written consent of all Parties, this Agreement may be terminated for any reason other than a default hereunder. After a termination pursuant to this Section 12, any costs incurred by a Party in connection with this Agreement shall be completely borne by such Party and no Party shall have any rights against or liability to the others, except with respect to those provisions of this Agreement that recite that they survive termination of this Agreement.

14. Integration. This is an integrated agreement, and contains all of the terms, considerations, understandings, and promises of the Parties. It shall be read as a whole.

15. Assignment. TBD Phase VI shall not assign or transfer any right or interest in or arising from this Agreement without the prior written consent of the City, which shall not be unreasonably withheld. Upon such transfer of title, TBD Phase VI is hereby released of all rights, obligations and duties under this Agreement.

16. Counterparts. This Agreement may be executed in any number of counterparts and by the Parties in separate counterparts (including copies sent to a Party by facsimile transmission or in portable document format (pdf)), each of which when executed and delivered will be deemed an original and all of which counterparts taken together will constitute one and the same instrument.

17. Exhibits. This Agreement contains the following exhibits, all of which are incorporated herein by this reference:

- A. Legal Description of the Identified Property
- B. Calculation of Inclusionary Housing Payment
- C. Memorandum of Agreement

*(Signatures on Next Page)*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their authorized representatives, as of the date first above written.

**CITY:**

CITY OF WEST SACRAMENTO,  
a municipal corporation

By: \_\_\_\_\_  
Aaron Laurel, City Manager

Attest:

By: \_\_\_\_\_  
Jennifer Cusmir, City Clerk

Approved as to form:

\_\_\_\_\_  
Jeffrey Mitchell, City Attorney

**TBD Phase VI:**

**SGI:**

SMART GROWTH INVESTORS II, L.P.,  
a California limited partnership

By: Smart Growth Investors II GP, LLC, a California limited liability company,  
Its General Partner

By: \_\_\_\_\_  
Mark L. Friedman, President

**EXHIBIT "A"****LEGAL DESCRIPTION(S) OF THE TBD PHASE VI PROPERTY**

The land described herein is situated in the State of California, County of Yolo, City of West Sacramento, described as follows:

A portion of Resultant Parcel 2 as shown on that certain Certificate of Compliance recorded August 18, 2020 as Instrument No. 2020-0026435, Official Records of Yolo County, more particularly described as follows:

Beginning at the Northwest corner of said Resultant Parcel 2; thence from said point of beginning, South 60° 35' 13" East 15.02 feet; thence along the arc of a curve to the right, having a radius 99.00 feet, a central angle of 17°52'28", an arc length of 30.88 feet, said arc being subtended by a chord bearing South 51°38'59" East 30.76 feet; thence South 42°42'45" East 27.39 feet; thence along the arc of a curve to the right, having a radius of 69.00 feet, a central angle of 13°05'09", an arc length of 15.76 feet, said arc being subtended by a chord bearing South 36°10'11" East 15.72 feet; thence South 29°37'36" East 46.41 feet; thence along the arc of a curve to the left, having a radius of 151.00 feet, a central angle of 18°10'01", an arc length of 47.88 feet, said arc being subtended by a chord bearing South 38°42'37" East 47.68 feet; thence South 47°47'37" East 14.58 feet; thence along the arc of a curve to the left, having a radius of 101.00 feet, a central angle of 37°30'49", an arc length of 66.13 feet, said arc being subtended by a chord bearing South 66°33'02" East 64.95 feet; thence South 85°18'26" East 54.25 feet to a point on the Westerly line of that certain Grant Deed to the City of West Sacramento, recorded as Instrument No. 2013-0025041, Official Records; thence along said Westerly line South 18°12'10" West 15.69 feet; thence South 34°29'51" West 53.67 feet; thence South 42°07'42" West 296.84 feet; thence South 54°22'03" West 93.19 feet; thence North 87°14'18" West 55.90 feet; thence leaving said Westerly line South 41°09'21" West 10.00 feet; thence North 48°50'39" West 250.72 feet; thence North 42°19'38" East 473.85 feet to the point of beginning.

Further described as Resultant Parcel 3 on that certain Certificate of Compliance recorded September 22, 2021, Instrument No. 2021-0036041, Official Records.

APN: 058-350-072-000

**EXHIBIT "B"****CALCULATION OF INCLUSIONARY HOUSING PAYMENT**

Project Market Rate Units (MRU)	260
Remaining Market Rate Unit Credits	22
Effective Market Rate Units	238
Housing Trust Fund Program (HTFP) Fee per MRU	\$7,551
HTFP Payment (238 x \$7,551)	\$1,797,138
Urban Infill Incentive (if applicable)	-\$1,437,710.40
<b>Total HTFP Payment</b>	<b>\$359,427.60</b>



**EXHIBIT "C"**

(SEE ATTACHED MEMORANDUM OF AGREEMENT)

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

City of West Sacramento  
1110 West Capitol Avenue  
West Sacramento, CA 95691

No recording fee required pursuant to  
Government Code Section 27383.

---

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**MEMORANDUM OF AFFORDABLE HOUSING AGREEMENT**

THIS MEMORANDUM OF AFFORDABLE HOUSING AGREEMENT is made this 15<sup>th</sup> day of November 2023 by and among the CITY OF WEST SACRAMENTO, a municipal corporation ("City"), Smart Growth Investors II, LP, a California limited partnership, ("TBD Phase VI").

City and TBD Phase VI are parties to that certain Affordable Housing Agreement dated as of November 15, 2023, the terms and conditions of which are hereby incorporated by this reference as if set forth in full herein. The Affordable Housing Agreement controls the development and use of that certain real property, including improvements thereto, situated in the County of Yolo, State of California, and more particularly described in Attachment 1.

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the date first above written.

**CITY:**

City of West Sacramento,  
a California municipal corporation

**BY:**

\_\_\_\_\_  
**Aaron Laurel, City Manager**

**TBD Phase VI:**

**SGI:**

SMART GROWTH INVESTORS II, L.P.,  
a California limited partnership

By: Smart Growth Investors II GP, LLC, a California limited liability company,  
Its General Partner

By: \_\_\_\_\_  
Mark L. Friedman, President

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

**ACKNOWLEDGMENT**

State of California    }

County of \_\_\_\_\_ }

On \_\_\_\_\_, 2023, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

[SEAL]

\_\_\_\_\_  
NOTARY PUBLIC

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

**ACKNOWLEDGMENT**

State of California    }

County of \_\_\_\_\_ }

On \_\_\_\_\_, 2023, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

[SEAL]

\_\_\_\_\_

NOTARY PUBLIC

## ATTACHMENT 1 TO MEMORANDUM OF AFFORDABLE HOUSING AGREEMENT

### LEGAL DESCRIPTION

The land described herein is situated in the State of California, County of Yolo, City of West Sacramento, described as follows:

A portion of Resultant Parcel 2 as shown on that certain Certificate of Compliance recorded August 18, 2020 as Instrument No. 2020-0026435, Official Records of Yolo County, more particularly described as follows:

Beginning at the Northwest corner of said Resultant Parcel 2; thence from said point of beginning, South 60° 35' 13" East 15.02 feet; thence along the arc of a curve to the right, having a radius 99.00 feet, a central angle of 17°52'28", an arc length of 30.88 feet, said arc being subtended by a chord bearing South 51°38'59" East 30.76 feet; thence South 42°42'45" East 27.39 feet; thence along the arc of a curve to the right, having a radius of 69.00 feet, a central angle of 13°05'09", an arc length of 15.76 feet, said arc being subtended by a chord bearing South 36°10'11" East 15.72 feet; thence South 29°37'36" East 46.41 feet; thence along the arc of a curve to the left, having a radius of 151.00 feet, a central angle of 18°10'01", an arc length of 47.88 feet, said arc being subtended by a chord bearing South 38°42'37" East 47.68 feet; thence South 47°47'37" East 14.58 feet; thence along the arc of a curve to the left, having a radius of 101.00 feet, a central angle of 37°30'49", an arc length of 66.13 feet, said arc being subtended by a chord bearing South 66°33'02" East 64.95 feet; thence South 85°18'26" East 54.25 feet to a point on the Westerly line of that certain Grant Deed to the City of West Sacramento, recorded as Instrument No. 2013-0025041, Official Records; thence along said Westerly line South 18°12'10" West 15.69 feet; thence South 34°29'51" West 53.67 feet; thence South 42°07'42" West 296.84 feet; thence South 54°22'03" West 93.19 feet; thence North 87°14'18" West 55.90 feet; thence leaving said Westerly line South 41°09'21" West 10.00 feet; thence North 48°50'39" West 250.72 feet; thence North 42°19'38" East 473.85 feet to the point of beginning.

Further described as Resultant Parcel 3 on that certain Certificate of Compliance recorded September 22, 2021, Instrument No. 2021-0036041, Official Records.

APN: 058-350-072-000



Vicinity Map





<b>Yolo County Income Limits – 2023</b>				
<b>Household Size</b>	<b>1 – Person</b>	<b>2 – Person</b>	<b>3 – Person</b>	<b>4 – Person</b>
<b>Very Low (50% AMI)</b>	\$39,900	\$45,600	\$51,300	\$57,000
<b>Low (60% AMI)</b>	\$47,880	\$54,720	\$61,560	\$68,400
<b>Median (100% AMI)</b>	\$79,800	\$91,200	\$102,600	\$114,000

CALCULATION OF INCLUSIONARY HOUSING PAYMENT

Project Market Rate Units (MRU)	260
Unit Credits from Smart Growth II DA	22
Effective Market Rate Units	238
Housing Trust Fund Program (HTFP) Fee per MRU	\$7,551
HTFP Payment (238 x \$7,551)	\$1,797,138
Urban Infill Area Incentive (if applicable)	-\$1,437,710.40
<b>Total HTFP Payment</b>	<b>\$359,427.60</b>

**MEETING DATE:** November 15, 2023

**ITEM # 8**

**SUBJECT:**



**CONSIDERATION OF ADOPTION OF THE TOTAL TENTATIVE AGREEMENT ON ECONOMIC TERMS FOR THE NEW MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF WEST SACRAMENTO AND THE WEST SACRAMENTO BATTALION CHIEFS' ASSOCIATION AND ADOPTION OF RESOLUTION 23-91 APPROVING AMENDMENTS TO THE BUDGET FOR FISCAL YEARS 2023/24 AND 2024/25**

**INITIATED OR REQUESTED BY:**

- Council     Staff
- Other

**REPORT COORDINATED OR PREPARED BY:**

Amanda Berlin, Assistant City Manager  
 Kaitlyn Montez, Sr. Human Resources Analyst  
**City Manager's Office**

**ATTACHMENT**     Yes     No             Information     Direction             Action

**OBJECTIVE**

The purpose of this report is to seek City Council consideration of approval of a total tentative agreement on economic terms for a new two-year Memorandum of Understanding between the City of West Sacramento and the West Sacramento Battalion Chiefs' Association (BCA) and updated Salary Schedule, and Resolution 23-91, approving related budget amendments.

**RECOMMENDED ACTION**

Staff respectfully recommends that the City Council:

1. Approve the total tentative agreement on economic terms for a new two-year Memorandum of Understanding between the City of West Sacramento and the West Sacramento Battalion Chiefs' Association (BCA);
2. Approve the updated Classification Plan (Salary Schedule) for the BCA; and
3. Adopt Resolution 23-91 approving amendments to the approved biennial budget for Fiscal Years 2023/24 and FY 2024/25 to fund the proposed salary and benefit changes.

**BACKGROUND**

In November 2022, the four Battalion Chiefs filed a Petition for Exclusive Recognition as a bargaining unit (the Battalion Chiefs' Association). The Battalion Chiefs' Association (BCA) was recognized by the City Manager in February 2023. Negotiations commenced on June 6, 2023. A tentative agreement was reached on November 8, 2023. The members of the Association ratified the tentative agreement on November 9, 2023.

**ANALYSIS**

The City and BCA agreed to a total tentative agreement for a new two-year Memorandum of Understanding (MOU) effective November 4, 2023 through November 4, 2025. The Total Tentative Agreement (Attachment 1) outlines the key economic provisions of a new MOU with BCA; those provisions are summarized below. Staff will return at a future meeting with the full, inaugural MOU incorporating these and other non-economic provisions for City Council approval.

1. Effective the pay period inclusive of ratification by BCA and approval by the City Council, the classification of Battalion Chief shall receive a general salary increase of three percent (3.0%).
2. Effective the pay period inclusive of ratification by BCA and approval by the City Council, the classification of Battalion Chief shall receive an additional equity adjustment of three percent (3.0%).
3. Effective the pay period inclusive of July 1, 2024, the classification of Battalion Chief shall receive a general salary increase of three percent (3.0%).
4. Effective the pay period inclusive of ratification by BCA and approval by the City Council, all employees shall pay an additional one percent (1%) towards the employer share of CalPERS retirement.
5. Effective the pay period inclusive of November 1, 2024, all Association members will receive a one-time, non-PERSable lump sum retention payment in the amount of four percent (4%) of annual base rate of pay.
6. Effective the payroll period inclusive of ratification by BCA and approval by the City Council, Association members may receive two percent (2%) of their base rate of pay for possessing an AA/AS degree OR five percent of their base rate of pay for possessing a BA/BS degree.
7. Effective the payroll period inclusive of ratification by BCA and approval by the City Council, Association members may receive three and one-half percent (3.5%) of their base rate of pay for issuance of a Chief Fire Officer Certification.

8. Effective the payroll period inclusive of ratification by BCA and approval by the City Council, Association members may receive a reimbursement of up to one thousand dollars (\$1000) per fiscal year for eligible expenses related to Career Enhancement & Wellness Activities and Programs incurred within twelve (12) months from the date of the expenditure, pursuant to the requirements and procedures outlined in City Administrative Policy II-E-1.
9. Effective the pay period inclusive of ratification by BCA and approval by the City Council, employees who are routinely and consistently assigned to train employees shall receive an additional five percent (5%) of base pay during the term of their assignment.
10. Effective the pay period inclusive of ratification by BCA and approval by the City Council, employees assigned to an administrative assignment shall receive an additional five percent (5%) of base pay during the term of their assignment.
11. Employees assigned to a reimbursable strike team/overhead deployment (Line EMT, PIO, Overhead or other recognized positions) shall receive a ten percent (10%) differential for any reimbursable strike team/overhead incident. The pay differential shall apply from the time of deployment to the employee's return from the deployment. USAR deployments are excluded from this pay differential.
12. Effective pay period inclusive of ratification by BCA and approval by the City Council, the employer contribution toward a cafeteria plan amounts for employees to apply toward health benefits (medical, dental and vision) shall be as listed below. The employee must purchase dental, vision and life at the employee only level at minimum.
  - a. Employee only: City will pay up to actual premium amount of medical, dental, and vision for employee only, not to exceed \$905 per month.
  - b. Employee plus one: City will pay up to actual premium amount of medical, dental, and vision for employee plus one, not to exceed \$1,358 per month.
  - c. Employee plus two or more: City will pay up to actual premium amount of medical, dental, and vision for employee plus two or more, not to exceed \$1,773 per month.
  - d. In no event shall the contribution exceed 100% of the selected plan premium cost including dental and vision.
  - e. Share the Savings
    - i. Employees hired prior to June 30, 2019, who choose not to participate in any of the City's medical plans ("opt out") and show proof of other group health care coverage, shall receive four hundred and seventy-five dollars (\$475) per month plus City paid dental/vision up to the family rate depending on coverage selected.
    - ii. New employees hired on or after June 30, 2019, who opt out will receive four hundred and seventy-five dollars (\$475) and City paid dental/vision at the employee only rate. Employees can purchase up to the family rate with the opt out funds.
13. Effective the pay period inclusive of January 1, 2024, the employer contribution toward a cafeteria plan amounts for employees to apply toward health benefits (medical, dental and vision) shall be as listed below. The employee must purchase dental, vision and life at the employee only level at minimum.
  - a. Employee only: City will pay up to actual premium amount of medical, dental, and vision for employee only, not to exceed \$1,075 per month.
  - b. Employee plus one: City will pay up to actual premium amount of medical, dental, and vision for employee plus one, not to exceed \$1,822 per month.
  - c. Employee plus two or more: City will pay up to actual premium amount of medical, dental, and vision for employee plus two or more, not to exceed \$2,377 per month.
  - d. In no event shall the City contribution exceed 100% of the selected plan premium cost including dental and vision.
  - e. Share the Savings
    - i. Employees hired prior to June 30, 2019, who choose not to participate in any of the City's medical plans ("opt out") and show proof of other group health care coverage, shall receive four hundred and seventy-five dollars (\$475) per month plus City paid dental/vision up to the family rate depending on coverage selected.
    - ii. New employees hired on or after June 30, 2019, who opt out will receive four hundred and seventy-five dollars (\$475) and City paid dental/vision at the employee only rate. Employees can purchase up to the family rate with the opt out funds.
14. Effective January 1, 2025, the employer contribution toward a cafeteria plan amounts for employees to apply toward health benefits (medical, dental and vision) shall be as listed below. The employee must purchase dental, vision and life at the employee only level at minimum:
  - a. Employee only: City will pay up to actual premium amount of medical, dental, and vision for employee only, not to exceed \$1,175 per month.
  - b. Employee plus one: City will pay up to actual premium amount of medical, dental, and vision for employee plus one, not to exceed \$1,922 per month.

- c. Employee plus two or more: City will pay up to actual premium amount of medical, dental, and vision for employee plus two or more, not to exceed \$2,477 per month.
- d. In no event shall the City contribution exceed 100% of the selected plan premium cost including dental and vision.
- e. Share the Savings
  - i. Employees hired prior to June 30, 2019, who choose not to participate in any of the City's medical plans ("opt out") and show proof of other group health care coverage, shall receive four hundred and seventy-five dollars (\$475) per month plus City paid dental/vision up to the family rate depending on coverage selected.
  - ii. New employees hired on or after June 30, 2019, who opt out will receive four hundred and seventy-five dollars (\$475) and City paid dental/vision at the employee only rate. Employees can purchase up to the family rate with the opt out funds.

Environmental Considerations

Not applicable.

Commission Recommendation

Not applicable.

Strategic Plan Integration

These recommendations support the City Council's Mission to provide Quality Municipal Services and a City government that is financially sound with a superior workforce.

Alternatives

The City Council may choose to accept or reject any or all of the terms of the agreement. However, should the terms of this agreement be rejected or modified, the City and the Union will have to reopen negotiations.

Coordination and Review

Representatives of the BCA and the City of West Sacramento have agreed to the terms of the agreement. The BCA membership ratified the tentative agreement on November 9, 2023.

Budget/Cost Impact

The approval of the MOU with the West Sacramento Battalion Chiefs' Association will result in a total additional cost of \$106,539 in Fiscal Year 2023/24 and \$180,170 in ongoing annual costs and \$27,009 in one-time costs in FY 2024/25. This item requests adoption of Resolution 23-91 approving amendments to the adopted budget for the General Fund to fund the proposed changes in salary and benefits for the Battalion Chiefs' Association MOU.

**ATTACHMENTS**

1. Total Tentative Agreement
2. BCA Salary Schedule
3. Resolution 23-91

**City of West Sacramento  
and the  
West Sacramento Battalion Chief Association (BCA)  
2023 MOU Negotiations**

**Total Tentative Agreement**

**Offered:** November 1, 2023

Note: As this is the inaugural MOU for the parties, all language is "new".

**5. SICK LEAVE**

**5.1** Sick leave is defined as the absence from duty by an employee because of:

**5.1.1.** Their own illness or injury or exposure to a contagious disease which incapacitates such employee from their duties;

**5.1.2.** Their own medical or dental appointment(s); or

**5.1.3.** They must care for a member of their family because of illness, injury or exposure to a contagious disease and when the care of such employee is definitely required, or for their family member's medical or dental appointments.

**5.1.3.1.** As used in this subsection, "family" means husband, wife, domestic partner, child, brother, sister, parents, grandparents or spouse's parents, brother in law, sister in law or grandparents. "Child" is defined as a biological, foster, or adopted child, a stepchild, a legal ward or a child of a person standing "in loco parentis" (refers to a person who has put themselves in the situation of a lawful parent by assuming the obligations incident to the parental relation without going through the formalities necessary to legal adoption).

**5.2.** The Fire Chief, or designee, may request a doctor's certificate as proof of necessity for absence in excess of four (4) consecutive shifts (96 hours) in order for sick leave with pay to be granted. The parties agree that such means shall not be used to harass or intimidate employees or discourage appropriate use of sick leave. If a pattern has been established where an employee has taken sick leave on certain days of the week (e.g., holidays, last day of the workweek) a doctor's note may be requested.

- 5.3. Personnel assigned to the forty-eight (48)/ninety-six (96) schedule shall earn sick leave at the rate of one-half (1/2) shift per month.
- 5.4. Unit personnel assigned to forty (40) hour work schedules shall have their leave converted pursuant to Appendix A.
- 5.5. In the event of an employee’s death or layoff, up to fifty percent (50%) of accumulated sick leave will be paid off. At retirement, an employee has two (2) options regarding their accumulated sick leave. The employee can choose up to fifty percent (50%) cash-out, the remaining percent of the employee’s unpaid accumulated sick leave is reported to CalPERS for additional service credit OR in lieu of receiving any cash-out, the employee may choose to have one hundred percent (100%) of the accumulated sick leave reported to CalPERS.
- 5.6. An employee who is incapacitated due to serious illness or injury while on vacation leave shall have such time charged against sick leave when they promptly notify their supervisor and substantiate such request upon return to normal duty.

**7. VACATION**

**7.1. Accumulation of Vacation Leave**

Vacation leave is accrued yearly and is computed on the basis of the employee's hire date as a full-time employee.

Annual vacation leave may not be accumulated; it must be used from year to year as accumulated, except as otherwise provided herein.

**7.1.1. Accumulation of Vacation Leave**

**56-Hour Employee:**

Years of Service	Annual Shifts Earned	Annual Accrual Hours	Monthly Accrual Hours
0 - 5 years	6	144	12
6 - 10 years	9	216	18
11+ years	12	288	24

**40-Hour Employee:**

Years of Service	Conversion Factor	Annual Accrual Hours	Monthly Accrual Hours
0 - 5 years	6 shifts x 16 hours	96	8
6 - 10 years	9 shifts x 16 hours	144	12
11+ years	12 shifts x 16 hours	192	16

Maximum accumulation through 19 yrs = 296 hours per year (shift employees = 444).

Maximum accumulation for over 20 yrs = 356 hours per year (shift employees = 534).

Total payoff at separation.

1 - 24 hour shift = 2 - 8 hour days of vacation.

**7.1.2.**

Effective the pay period inclusive of ratification by BCA and approval by the City Council, employees may have prior years of qualifying service included in their City years of service to count toward their accrual tier if they previously worked as a full time paid Firefighter/EMT or above. Prior years of service must be verified by submitting employment documentation outlining previous dates of employment. Additional documentation may be requested if necessary.

**7.2. Scheduling Vacations**

Vacation for members will be scheduled to ensure sufficient staffing is available to provide shift battalion chief coverage. Priority of vacation selection shall be by time in the Department.

**7.3. Vacation Buy-Back**

Employees will be eligible to sell back unused accrued vacation hours annually in the second pay period of January each calendar year.

To qualify to participate in the vacation sell back program, the employee must use a minimum of 40 hours of accrued leave time (not including sick leave or paid holidays) in the preceding calendar year and submit a request form for the sell back by December prior to the sell back.

If qualified, shift employees can sell back up to one hundred and twenty (120) hours and 40-hour employees can sell back up to eighty (80) hours of accrued vacation time each calendar year.

**8. HOLIDAYS**

**8.1.** All forty-eight (48)/ninety-six (96) hour personnel will receive six (6) twenty-four (24) hour shifts per year as holidays plus one point seven-five (1.75) shifts of floating holidays. Holidays accrue at the beginning of each calendar year; floating holidays accrue at the beginning of the fiscal year. An employee appointed during the period from July 1 through December 31 shall be entitled to one point seven-five (1.75) shifts for that fiscal year. An employee appointed during the period



from January 1 through March 31 shall be entitled to zero point eight seven-five (0.875) shifts for the remainder of the fiscal year. An employee appointed during the period from April 1 through June 30 shall not be entitled to any floating holiday hours for that fiscal year. Upon separation, employees are entitled to payout for any unused floating holiday time. Employees on a shift schedule may cash out up to ninety-six (96) hours of holiday leave per fiscal year.

- 8.2.** Unit personnel assigned to forty (40) hour work schedules will receive twelve (12) set holidays listed in Section 8.4 and three and one-half (3.5) floating holidays. Holidays accrue at the beginning of each calendar year; floating holidays accrue at the beginning of the fiscal year. An employee appointed during the period from July 1 through December 31 shall be entitled to twenty-eight (28) hours for that fiscal year. An employee appointed during the period from January 1 through March 31 shall be entitled to fourteen (14) hours for the remainder of the fiscal year. An employee appointed during the period from April 1 through June 30 shall not be entitled to any floating holiday hours for that fiscal year. Upon separation, employees are entitled to payout for any unused floating holiday time. For personnel assigned to a 40-hour week, when a City designated holiday falls on regularly scheduled weekday, if they elect to work the holiday, shall receive their base rate and they will bank their holiday hours at the straight time base rate. If they elect to not work the holiday, they will receive holiday pay at their base rate for their hours on that day.
- 8.3.** Shift personnel assigned to work on a City designated holiday due to Emergency Call Back shall receive one and one-half (1-1/2) times their straight time base rate for up to twenty-four (24) hours per shift. This includes responses pursuant to automatic aid agreements and to responses to agencies within Yolo County. (See "Emergency Incident Pay".)
- 8.4.** The requirements of Section 8.3 above shall be instituted for the following holidays:

- 1) New Year's Day (January 1)
- 2) Martin Luther King Jr.'s Birthday (Third Monday in January)
- 3) President's Day (Third Monday in February)
- 4) Cesar Chavez Day (March 31)
- 5) Memorial Day (Last Monday in May)
- 6) Juneteenth (June 19)
- 7) Independence Day (July 4)
- 8) Labor Day (First Monday in September)
- 9) Veteran's Day (November 11)
- 10) Thanksgiving Day (Fourth Thursday in November)

11) Day after Thanksgiving Day (Friday following Thanksgiving)

12) Christmas Day (December 25)

## **9. MANAGEMENT LEAVE**

Employees on a 40-hour schedule shall receive eighty (80) hours and employees on a shift schedule shall receive one hundred and twenty (120) hours per fiscal year of management leave annually on July 1. Employees hired during the fiscal year shall receive a pro-rated amount of management leave for that year. Upon separation, employees are entitled to payout for any unused management leave hours.

## **10. RETIREMENT**

**10.1.** The City shall continue retirement coverage for all employees under the California Public Employees' Retirement system (CalPERS).

For employees hired on or after January 1, 2013, who are new CalPERS members, the retirement formula will be 2.7% @ 57 in accordance with the Public Employees' Pension Reform Act of 2013 (PEPRA) and includes 3 year final compensation and Unused Sick Leave Credit. Employees shall have a member contribution rate of fifty percent (50%) of the total normal cost rate.

For employees hired on or after December 15, 2012, or who are current CalPERS members, the retirement formula is 3% @ 55 plan and includes 3 year final compensation and Unused Sick Leave Credit. The employee pays entire 9% of employee's contribution.

For employees hired before December 15, 2012, the retirement formula is 3% @ 50 with final year highest compensation, enhanced non-industrial disability, 1959 Survivor's Benefit (4th level), and Unused Sick Leave Credit. The employee pays entire 9% of employee's contribution.

New employees covered by a public retirement system with reciprocity (i.e., 37 Act) will be placed in the 3% @ 55 plan in accordance with PEPRA.

### **10.2 Employee Contribution To Employer Share**

Effective the pay period inclusive of ratification by BCA and approval by the City Council, all employees shall pay an additional one percent (1%) towards the employer share of CalPERS retirement. As soon as administratively possible, the City will amend its contract with CalPERS per PERS Section 20516. As applicable, the employee contribution will be made pre-tax.

## **12. HEALTH AND WELFARE BENEFITS**

## 12.1 City Contributions for Dental, Vision and Medical

The City shall continue enrollment in the State of California Public Employees' Retirement System (CalPERS) Health Insurance Program. Medical plans are offered through the CalPERS medical program (PEHMCA) using the unequal, minimum contribution methodology. Dental plan is self-insured through Delta Dental. Vision plan is Vision Service Plan.

**12.1.1** Effective pay period inclusive of ratification by BCA and approval by the City Council, the employer contribution toward a cafeteria plan amounts for employees to apply toward health benefits (medical, dental and vision) shall be as listed below. The employee must purchase dental, vision and life at the employee only level at minimum.

- Employee only: City will pay up to actual premium amount of medical, dental, and vision for employee only, not to exceed \$905 per month.
- Employee plus one: City will pay up to actual premium amount of medical, dental, and vision for employee plus one, not to exceed \$1,358 per month.
- Employee plus two or more: City will pay up to actual premium amount of medical, dental, and vision for employee plus two or more, not to exceed \$1,773 per month.
- In no event shall the contribution exceed 100% of the selected plan premium cost including dental and vision.
- Share the Savings
  - Employees hired prior to June 30, 2019, who choose not to participate in any of the City's medical plans ("opt out") and show proof of other group health care coverage, shall receive four hundred and seventy-five dollars (\$475) per month plus City paid dental/vision up to the family rate depending on coverage selected.
  - New employees hired on or after June 30, 2019, who opt out will receive four hundred and seventy-five dollars (\$475) and City paid dental/vision at the employee only rate. Employees can purchase up to the family rate with the opt out funds.

**12.1.2.** Effective the pay period inclusive of January 1, 2024, the employer contribution toward a cafeteria plan amounts for employees to apply toward health benefits (medical, dental and vision) shall be as listed below. The employee must purchase dental, vision and life at the employee only level at minimum.

- Employee only: City will pay up to actual premium amount of medical, dental, and vision for employee only, not to exceed \$1,075 per month.

- Employee plus one: City will pay up to actual premium amount of medical, dental, and vision for employee plus one, not to exceed \$1,822 per month.
- Employee plus two or more: City will pay up to actual premium amount of medical, dental, and vision for employee plus two or more, not to exceed \$2,377 per month.
- In no event shall the City contribution exceed 100% of the selected plan premium cost including dental and vision.
- Share the Savings
  - Employees hired prior to June 30, 2019, who choose not to participate in any of the City's medical plans ("opt out") and show proof of other group health care coverage, shall receive four hundred and seventy-five dollars (\$475) per month plus City paid dental/vision up to the family rate depending on coverage selected.
  - New employees hired on or after June 30, 2019, who opt out will receive four hundred and seventy-five dollars (\$475) and City paid dental/vision at the employee only rate. Employees can purchase up to the family rate with the opt out funds.

**12.1.3.** Effective January 1, 2025, the employer contribution toward a cafeteria plan amounts for employees to apply toward health benefits (medical, dental and vision) shall be as listed below. The employee must purchase dental, vision and life at the employee only level at minimum:

- Employee only: City will pay up to actual premium amount of medical, dental, and vision for employee only, not to exceed \$1,175 per month.
- Employee plus one: City will pay up to actual premium amount of medical, dental, and vision for employee plus one, not to exceed \$1,922 per month.
- Employee plus two or more: City will pay up to actual premium amount of medical, dental, and vision for employee plus two or more, not to exceed \$2,477 per month.
- In no event shall the City contribution exceed 100% of the selected plan premium cost including dental and vision.
- Share the Savings
  - Employees hired prior to June 30, 2019, who choose not to participate in any of the City's medical plans ("opt out") and show proof of other group health care coverage, shall receive four hundred and seventy-five dollars (\$475) per month plus City paid dental/vision up to the family rate depending on coverage selected.

- New employees hired on or after June 30, 2019, who opt out will receive four hundred and seventy-five dollars (\$475) and City paid dental/vision at the employee only rate. Employees can purchase up to the family rate with the opt out funds.

## **12.2 Life Insurance**

The Life Insurance is a \$24,000 term life insurance policy with \$1,000 coverage for a spouse and children aged 6 months to 23 years and \$100 coverage for children aged 14 days to 6 months. Premiums shall be paid by the employee.

## **14. COMPENSATION**

### **14.1. Salary**

Effective the pay period inclusive of ratification by BCA and approval by the City Council, the classification of Battalion Chief shall receive a general salary increase of three percent (3.0%).

Effective the pay period inclusive of ratification by BCA and approval by the City Council, the classification of Battalion Chief shall receive an additional equity adjustment of three percent (3.0%).

Effective the pay period inclusive of July 1, 2024, the classification Battalion Chief shall receive a general salary increase of three percent (3.0%).

### **14.2. Training Specialty Assignment**

Effective the pay period inclusive of ratification by BCA and approval by the City Council, employees who are routinely and consistently assigned to train employees shall receive an additional five percent (5%) of base pay during the term of their assignment. The Fire Chief or designee at their sole discretion will assign such duties and determine the number of employees receiving this assignment.

**14.2.1.** Employees on light/limited duty capacity are not eligible to receive an additional five percent (5%) if assigned work as part of their light/limited duty.

### **14.3. Administrative Assignment Pay**

Effective the pay period inclusive of ratification by BCA and approval by the City Council, employees assigned to an administrative assignment shall receive an additional five percent (5%) of base pay during the term of their assignment. This additional compensation does not qualify as

Special Compensation reportable to CalPERS (as Employees in this unit are not eligible rank and file employees). The Fire Chief or designee will assign such duties and determine the number of employees receiving this assignment at their sole discretion.

**14.3.1** Employees on light/limited duty capacity are not eligible to receive an additional five percent (5%) if assigned to administrative work as part of their light/limited duty.

**14.4. Educational and Certification Incentive Pay**

Maximum educational and certification incentive that may be obtained is eight and one half percent (8.5%) of base pay per employee.

<u>Education</u>	<u>Amount</u>
BA/BS	5%
AA/AS	2%
Maximum educational incentive that may be obtained is five percent (5%) of base pay per employee. Employees possessing both an AA/AS and BA/BS will be paid at the highest certificate amount.	
<u>Certificate</u>	<u>Amount</u>
Chief Fire Officer Certification	3.5%
Maximum certification incentive that may be obtained is three and one-half percent (3.5%) of base pay per employee. New certificates must be earned off duty.	

The incentives in this section shall be cumulative and not compounded. Compensation changes in Section 14.4 shall be effective the payroll period inclusive of ratification by BCA and approval by the City Council.

**14.5. Career Enhancement and Wellness Reimbursement**

The City will reimburse up to one thousand dollars (\$1000) per fiscal year to all eligible employees (prorated for new hires) for eligible expenses related to Career Enhancement and/or Wellness Activities and Programs incurred within twelve (12) months from the date of the expenditure, pursuant to the requirements and procedures outlined in City Administrative Policy II-E-1.

**14.8. Emergency Incident Pay**

**14.8.1 Emergency Call Back**

All hours worked by employees outside their regular working hours as a result of emergency call back or station staffing will be paid at one and one-half (1-1/2) times the employee's base rate of pay.

**14.8.2. Mutual Aid and Other Responses**

Employees shall be paid at the rate of time and one-half (1.5) their base rate of pay for mutual aid response through the California Mutual Aid System and for call-out and response through the California Office of Emergency Services outside of their regular working hours.

Employees shall be paid at the rate of time and one-half (1.5) their base rate of pay in the event of an unusual or prolonged emergency situation within the City of West Sacramento outside their regular working hours as approved by the City Manager.

**14.8.3. Strike Team/Overhead Deployments**

Employees assigned to a reimbursable strike team/overhead deployment (Line EMT, PIO, Overhead or other recognized positions) shall receive a ten percent (10%) differential for any reimbursable strike team/overhead incident. The pay differential shall apply from the time of deployment to the employee's return from the deployment. USAR deployments are excluded from this pay differential.

**14.9. Retention Bonus**

Effective the pay period inclusive of November 1, 2024, all Association members will receive a one-time, non-PERSable lump sum retention payment in the amount of four percent (4%) of annual base rate of pay.

**15. SCHEDULE AND HOURS**

**15.3. Shift Bids**

Employees shall have the opportunity to bid annually on or around November 30 for shifts and those bids shall take effect in January. If a mutual agreement cannot be met by that date, then the bidding will be completed by seniority in rank (See section 16). Based on operational need, the Fire Chief or designee retains discretion to modify shift assignment determined through the shift bid process.

**22. TERM**

The term of the Memorandum of Understanding shall be for a period of two (2) years commencing the beginning of the pay period inclusive of ratification by BCA and approval by the City Council.

**APPENDIX "A" LEAVE CONVERSION - 40 HOUR PERSONNEL**

One twenty-four (24) hour shift of leave time (i.e., vacation, holiday, or sick leave) is equivalent to two (2) eight-hour (8) days (i.e., sixteen (16) hours). Members assigned to a forty (40) hour workweek will accrue leave based on the following conversion factor:

- One (1) twenty-four (24) hour shift of leave time for a fifty-six (56) hour a week employee is equal to sixteen (16) hours of leave for a forty (40) hour a week employee.
- The number of annual shifts of leave for a fifty-six (56) hour a week employee multiplied by sixteen (16) hours equals the number of hours of leave for a forty (40) hour a week employee.

On January 1 of each year, the forty (40) hour employee will be credited with the combined amount of vacation and holiday hours accrued in the prior calendar year. Sick leave is accrued on a monthly basis.

The various accruals for a fifty-six (56) hour and forty (40) hour employee are noted below:

**Vacation:****56-Hour Employee:**

Years of Service	Shifts Earned	Annual Accrual Hours	Monthly Accrual Hours
0 - 5 years	6	144	12
6 - 10 years	9	216	18
11+ years	12	288	24

**40-Hour Employee:**

Years of Service	Conversion Factor	Annual Accrual Hours	Monthly Accrual Hours
0 - 5 years	6 shifts x 16 hours	96	8
6 - 10 years	9 shifts x 16 hours	144	12
11+ years	12 shifts x 16 hours	192	16

**Holidays:**

56 Hour Employee	Conversion Factor	40 Hour Employee Annual Holiday Hours
6 shifts	6 shifts x 16 hours	96

**Floating Holidays:**

56 Hour Employee	Conversion Factor	40 Hour Employee Annual Floating Holiday Hours
1.75 shifts Per Year	1.75 shifts x 16 hours	28

**Sick Leave:**

56 Hour Employee	Conversion Factor	40 Hour Employee Monthly Accrual
1/2 shifts	1/2 shift x 16 hours	8 hours

WSBCA:



*Dan L. Koontz*

2C2E9A9B5029452...

Dan Koontz  
Chief Negotiator

11/8/2023 | 4:54:43 PM PST

Date

City of West Sacramento:

DocuSigned by:  
*fl*

2725771D98D941C...

Laura Izon  
Chief Negotiator

11/9/2023 | 8:43:48 AM PST

Date

City of West Sacramento  
2023/2024 Classification Plan

POSITION TITLE	SALARY EFFECTIVE	MONTHLY SALARY RANGE					ANNUAL SALARY	
		A	B	C	D	E	MINIMUM	MAXIMUM
Fire Battalion Chief	11/4/23	\$10,307				\$12,526	\$123,684	\$150,312

**RESOLUTION 23-91****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST SACRAMENTO  
ADOPTING AMENDMENTS TO THE BUDGET FOR FISCAL YEARS 2023/24 AND 2024/25  
TO FUND THE BATTALION CHIEFS' ASSOCIATION MOU**

**WHEREAS**, the City Council adopted the biennial Operations and Maintenance (O&M) budget for Fiscal Years 2023/24 and 2024/24 on June 28, 2023; and

**WHEREAS**, in November 2022, the four Battalion Chiefs filed a Petition for Exclusive Recognition as a bargaining unit, the Battalion Chiefs' Association (BCA), and the BCA was recognized by the City Manager in February 2023; and

**WHEREAS**, representatives from the BCA and the City began negotiating in good faith on June 6, 2023; and

**WHEREAS**, a tentative agreement was reached and signed by BCA on November 9, 2023; and

**WHEREAS**, the budget amendments are required to fund the costs of the proposed MOU in FY 2023/24 and 2024/24; and

**WHEREAS**, the City Council has considered all information related to this matter, as presented at the public meetings of the City Council identified herein, including any supporting reports by City staff, and any other information provided during public meetings.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of West Sacramento as follows:

1. The City Council hereby approves amendments to the ongoing General Fund Budget for fiscal year 2023/24 in the amount of \$106,539 and for fiscal year 2024/25 in the amount of \$180,170, and amendments to the one-time General Fund Budget of \$27,009 in FY 2024/25 as follows:

**FY 2023/24 SOURCES**

<u>\$106,539</u>	101-0000-3110	General Fund Balance
<b>\$106,539</b>	<b>TOTAL SOURCES</b>	<b>FY 2023/24</b>

**FY 2023/24 USES**

<u>\$106,539</u>	101-9151-5111	General Fund Salaries & Wages
<b>\$207,179</b>	<b>TOTAL USES</b>	<b>FY 2023/24</b>

**FY 2024/25 SOURCES**

<u>\$207,179</u>	101-0000-3110	General Fund Balance
<b>\$207,179</b>	<b>TOTAL SOURCES</b>	<b>FY 2024/25</b>

**FY 2024/25 USES**

\$180,170	101-9110-5111	General Fund Salaries & Wages
<u>\$27,009</u>	101-9110-5118	General Fund Non-PERSable Pays
<b>\$207,179</b>	<b>TOTAL USES</b>	<b>FY 2024/25</b>

*\*Note: Interfund Transfers (Grey Text) are not included in totals above so as not to duplicate total financial impacts.*

2. The City Council hereby finds that the facts set forth in the recitals to this Resolution are true and correct and establish the factual basis for the City Council's adoption of this Resolution.

3. This Resolution shall take effect immediately upon its adoption.


**PASSED AND ADOPTED** by the City Council of the City of West Sacramento this 15<sup>th</sup> day of November 2023, by the following vote:

**AYES:**  
**NOES:**  
**ABSENT:**

\_\_\_\_\_  
Martha Guerrero, Mayor

**ATTEST:**

\_\_\_\_\_  
Jennifer Cusmir, City Clerk

<b>MEETING DATE:</b> November 15, 2023		<b>ITEM # 9</b>	
 <b>SUBJECT:</b> <b>CONSIDERATION OF RESOLUTION 23-76 SETTING THE TIME AND DATE FOR THE 2024/25 REGULAR MEETINGS OF THE CITY COUNCIL</b>			
<b>INITIATED OR REQUESTED BY:</b> <input type="checkbox"/> Council <input checked="" type="checkbox"/> Staff <input type="checkbox"/> Other		<b>REPORT COORDINATED OR PREPARED BY:</b> Amanda Berlin, Assistant City Manager <b>City Manager's Office</b>	
<b>ATTACHMENT</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Information	<input type="checkbox"/> Direction <input checked="" type="checkbox"/> Action

**OBJECTIVE**

The objective of this report is to seek Council approval of the City Council meetings scheduled for February 1, 2024 through January 31, 2025.

**RECOMMENDED ACTION**

It is respectfully recommended that the City Council adopt Resolution 23-76 setting the time and date for City Council meetings commencing February 1, 2024 through January 31, 2025.

**BACKGROUND**

The City Council generally meets on the first and third Wednesdays of the month. In the fall of each year, the Council reviews the meeting calendar with consideration given to holidays and other regular Council obligations. Resolution 23-76 sets a regular Council meeting schedule for 2024/25 which takes into consideration holidays and other scheduling conflicts. This schedule will reduce the need to cancel and/or schedule special meetings.

**ANALYSIS**

Resolution 23-76 keeps, as much as possible, with the designated first and third Wednesdays of each month with the following exceptions:

- Pursuant to Resolution 22-136 the Council is currently scheduled to meet on January 17, 2024, and staff is recommending not scheduling a meeting on February 7 (first Wednesday) but scheduling a meeting on February 21 (third Wednesday) to allow for scheduling two consecutive meeting days in February, to be determined at a later date, for the annual Council strategic planning session.
- Due to the Washington Unified School District Spring Break schedule and the Metro Chamber Annual Cap-to-Cap event (which Council attends) scheduled for April 13-17, 2024, staff is proposing to schedule a meeting on April 10 (second Wednesday) and not schedule meetings on April 3 (first Wednesday) or April 17 (third Wednesday). If necessary, a special meeting could easily be scheduled to accommodate any date sensitive items.
- Staff is recommending not scheduling a meeting on July 3 due to the July 4 holiday.
- Staff is recommending not scheduling a meeting on September 4 due to the Labor Day holiday.
- Due to the League of California Cities Annual Conference and Expo (which Council and many staff attend) scheduled for October 16-18, 2024, staff is recommending not scheduling a meeting on October 16.
- Due to the holiday season, staff recommends meeting once in December on the 4<sup>th</sup> and not scheduling meetings on December 18 or January 1, to allow for a holiday break until January 15, 2025. The meeting on December 4 will also accommodate the planned Executive Team Retreat schedule. A Special Meeting may need to be scheduled for the swearing-in of re-elected and/or newly elected members of the City Council depending on the date of Yolo County's certification of the 2024 elections.

Environmental Considerations  
N/A

Commission Recommendations

N/A

Strategic Plan Integration

N/A

Alternatives

The Council may choose to keep the regular meeting schedule on the first and third Wednesdays of the month and cancel meetings or hold special meetings, as necessary.

Coordination and Review

N/A

Budget Cost Impact

N/A

**ATTACHMENT**

- 1) Resolution 23-76

**RESOLUTION 23-76**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST SACRAMENTO  
SETTING THE TIME AND DATE FOR THE FEBRUARY 2024 - JANUARY 2025 REGULAR  
MEETINGS OF THE CITY COUNCIL**

**WHEREAS**, Municipal Code Section 2.04.010(c) states that the time of regular City Council meetings shall be set by resolution and may be amended from time to time; and

**NOW, THEREFORE, BE IT RESOLVED** that the City Council sets the time and date for regular meetings of the City Council for February 2024 through January 2025 at 7:00 p.m. (between 6:00 - 6:30 p.m. for closed sessions) as follows:

February 21, 2024  
March 6 & 20, 2024  
April 10, 2024  
May 1 & 15, 2024  
June 5 & 19, 2024  
July 17, 2024  
August 7 & 21, 2024  
September 18, 2024  
October 2, 2024  
November 6 & 20, 2024  
December 4, 2024  
January 15, 2025

**BE IT FURTHER RESOLVED** that prior to the end of each calendar year, a calendar of regular meetings will be adopted for the subsequent calendar year.

**PASSED AND ADOPTED** this 15<sup>th</sup> day of November 2023 by the following vote:

**AYES:**  
**NOES:**  
**ABSENT:**  
**ABSTAIN:**

\_\_\_\_\_  
Martha Guerrero, Mayor

**ATTEST:**

\_\_\_\_\_  
Jennifer Cusmir, City Clerk

MEETING DATE: November 15, 2023

ITEM # 10

**SUBJECT:**



**PUBLIC WORKSHOP REGARDING PROPOSED AMENDMENTS TO TITLE 17 (ZONING) OF THE MUNICIPAL CODE TO FACILITATE TINY HOMES ON WHEELS AS LEGAL DWELLINGS**

**INITIATED OR REQUESTED BY:**

- Commission     Staff
- Other

**REPORT COORDINATED OR PREPARED BY:**

David Tilley, Principal Planner  
 Community Development Department

ATTACHMENT  Yes     No     Information     Direction     Action

**OBJECTIVE**

This item is a public workshop regarding proposed amendments to Title 17 (Zoning) of the Municipal Code to accommodate tiny homes on wheels as legal dwellings.

**RECOMMENDED ACTION**

Staff respectfully recommends that the City Council:

1. Receive a presentation from staff;
2. Take public comment in a workshop format; and
3. Provide direction to staff regarding the proposed Municipal Code amendments.

**BACKGROUND**

Tiny homes are those that are typically under 600 square feet and are intended to be minimally impactful on the environment. Some may be very small; for example, some may be 200 square feet or less (10' x 20'). Tiny homes typically range in size depending on the local jurisdictional requirements, may be placed and used on a variety of sites, ranging from the backyards of existing homes to isolated rural settings. Tiny homes may or may not be constructed on a chassis (with or without axles and/or wheels). Tiny homes built on a permanent foundation are currently allowed under Title 17 of the West Sacramento Municipal Code, provided they comply with all requirements pertaining to residential construction, such as utility connections and life safety requirements. From a zoning standpoint the mere size of the home is largely not relevant if it is proposed on a residential parcel.

A variant of tiny homes is those that are built on a chassis with wheels and may be towed from one location to another. Tiny homes on a chassis and wheels (THoWs) are legally considered vehicles regulated by the Department of Motor Vehicles (DMV). THoWs are currently allowed in mobile home parks pursuant to State law that are regulated by HCD (see Figure 1 below). This means that they are not subject to building codes and do not count as housing units toward the City's housing production goals in the Housing Element of the General Plan, according to HCD. THoWs meet the City's current definition of a trailer, which is defined as "a vehicle with or without motor power, which is designed or used for hauling materials or vehicles, or for human habitation, office, or storage including camper, recreational vehicle, travel trailer, and mobile home, but not including mobile homes on a permanent foundation."







Figure 1 THoW examples

Trailers are excluded from the definition of a dwelling unit, which is “one or more rooms designed, occupied, or intended for occupancy as separate living quarters, with full cooking, sleeping, and bathroom facilities for the exclusive use of a single household. Excludes tents, cabins, boats, trailers, dormitories, labor camps, hotels, and motels.” This means that a THoW is not considered a legal dwelling unit under the Zoning Code when proposed to be located outside of an RV park, campground, mobile home park, etc.

If ultimately desired by the City Council, the City could entertain THoWs as a land use type and allow them outside of RV parks and the like. Other communities, such as Santa Cruz County, Placer County, and the City of Oakland, have passed ordinances to accommodate THoWs with varying requirements. THoW would still be legally vehicles and thus not subject to building codes but would be subject to other land development-related sections of the City’s Municipal Code. It’s unclear if THoWs would count toward the City’s housing obligations as provided for in the Housing Element of the General Plan. Given that the City’s target by 2029 is more than 9400 units it’s unlikely that THoWs would contribute much toward the goal.

Beginning in 2020, the City has been monitoring a THoW that was placed and occupied on a residential lot in the Bryte neighborhood (see Figure 2 below). Under current Municipal Code standards, this THoW is noncompliant for several reasons - most notably that it is not a legal dwelling type and not connected to municipal utilities such as water or sewer, instead utilizing a neighbor’s garden hose to supply the unit with domestic water and a compost toilet. In addition, the THoW is not connected to electrical or gas utilities, relying on solar panels. After Code Enforcement began enforcing the violations based on a complaint, activity on enforcement has slowed and paused to allow the property owner an opportunity to work towards compliance.



Figure 2 THoW in Bryte

**ANALYSIS**

Staff has identified three possible options when it comes to the legality of THoW in West Sacramento:

- Pathway 1 maintains the status quo, thus limiting THoW to RV parks, campgrounds, etc. where suitable sanitation facilities and stable, adequate utilities are available. If Council were to direct staff to this option, abatement of the code violations would resume on active code enforcement cases, including on the THoW referenced above in Bryte. It should be noted that Code Enforcement staff have received and abated other ThoW cases; roughly six individual cases over the past 18 months. The nature of the other (now closed) cases were travel trailers and RVs that had been moved into the rear yards of existing residential properties and occupied as ADUs.
- Pathway 2 treats ThoWs as accessory dwelling units (ADU). ADUs are those dwellings built on a residential lot where there is already a primary dwelling. In response to the housing crisis, the State legislature has enacted a number of laws that create an easier path for property owners to densify their residential properties through the construction of accessory units without requiring discretionary approvals. If the Council is amenable to allowing THoWs on single-family residential properties, staff recommends this option, with the provision of requirements to employ higher design standards than what would be seen on RVs and travel trailers. In this scenario, an administrative permit would be necessary to ensure the proposed THoW meets the criteria such as utility connections, construction of an adequate parking pad for the THoW, and design features. The review process would also include the assessment of applicable impact fees. Since the THoW would still be considered a vehicle, it is not reviewed through the typical building permit process.
- Pathway 3 would allow THoWs as ADUs and/or primary dwellings on residential lots. In this scenario, the City would still require typical development standards such as connections to City utilities, an improved building pad, paved parking, and would adopt similar design standards as noted above for ADUs. Design standards could include, but not be limited to, door and window design, eaves, exterior cladding materials, roof pitch, skirting of wheels and chassis, etc.

The following table summarizes the three options:

<b>Pathway 1- <u>Status Quo</u></b>	<b>Pathway 2: THoW- <u>ADU only</u></b>	<b>Pathway 3: Pathway 2 plus allow THoW as a <u>primary unit</u></b>
Anything legally a vehicle is prohibited as a dwelling outside of a park or campground	Amend municipal code to allow a vehicle to be used as an ADU	Amend municipal code to allow a vehicle to be used as a primary dwelling
"Tiny" homes could be primary or secondary (pre-manufactured or stick-built)	Could not be self-propelled	Could not be self-propelled
	Need design standards such as pitched roof, eaves, windows, complementary siding and roofing materials to the primary dwelling, etc.	Need design standards such as pitched roof, windows, eaves, conventional siding and roofing materials, etc.
	Conventional connections to wet and dry utilities	Conventional connections to wet and dry utilities
	Built to ANSI or NFPA standard <sup>1</sup>	Built to ANSI or NFPA standard
	Size limit to what can be transported on public roads (<400 sf)	Size limit to what can be transported on public roads (<400 sf)
	Follow ADU law for fees, fire sprinklers, short-term rental prohibition, etc.	All applicable impact fees (adjusted for proportionality)

<sup>1</sup> A movable tiny house shall comply with the National Fire Protection Association 1192 Standard on Recreational Vehicles or the American National Standards Institute A119.5 Park Model Recreational Vehicle Standard. (Tiny Home Industry Association website)

Pathway 1- <u>Status Quo</u>	Pathway 2: THoW- <u>ADU only</u>	Pathway 3: Pathway 2 plus allow THoW as a <u>primary unit</u>
	Connect to power grid	Fire sprinklers per Fire Department
		Improved building pad; frontage improvements
		Connect to power grid

Staff's proposed changes to the Municipal Code are listed below (see Attachment 1, Draft Ordinance 23-X).

17.08.040 Supplemental Regulations

**E. Tiny Homes on Wheels. Tiny Homes on Wheels may only be deployed as an Accessory Dwelling Unit and are subject to those standards contained within 17.30.040 (Accessory Dwelling Units) in addition to:**

1. **Design and Materials.** The exterior design and materials of the Tiny Home on Wheels shall be visually compatible with the primary dwelling regarding the roof, building walls, doors, windows, horizontal/vertical expression, and architectural detail.
2. **Public Utilities.** The Tiny Home on Wheels shall be connected to the City water and sewer systems or on an approved well and/or septic system where City services are not available. Connection to electrical and/or gas service is also required.
3. **Administrative Approval.** A proposed Tiny Home on Wheels must receive administrative approval from the Community Development Department prior to be transported to the project site. Fees for said approval shall per the adopted fee schedule contained within the Book of Fees.
4. **Additional criteria** can be found in Exhibit A (see Attachment 2, Exhibit A (Additional Design Criteria)).

17.51.020 Definitions

**Dwelling Unit.** One or more rooms designed, occupied, or intended for occupancy as separate living quarters, with full cooking, sleeping, and bathroom facilities for the exclusive use of a single household. Excludes **Tiny Homes on Wheels when used as an accessory dwelling unit**, tents, cabins, boats, dormitories, labor camps, hotels, and motels.

**Tiny Home on Wheels.**

1. **Is a detached self-contained unit, designed and built to look like a conventional building structure, and which includes basic functional areas that support normal daily routines such as cooking, sleeping, toilet, and bathing facilities; and**
2. **Is licensed and registered with the California Department of Motor Vehicles; and,**
3. **Meets the National Highway Traffic Safety Administration regulations (Federal Motor Vehicle Safety Standards- Title 49 of the Code of Federal Regulations), American National Standards Institute (ANSI) 119.5 requirements or the National Fire Protection Association (NFPA) 1192 RV standards and is certified for ANSI or NFPA compliance. Certification must be made by a qualified third-party inspector; and,**
4. **Is towable by a bumper hitch, frame-towing hitch, or fifth wheel connection and cannot move under its own power; and,**
5. **Is a minimum of 150 square feet and maximum of 400 square feet as measured within the exterior faces of the exterior walls.**

**Trailer.** A vehicle with or without motor power, which is designed or used for hauling materials or vehicles, or for human habitation, office, or storage including camper, recreational vehicle, travel trailer, and mobile home, but not including mobile homes on a permanent foundation and **Tiny Homes on Wheels when used as an accessory dwelling unit.**

Staff is seeking the input from the City Council on the possibility of creating a regulatory framework to allow Tiny Homes on Wheels in West Sacramento. Since tiny homes as ADUs are already sufficiently addressed, staff has focused on how existing regulations might be revised to accommodate THoWs, should the Council support such an approach. The critical issues for THoWs revolve around how to address basic health and public safety

considerations; sewage connections/disposal, electric power/natural gas provision, and potable water. Another important factor to consider is that these units are not constructed in a way that is intended to serve a permanent habitation.

#### Environmental Considerations

Staff anticipates the proposed Municipal Code updates to be eligible for a categorical exemption from CEQA review pursuant to §15305 (Minor Alterations in Land Use Limitations) of the CEQA Guidelines.

#### Commission Recommendation

This item was heard in a workshop before the Planning Commission on September 7, 2021. Two members of the public provided verbal comments including a representative from the Tiny Home Industry Association. Staff presented the three pathways with the initial staff recommendation being to allow THoWs as ADU's only. Overall, the Commission supported the concept of recognizing THoWs as legal dwellings (primary or accessory).

#### Strategic Plan Integration

This proposed code updates advance the 2023 Policy Agenda strategic principal Housing & Homelessness: provide housing options for everyone and services for the most vulnerable members of society.

#### Alternatives

The Council's primary alternatives are summarized below.

1. Conduct the public workshop and provide direction to staff.
2. Continue the item to a future date and request additional information be provided at that time.

Alternative 1 is staff's recommendation. Staff is prepared to effectuate Alternative 2 at the Commission's direction.

#### Coordination and Review

The project was coordinated with staff from the City Attorney's Office, the Fire Department, and the Economic Development & Housing Department.

#### **ATTACHMENTS**

1. Draft Ordinance 24-X
2. Exhibit A (Proposed Additional Design Criteria)

## ORDINANCE NO. 24-XX

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WEST SACRAMENTO AMENDING TITLE 17 (ZONING) OF THE MUNICIPAL CODE PERTAINING TO TINY HOMES ON WHEELS

The City Council of the City of West Sacramento does ordain as follows:

Section 1. Purpose. The purpose of this Ordinance is to make various amendments to the Zoning Code pertaining to Tiny Homes on Wheels.

Section 2. Authority. The City Council enacts this Ordinance in accordance with the authority granted to cities by State law.

Section 3. Amendment. The following sections of the West Sacramento Municipal Code are hereby amended to read as follows:

#### 17.08.040 Supplemental Regulations

**E. Tiny Homes on Wheels.** Tiny Homes on Wheels may only be deployed as an Accessory Dwelling Unit and are subject to those standards contained within 17.30.040 (Accessory Dwelling Units) in addition to:

1. **Design and Materials.** The exterior design and materials of the Tiny Home on Wheels shall be visually compatible with the primary dwelling regarding the roof, building walls, doors, windows, horizontal/vertical expression, and architectural detail.
2. **Public Utilities.** The Tiny Home on Wheels shall be connected to the City water and sewer systems or on an approved well and/or septic system where City services are not available.
3. **Administrative Approval.** A proposed Tiny Home on Wheels must receive administrative approval from the Community Development Department prior to be transported to the project site. Fees for said approval shall per the adopted fee schedule contained within the Book of Fees.
4. **Additional criteria can be found in Exhibit A.**

#### 17.51.020 Definitions

**Dwelling Unit.** One or more rooms designed, occupied, or intended for occupancy as separate living quarters, with full cooking, sleeping, and bathroom facilities for the exclusive use of a single household. Excludes Tiny Homes on Wheels when used as an accessory dwelling unit, tents, cabins, boats, trailers, dormitories, labor camps, hotels, and motels.

**Tiny Home on Wheels.** A vehicle intended for human habitation as an accessory dwelling unit that is built on a chassis and complies with National Highway Traffic Safety Administration regulations (Federal Motor Vehicle Safety Standards- Title 49 of the Code of Federal Regulations). They must also comply with the National Fire Protection Association 1192 RV Standard. Tiny Homes on Wheels are typically less than 600 square feet of floor area.

**Trailer.** A vehicle with or without motor power, which is designed or used for hauling materials or vehicles, or for human habitation, office, or storage including camper, recreational vehicle, travel trailer, and mobile home, but not including mobile homes on a permanent foundation and **Tiny Homes on Wheels when used as an accessory dwelling unit.**

Section 5. Severability Clause. If any section, subsection, paragraph, sentence, clause or phrase of this Ordinance for any reason shall be held to be invalid or unconstitutional, the decision shall

not affect the remaining portions of the Ordinance. The Council of the City of West Sacramento hereby declares that it would have passed this Ordinance and each article, section, subsection, paragraph, sentence, clause or phrase which is a part thereof, irrespective of the fact that any one or more articles, sections, subsections, paragraphs, sentences, clauses or phrases are declared to be invalid or unconstitutional.

Section 6. Effective Date and Publication. This Ordinance shall take effect 30 days after its adoption, and pursuant to Resolution 99-46, published in summary format prior to adoption and within 15 days after adoption in a newspaper of general circulation published and circulated within the City of West Sacramento.

Section 7. CEQA. A Categorical Exemption has been prepared for this ordinance in compliance with the provisions of the California Environmental Quality Act.

**PASSED, APPROVED AND ADOPTED** by the City Council of the City of West Sacramento on this \_\_\_\_ day of \_\_\_\_\_, 2024, by the following vote:

**AYES:**  
**NOES:**  
**ABSENT:**  
**ABSTAIN:**

\_\_\_\_\_  
Martha Guerrero, Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

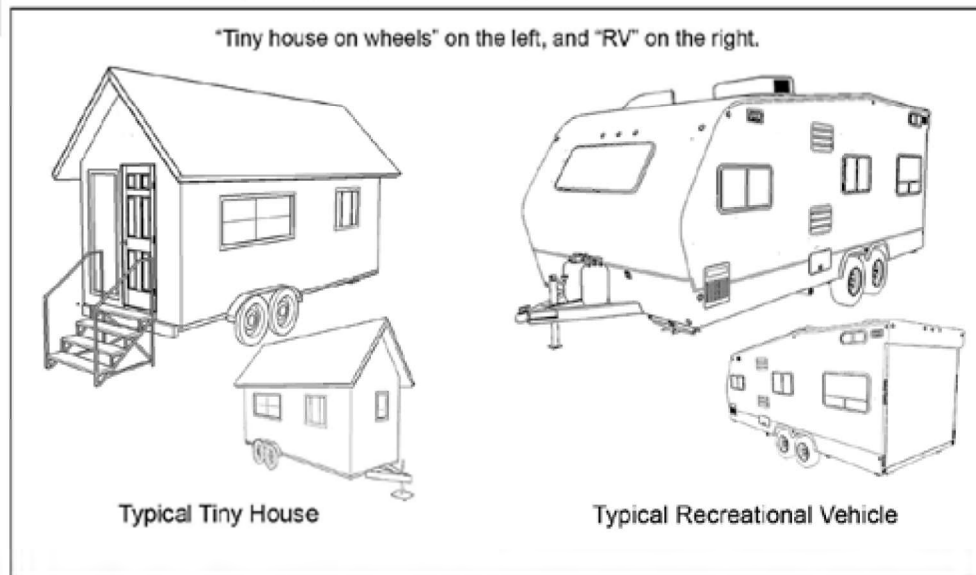
\_\_\_\_\_  
Jennifer Cusmir, City Clerk

\_\_\_\_\_  
Jeffrey Mitchell, City Attorney

CODIFY XX UNCODIFY \_\_\_\_

**EXHIBIT A****Draft Tiny Home on Wheels Design Criteria**

1. **Design.** To be considered the THoW shall be mounted on a wheeled trailer chassis and designed and built to look like a conventional residential structure, using conventional building materials, and is thus architecturally distinct from traditional mobile homes and recreational vehicles.
2. **Maximum Floor Area.** The maximum square footage of habitable floor space for a THoW shall be 450 square feet.
3. **Address.** The THoW shall obtain a separate address with issuance of an electrical permit.
4. **Qualifying Features.** The THoW shall include a bathroom, kitchen, and a sleeping area.
5. **Certification.** The THoW shall comply with standards set forth in California Health and Safety Code 18027.3 (i.e., ANSI 119.5 and NFPA 1192). A THoW shall be certified by a recognized national certification body as complying with these standards and a certified label shall be placed on the moveable tiny house to demonstrate compliance.
6. **One Story.** THoW are limited to one story. Lofts up to 48" in height do not constitute a second story.
7. **Screened Undercarriage.** The THoW's undercarriage, including wheels, axles, tongue, and hitch, shall be concealed from view, using materials that are similar to the materials used on the main body of the THoW .
8. **Egress.** The THoW shall have a minimum of two means of egress, one of which shall be the main entrance and one of which shall be in each sleeping area. Entrance and egress stairs, pathways, and windows shall be constructed in accordance with state standards.
9. **Appearance.** THoW shall resemble conventional residential structure rather than a recreational vehicle. This shall be done by incorporating design features and materials typically used for houses (e.g., siding, roofing, pitched roofs, eaves, residential windows, etc.). See example below:



10. **Living Area Extensions.** The roof and all exterior walls shall not be fixed with slide-

- outs, tip-outs, or other forms of mechanically articulating room area extensions.
11. **Water and Sewer.** The THoW shall connect to City water and sewer where available. Where these services are not available, a THoW shall be served on an on-site well and sewage disposal facilities approved by the Yolo County Environmental Health department.
  12. **Energy.** THoWs shall incorporate an electrical subpanel. Building permits may be required.
  13. **Mechanical Equipment.** All mechanical equipment incorporated into the structure other than solar energy panels or collectors.
  14. **Tie Down.** A THoW tiny home shall be tied down with anchors or otherwise stabilized as designed by the manufacturer.
  15. **Porches and Decks.** Structures such as porches, decks, sheds, and gazebos shall be designed to detach from the moveable tiny house. Uncovered porches or decks less than thirty (30) inches in height and less than two hundred (200) square feet do not require building permits. Permanent roofed structures over one hundred twenty (120) square feet do require building permits.
  16. **Wind Loads.** A moveable tiny home shall be constructed to withstand minimum wind loads for the proposed parking location.
  17. **Parking Pad.** The wheels shall be skirted or removed and shall sit with leveling or support jacks on a paving surface designed in accordance with Title 17 (Zoning) of the WSMC.
  18. **Parking.** THoWs shall not require additional parking when proposed as an ADU.
  19. **Emergency and Rescue Openings.** All THoWs shall have emergency escape and rescue openings sufficient to ensure emergency escape, including a means of escape, if not an exterior passage door, from each sleeping space that provides an opening of sufficient size to permit the unobstructed passage, with its major axis parallel to the plane of the opening and horizontal at all times, of an ellipsoid generated by rotating about the minor axis an ellipse having a major axis of 24 in. (610 mm) and a minor axis of 17 in. (432 mm). An exterior passage door, if used for a means of escape, shall provide an unobstructed opening with a minimum horizontal dimension of 18 in. (432 mm) and a minimum vertical dimension of 48 in. (1219 mm). Egress roof access windows in lofts used as sleeping rooms shall be deemed to meet this requirement if installed such that the bottom of the opening is not more than 44 inches above the loft floor, provided the egress roof access window has a net clear opening of not less than 5.7 square feet (0.530 m<sup>2</sup>), the net clear height of the opening is not less than 24 inches (610 mm) tall, and the net clear width of the opening is not less than 20 inches (508 mm) wide.
  20. **Class "A" Roof Requirement.** All THoWs shall have a roof, including skylights and any egress roof access window, that meets the standards for a Class "A" roof assembly as tested in accord with ASTM E108 or UL 790 standards or equivalent fire roof assembly safety standards requirements as demonstrated by sufficient evidence satisfactory to the Community Development Director.



MEETING DATE: November 15, 2023

ITEM # 11

**SUBJECT:****WORKSHOP ON THE FUTURE OF CITY'S ON-DEMAND RIDESHARE PROGRAM****INITIATED OR REQUESTED BY:**

[ ] Council [X] Staff

[ ] Other

**REPORT COORDINATED OR PREPARED BY:**Stephanie Chhan, Senior Transportation Planner  
Community Development Department

ATTACHMENT [X] Yes [ ] No [ ] Information [X] Direction [ ] Action

**OBJECTIVE**

The purpose of this report is to provide information to and request feedback from the City Council on the future of the On-Demand Rideshare Program to proceed with the development and evaluation of a Request for Proposal.

**RECOMMENDED ACTION**

It is respectfully recommended that the City Council receive staff's presentation on the future of the On-Demand Rideshare Program and provide feedback and direction to staff on priority service operations and parameters.

**BACKGROUND**

On January 17, 2018, the City awarded a contract to NoMad Transit LLC, a wholly owned subsidiary of Via Transportation, Inc. with the option to extend annually for up to five additional years. The West Sacramento On-Demand Rideshare Program was launched as a 1-Year Pilot on May 14, 2018, following robust Transportation, Mobility, and Infrastructure (TMI) Commission and City Council engagement dating back to June 2016. The program was initially developed in response to Council direction to explore a more flexible, innovative public transit model that better served resident needs, as fixed route bus service continued to experience increased costs alongside declining ridership.

On June 7, 2023, the City Council approved Amendment No. 5 to the Amended & Restated Contract with NoMad Transit LLC to extend operations of the West Sacramento On-Demand Rideshare Program through June 30, 2024. This is the last allowable extension per the 2018 Contract for Services executed with NoMad Transit LLC. On July 19, 2023, the City Council authorized staff to release a Request for Information (RFI) to identify if there are other interested and adequate providers that meet the City's desired service and to understand how technology offerings have evolved. Staff identified four options to move forward with following the RFI process:

- Option 1: Sole Source Contract with NoMad Transit LLC
- Option 2: Partnership with Yolo County Transportation District (YoloTD)
- Option 3: Competitive Procurement for On-Demand Microtransit Operator
- Option 4: End the On-Demand Rideshare Program

The RFI included the following updated goals for the On-Demand Rideshare Program:

- Provide safe, reliable, and accessible on-demand transportation service
- Connect areas poorly serviced by transit to key destinations/amenities
- Increase awareness of and provide convenient connections to multi-modal and active transportation options
- Close first- and last- mile gaps at and around key transit hubs to support regional trips
- Maintain a productive, cost-effective, and sustainable microtransit service
- Gather data to complement, support, and advance existing and future transit options

**ANALYSIS**

On September 8, 2023, the City received responses to the RFI and determined that there are comparable and competitive contractors available to operate the On-Demand Rideshare Program. YoloTD did not submit a formal response to the Request for Information, however, City staff and YoloTD discussed the feasibility of a partnership for the On-Demand Rideshare Program. YoloTD operates their on-demand rideshare service, BeeLine, in Knight's Landing, Winters, and Woodland – the annual operating budget for Fiscal Year (FY) 2023/24 is \$1,359,000. Given discussions and high-level cost estimates, YoloTD believed it would be challenging to provide

microtransit service at the desired levels within the City’s current operating costs going forward due to labor, vehicle procurement, and potential necessary infrastructure to support operations and future electrification. Initial cost estimates suggest that a partnership with YoloTD with the current level of service could increase costs by \$1.5 to \$2 million. Though external funding opportunities are available, it would be difficult to secure by July 2024. Furthermore, YoloTD indicated it would be difficult to replicate a service with demand-responsive city-wide, corner-to-corner service operating – YoloTD indicated that service levels would require YoloTD Board of Director approval for any changes whereas the City and NoMad Transit LLC coordinate to modify the number of vehicles in service dependent on demand and wait times. As such, staff recommends not pursuing a partnership with YoloTD for the On-Demand Rideshare Program, but to continue coordinating with YoloTD on the City’s transportation planning efforts such as the upcoming Light Rail Transit/Bus Rapid Transit Study.

Based on the responses and consistent with the City’s procurement procedures, staff recommends releasing a competitive procurement. High level cost estimates were not typically provided through the RFI, and City staff will evaluate costs during the competitive procurement process. In anticipation of releasing a Request for Proposal, staff is presenting upcoming funding challenges to Commission and City Council to determine priorities for the On-Demand Rideshare Program.

Funding Gap Mitigation

Currently, the On-Demand Rideshare Program is funded by Transportation Development Act (TDA) funds. TDA is administered by the California Department of Transportation (Caltrans) and provides two sources of public transportation funding for local governments: Local Transportation Funds (LTF) and State Transit Assistance (STA) funds. The funds are intended for the development and support of public transportation needs that exist in California and are allocated to counties based on population, taxable sales and transit performance. LTF revenues are primarily intended to support public transit services but can support a wide variety of transportation programs including planning activities, pedestrian and bicycle facilities, road rehabilitation or other community transit, bus and rail projects. However, STA funds have more restrictive criteria and regulations that must be met in order to fund eligible expenses. Unlike LTF, STA funds may not be allocated for fund administration, streets, roads, or pedestrian/bicycle facility purposes. The Sacramento Area Council of Governments (SACOG) has TDA administration responsibilities for Sacramento, Sutter, Yolo and Yuba Counties. SACOG staff compiles a list of unmet transit service needs for each transit operator for the Social Service Transportation Advisory Council consideration to determine whether the unmet transit needs are reasonable to meet. LTF revenues can be used for streets and roads projects in some jurisdictions after “reasonable to meet” transit services have been provided. In accordance with these limitations, the City has used LTF revenue to support the contract with NoMad Transit LLC since the inception of the On-Demand Rideshare Program.

On September 27, 2023, the City Council approved the FY 2023/24 TDA Claim and Resolution 23-68. After reconciling the FY 2023/24 Via On-Demand Transit Services budget, staff requested \$2,899,378.21 in LTF dollars to support the FY 2023/24 Via On-Demand Transit Services contract with NoMad Transit. Over the past five years, the City’s TDA claim expenses typically exceeded the annual TDA allocation. Given that the City has had carry over TDA balance from previous years, the City has been able to support the On-Demand Rideshare Program using TDA alone.

Attachment 1 summarizes annual TDA allocations and annual expenses, showing that the City’s annual expenses typically exceeded the annual allocation. The table below summarizes current allocations, claims, and remaining reserve fund balances for FY 2023/24.

	<b>Carry Over from Previous Years</b>	<b>FY 2023/24 TDA Allocation</b>	<b>FY 2023/24 Total Available</b>	<b>FY 2023/24 TDA Claim Expenses</b>	<b>FY 2023/24 Remaining Balance</b>
<b>LTF</b>	\$810,417.14	\$3,794,876	\$4,605,293.14	\$3,561,019.22	\$1,044,273.92
<b>STA</b>	\$1,887,549.99	\$630,458	\$2,518,007.99	\$2,518,007.99	\$0
<b>TDA Totals</b>	<b>\$2,697,967.13</b>	<b>\$4,425,334</b>	<b>\$7,123,301.13</b>	<b>\$6,079,027.21</b>	<b>\$1,044,273.92</b>

Staff anticipates even with FY2024/25 TDA allocations, there will be a funding gap if costs for contracted services remain the same or increase as compared to the \$3,301,372 fee schedule for FY 2023/24 (Attachment 2). Staff estimates that if there are similar TDA allocations (approximately \$4.3 million) and expenditures to SACOG and YoloTD (approximately \$3.0 million) as previous years, the On-Demand Rideshare Program will see a funding gap of approximately \$600,000 (under an estimated similar contract to FY 2023/24) to \$800,000 (under an estimated 5 percent increase to the FY 2023/24 contract) for FY 2024/25 and increasing to \$1.6 million (under

an estimated similar contract to FY 2023/24) to \$1.8 million (under an estimated 5 percent increase to the FY 2023/24 contract) after FY 2024/25. If all the TDA funds are used for the On-Demand Rideshare Program, the City will also need to identify other funding sources to support bus shelter maintenance and utilities at Harbor Yard. Furthermore, YoloTD has indicated that there may be a funding gap that grows from \$3 million in FY 2024/25 to \$6 million in FY 2025/26. YoloTD identified several strategies to close this funding gap – one of which includes increasing the use of state LTF funds and potentially reducing the amount available for flexible uses by local agencies. As such, a larger gap may be anticipated. The YoloTD FY2023/24 budget is provided as Attachment 3.

Staff is therefore conducting a workshop on the future of the On-Demand Rideshare Program to seek City Council feedback regarding key service parameters for continuation of the rideshare program. This may include:

- Funding Plan
- Overall service model
- Hours of operation
- Service coverage area
- Accessibility/user experience
- Vehicles & drivers
- Customer service
- Technology platform
- Fares & incentives
- Marketing
- Data sharing
- Performance evaluation
- Other Product Features, Innovations, and Opportunities

The workshop will provide an opportunity for the City Council to consider the funding needed to continue the service at its current level of operations, to explore tradeoffs that can support maintaining similar service parameters, or to propose significant changes to the service to operate within the funding available through TDA. For example, changes to the fare structure may increase the revenue the City receives to reinvest into the Program as well as lower ridership to maintain demand for an acceptable estimated pick-up time. The On-Demand Rideshare Program cost \$15.35 per ride in FY 2022/23 based on the funds expended through the contract with NoMad Transit LLC and staff time costs. As such, the City highly subsidizes the On-Demand Rideshare Program - currently the regular fare is \$3.50 and the City also currently offers a ViaPass, a discounted weekly frequent rider program that offers riders up to four rides a day, seven days a week for \$15. Seniors 62+ and individuals with eligible disabilities receive a 50 percent discount off the regular fare and ViaPass price. Riders can add additional passengers for \$1.00 each. ViaPass effectively provides a 50 percent discount on regular fares and 70 percent discount on top of already discounted fares. ViaPass users take 2.5 times more rides than non-pass riders. Approximately 26 percent of weekly active users hold a ViaPass and 48 percent of all weekly rides are taken using ViaPass. Condensing hours of operation, adjusting the service area, or increasing targeted average wait time can reduce the cost of driver hours, the number of vehicles in operation, and fuel consumption. Staff also plans to release a rider survey to understand what service attributes are important to the public. Draft survey questions are provided in Attachment 4. Staff will take the Council's feedback and results from the survey into consideration during the RFP process, and additional opportunity to provide input in the service model will be available if the City moves forward with awarding a contract.

#### Evolution of City-led On-Demand Rideshare Services in Peer Agencies

Though most on-demand rideshare services are provided by transit agencies or transit agencies partnered with cities, there are a number of city-led on-demand rideshare services. Some cities have turned to on-demand rideshare technology platforms for their senior/paratransit/Dail-a-Ride programs such as Newton, MA; Beverly Hills, CA; West Hollywood, CA; Santa Monica, CA; Chapel Hill, NC; and Miami, FL. Others have expanded their existing City-led transit services to support the general public with on-demand rideshare technology platforms such as Auburn, CA; Roseville, CA; and San Gabriel, CA. On-demand rideshare continue to be popular services initiated by cities – Palo Alto, CA; Norman, GA; and Titusville, PA; and Glendale, AZ are just a few cities that launched on-demand rideshare services in 2023. Below are examples of older city-led rideshare programs initiated by cities without existing transit programs and how these cities have evolved their programs.

Arlington, Texas, once the largest city in the United States without a public transit system, launched its microtransit program in 2017 (now called Arlington Transportation). Arlington has a population of approximately 393,000 in 99.62 square miles. In December 2017, Arlington launched Via Arlington with 18 vehicles covering 25 square miles around the Entertainment District and University of Texas, Arlington campus. The service now features a fleet of 68 custom-branded Mercedes Metris and Sienna vans and a few EasyMile autonomous vehicles that cover the entire city, as well two transit stations outside of the Arlington to support transfers to other transit services. Arlington Transportation has maintained the same service hours from 7AM to 9PM on weekdays and 9AM to 9PM on Saturdays – no service on Sundays and advanced notice for holiday-related schedule changes. Arlington Transportation charged a flat fee of \$3 per person and a similar ViaPass program for \$10 per week when launched in 2017, but fares have now increased to \$3-\$5 per ride depending on distance, additional

passengers cost the same amount, a weekly ViaPass is \$25, and a monthly ViaPass is \$80. Additionally, Arlington Transportation charges a \$1.50 fee for cancellations and no-shows. Arlington Transportation achieved 2 million rides in June 2023 as the sole public transit option for the City. In 2017, the City contributed \$322,500, with the remaining two-thirds coming from the Federal Transit Administration to support the \$922,500 contract. Costs have significantly increased given the expansions and innovations incorporated into the program - autonomous shuttles through the Rideshare, Automation, and Payment Integration Demonstration (RAPID) project, a student transportation program, and Intercity Service. In November 2022, the Arlington City Council approved a \$30 million two-year contract extension - \$22 million of which funded standard Via service and the remainder funding the RAPID project, student transportation program, and Intercity Service. Of the \$22 million, \$4.9 million of fare revenue would be reinvested, \$10.2 million in local funds, and \$6.8 million in Federal Transit Administration supports the program.

Cupertino, California launched its on-demand shuttle pilot with Via on October 29, 2019 (now known as Silicon Valley Hopper). Cupertino has a population of approximately 60,000 in 11.33 square miles. The on-demand transit network initially spanned the entirety of the City of Cupertino and included a satellite zone surrounding the Sunnyvale CalTrain station for commuters with six Mercedes Metris vans, with the intent to grow to 10 vehicles over time. Due to the COVID-19 pandemic, the pilot program was paused and resumed in October 2021. In 2022, the cities of Santa Clara and Cupertino received a \$8.5 million Transit and Intercity Rail Capital Program (TIRCP) grant to expand the on-demand shuttle service between the two cities using a fleet of zero-emission vehicles. Vehicles have been replaced with Kia Niro EVs and Lightning 3 zero-emission vehicles. As such, the service area now includes part of Santa Clara, increasing the total service zone to 20.4 square miles, as well as pick-up/drop-off locations at the Mountain View and Santa Clara CalTrain stations. Hours of operations have been adjusted on Monday through Friday from 6AM to 8PM and now operates from 7AM to 7PM – Saturday service remains the same, from 9AM to 5PM. Fares were originally \$5 per ride, with weekly and monthly passes available for just \$17 a week and \$60 a month; however, fares were temporarily reduced to \$2 as ridership rebounded from the pandemic and are now \$3.50 for one-way fare, \$1.75 for discounted riders (seniors, students, low-income, disabled), and \$1 for additional riders. The City budgeted a not-to-exceed cost of \$1.75 million for the 18-month on-demand shuttle pilot program. In March 2023, the Cupertino City Council approved a four-year contract with Via showing a total cost of \$16,931,283 split between the TIRCP grant, Cupertino, and Santa Clara. The four-year service budget shows anticipated cost of \$3,244,928 for the first year of service, \$3,806,378 for the second year of service, \$4,070,272 for the third year of service and \$5,809,705 for the fourth year of service. The service is expected to expand an additional 6.4 square miles in year four, spring 2026, and increase from 10 to 16 vehicles over the contract term.

#### Environmental Considerations

The Request for Proposals is not a project under California Environmental Quality Act. Staff will return to City Council to provide direction on whether to continue the On-Demand Rideshare Program.

#### Commission Recommendation

This item was presented to the Transportation, Mobility & Infrastructure (TMI) Commission on November 6, 2023. Feedback from the TMI Commission has been incorporated into the presentation.

#### Strategic Plan Integration

This project advances the 2023 Strategic Plan principle of Mobility & Connectivity – “Provide convenient and sustainable choices for people to get where they are going.”

#### Alternatives

The Council’s primary alternatives to staff’s recommendations are:

- 1) Receive staff’s presentation and provide feedback on the future of the City’s On-Demand Rideshare Program; or
- 2) Direct the staff’s presentation to be moved to a later meeting; or
- 3) Decline to hear staff’s presentation on the future of the City’s On-Demand Rideshare Program; or
- 4) Direct staff to end the On-Demand Rideshare Program.

Alternatives 2 and 3 will restrict staff from making an informed decision on an On-Demand Rideshare operator and may result in a lapse of service, should the Council wish to continue a citywide rideshare program. Alternative 4 is not recommended given the public support of the program.

#### Coordination and Review

This report was prepared by the Transportation & Mobility Division of the Community Development Department

and received review from the Finance Department, City Attorney's Office, and City Manager's Office.

**Budget/Cost Impact**

At this point, there are no budget/cost impacts except for staff time to explore the continuation of the On-Demand Rideshare Program. Should City Council extend the On-Demand Rideshare Program beyond FY 2023/24, a resolution with an appropriation request will be brought forward to City Council for consideration. A funding source outside of TDA funds will be required.

**ATTACHMENTS**

- 1) Table of Annual Transportation Development Act Allocation and Expenditures
- 2) Amendment No. 5 and Fiscal Year 2023/24 Fee Schedule with NoMad Transit LLC
- 3) Yolo County Transportation District Fiscal Year 2023/24 Budget
- 4) Draft Future of West Sacramento On-Demand Rideshare Rider Questionnaire

## Annual Transportation Development Act Allocation and Expenditures

	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24
	<b>Transportation Development Act Allocation<sup>1</sup></b>					
LTF Allocation	\$2,377,223	\$2,888,398	\$2,971,944	\$3,334,091	\$3,958,904	\$3,794,876
STA Allocation	\$447,096	\$477,692	\$282,114	\$461,163	\$658,441	\$630,458
<b>Total TDA</b>	<b>\$2,824,319</b>	<b>\$3,366,090</b>	<b>\$3,254,058</b>	<b>\$3,795,254</b>	<b>\$4,617,345</b>	<b>\$4,425,334</b>
	<b>Transportation Development Act Expenditures to SACOG and YoloTD</b>					
SACOG Planning (LTF)	\$71,317	\$86,652	\$89,158	\$100,023	\$118,767	\$113,846
YoloTD for fixed-route and paratransit (LTF + STA)	\$1,917,431 + \$213,403	\$1,685,636 + \$403,240 plus FY18/19 adj	\$1,541,351 <sup>2</sup> + \$166,263	\$2,201,567 <sup>3</sup> + \$285,229	\$2,720,000 <sup>3</sup> + \$285,000	\$512,795.01 + \$2,518,007.99
	<b>Remaining Transportation Development Act Funds for City Use<sup>4</sup></b>					
LTF	\$388,475	\$1,116,110	\$1,341,435	\$1,032,501	\$1,120,137	\$3,168,235
STA	\$233,693	\$74,452	\$115,851	\$175,934	\$373,441	<b>(\$1,887,550)<sup>5</sup></b>
<b>Total TDA for City Use</b>	<b>\$622,168</b>	<b>\$1,190,562</b>	<b>\$1,457,286</b>	<b>\$1,208,435</b>	<b>\$1,493,578</b>	<b>\$3,168,235</b>
	<b>Transportation Development Act Expenditures Claimed by City</b>					
City Claim for Via Contract <sup>6</sup> (LTF)	\$599,001 <sup>7</sup>	\$1,905,000	\$1,252,277	\$1,677,405.87	\$2,484,600.99	\$2,899,378.21
Staff Time (STA)	\$0	\$115,000	\$115,000	\$115,000	\$192,272.01	\$0 <sup>8</sup>
Bus Shelter Maintenance (LTF)	\$20,000	\$28,000	\$33,000	\$33,000	\$30,000	\$35,000 <sup>3</sup>

<sup>1</sup> May not match prior year agenda reports to City Council because updated with revised TDA allocations

<sup>2</sup> Claimed \$166,263 over Fixed Route Service cost estimated in YoloTD FY 2020/21 budget

<sup>3</sup> Includes some expenditures for utilities at Harbor Yard

<sup>4</sup> If claim were only based on annual TDA allocation to show that City has been dipping into prior year reserves

<sup>5</sup> Prior year STA allocations used to support both fixed-route and paratransit services

<sup>6</sup> Only includes TDA claim amount - does not include reinvestment of fare revenue or contract rollover

<sup>7</sup> City received a Sacramento Area County of Governments Transportation Demand Management Innovation grant of \$149,999

<sup>8</sup> Moving the contract costs to the TDA fund and thus, eliminating the application of the Indirect Cost Allocation Plan (ICAP) rates to staff time led to cost savings in FY 2022/23 that was rolled-over to be used for FY 2023/24.

Annual Transportation Development Act Allocation and Expenditures

Other Projects (LTF)	\$82,160	\$0	\$0	\$0	\$0	\$0
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**AMENDMENT NO. 5**  
to the  
**AMENDED AND RESTATED CONTRACT FOR**  
**SERVICES**  
between the  
**CITY OF WEST SACRAMENTO**  
and  
**NOMAD TRANSIT LLC**  
Dated May 1, 2019

This Amendment No. 5 (the "Amendment") to the Amended and Restated Contract for Services dated May 1, 2019 (the "Existing Contract") by and between the City of West Sacramento ("the City") and NoMad Transit LLC ("the Contractor") is made and entered into this July 1, 2023. Except as expressly amended herein, the Existing Contract is in full force and effect.

**RECITALS**

**WHEREAS**, on January 17th, 2018, the City awarded a contract to NoMad Transit LLC, a wholly owned subsidiary of Via Transportation, Inc., for a one (1) year Pilot operation based on the Contractor's proposal submitted in response to the City's Request for Proposals dated May 26, 2017; and

**WHEREAS**, the January 17th, 2018 executed agreement provided that, by mutual agreement, the Contract may be extended annually for a total of up to five (5) additional years; and

**WHEREAS**, the City Council approved an Amended and Restated Contract on May 1, 2019 to NoMad Transit LLC, a wholly owned subsidiary of Via Transportation Inc., to continue operations of the West Sacramento On-Demand Rideshare program, launched on May 14, 2018; and

**WHEREAS**, whereas the May 1, 2019, awarded contract has an expiration date of June 30, 2020, after which operations would otherwise cease and provided that, by mutual agreement, the Contract may be extended annually for a total of up to four (4) additional years; and

**WHEREAS**, on June 17, 2020, the City Council approved a 2-year contract renewal with NoMad Transit LLC to continue operations of the West Sacramento On-Demand Rideshare program from July 1, 2020 through June 30, 2022; and

**WHEREAS**, on July 14, 2021, the City Council approved an amendment to the contract with NoMad Transit LLC establishing the schedule of fees for fiscal year 2021/22; and

**WHEREAS**, on June 15, 2022, the City Council approved a 1-year contract renewal with NoMad Transit LLC to continue operations of the West Sacramento On-Demand Rideshare program from July 1, 2022 through June 30, 2023; and

**WHEREAS**, on June 7, 2023, the City Council approved an amendment on a 1-year contract renewal with NoMad Transit LLC to continue operations of the West Sacramento On-Demand Rideshare program from July 1, 2023 through June 30, 2024; and

**WHEREAS**, the City and Contractor desire to modify the Existing Contract as provided herein.

**NOW, THEREFORE, IT IS MUTUALLY AGREED** by the parties hereto to amend said



agreement as set forth below. Stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) is to be deleted and bold and underlined text (indicated textually in the same manner as the following example: **Bold and underlined text**) is to be added as follows:

## Part I: Amendments

### A. Amendments to Existing Contract Provisions

1. Section 2.A is revised as follows: "The services of Contractor are to commence on May 14, 2019 and terminate on June 30, 2024 and shall be undertaken and completed in accordance with the service parameters set forth by Exhibit "A"..."
2. **Section 4.A** is revised as follows: "The Contractor shall be paid monthly in arrears for the actual fees, costs and expenses, including but not limited to purchased transportation services, and otherwise as set forth in the Schedule of Fees, which in no event shall total compensation exceed the Funding from City of West Sacramento (Excl. Fare Revenue) as identified in Exhibit "B", without City's prior written approval..."
3. **Section 4.B** is revised as follows: "Said amounts shall be paid by City upon submittal of Contractor's monthly invoices provided in accordance with Task 1.3, and in no event later than 30 days from its receipt thereof."
4. **Section 4.H.** is revised as follows: "At the expiration or earlier termination of the Contract, all unspent service revenue remaining with the Contractor shall be remitted to the City within sixty (60) days. In the event that actual fare revenues collected exceed the estimated amount stated in Exhibit "B", all additional fare revenues will be reinvested toward the FY 2023/24 Program operations such that the total amount payable by the City (Section 4A) is reduced by an equivalent amount, unless otherwise directed by the City. Should the actual 2023/24 fare revenues collected be less than the estimated amount stated in Exhibit "B", the City shall not be billed in excess of the total amount payable by the City (Section 4A) and the Parties shall discuss in good faith how to adapt the services in light of the lower budget and shall mutually agree upon any resulting changes to the services.
5. **Section 4.I.** is revised as follows: All unspent fare revenues generated by the Program between July 1, 2022 and June 30, 2023 remaining with the Contractor, and which would have otherwise been remitted directly to the City, shall be reinvested toward the FY 2023/24 Program operations and such amount shall be credited towards the invoice(s) payable by the City during FY 2023/24 until all such unspent fare revenues have been credited.

6. **Section 4.J.** is revised as follows: Exclusive of fare referenced in Section I above, the total amount of fare revenue reinvested during the FY 2023/24 Program shall not exceed **three hundred thirteen thousand six hundred forty two (\$313,642)** dollars as stated in Exhibit ~~“C”~~ **“B”**. **The estimated fare revenues from FY 2022-23 to be reinvested in FY 2023-24 shall be one hundred fifty thousand (\$150,000) dollars and additional funding from the City shall not exceed two million, eight hundred thirty-seven thousand, seven hundred thirty (\$2,837,730) dollars.** In no event shall the total combined compensation of reinvested fare revenues and payments made by the City for **FY 2023/24** exceed **three million, three hundred, and one thousand and three hundred seventy-two dollars (\$3,301,372)** without City's prior written approval.

#### **B. Amendments to Contract Exhibits**

1. Exhibit A to the Existing Contract is hereby renamed **“FY 2023/24 Scope of Work”** and is amended as follows:

Task 4.1 Ridership Data Reports is revised as follows: The following shall be added at the end:

**The Contractor shall assist the City in tracking and collecting key performance data such that City can review performance metrics consistent with the Transportation Development Act (TDA). This data shall be provided to the City quarterly and shall include the following metrics:**

- **Vehicle revenue hours - The hours that vehicles are scheduled to or actually travel while in revenue service. Vehicle revenue hours include: layover/recovery time. Vehicle revenue hours exclude: deadhead, operator training, vehicle maintenance testing; and other non-revenue uses of vehicles.**
- **Vehicle revenue miles - The miles that vehicles are scheduled to or actually travel while in revenue service. Vehicle revenue miles include: layover/recovery time. Vehicle revenue hours exclude: deadhead, operator training, vehicle maintenance testing; and other non-revenue uses of vehicles.**
- **Passengers per Revenue Hour**
- **Passengers per Revenue Mile**
- **Accidents**
- **On-time performance**
- **Passenger complaints and compliments**

2. Exhibit B to the Existing Contract – **FY 2022/23 SCHEDULE OF FEES** is hereby replaced by the attached **“FY 2023/24 SCHEDULE OF FEES”**

#### **Part II: Remaining Terms Unchanged.**

Except as expressly revised herein, the Existing Contract remains in full force and effect. In the event of a conflict between the Existing Contract and the terms of this Amendment No. 5, the terms set forth herein shall control.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement to be effective as of June 7, 2023.

**CITY OF WEST SACRAMENTO**

DocuSigned by:  
By:   
6ED1E9CA078E42A...  
Aaron Laurel, City Manager

**NoMad Transit LLC**

DocuSigned by:  
By:   
F89EDB5082754FA...  
Erin Abrams, Manager

**APPROVED AS TO FORM**

DocuSigned by:  
By:   
E802FF46DDB44EA...  
Jeffrey Mitchell, City Attorney

**ATTEST:**

DocuSigned by:  
By:   
Jennifer Cusmir, City Clerk 6/20/2023 | 9:59:43 AM PDT

**Exhibit B: FY 2023/24 Schedule of Fees**

	WSC Via Year 6 Contract Value			Total Not-to-Exceed Price (12 Months)
	Price per Driver Hour	Price per Service Hour	Price per Ride	
Year 6 Service Planning*	N/A	N/A	N/A	\$55,000
Supply Planning*	N/A	N/A	N/A	\$0
<b>Total Upfront Costs</b>				<b>\$55,000</b>
Project Management	\$3.55	N/A	N/A	\$203,060
Performance Monitoring and Reporting	\$0.72	N/A	N/A	\$41,184
Marketing & Promotions Plan and Implementation	\$0.14	N/A	N/A	\$8,008
Program Operations**	\$47.82	N/A	N/A	\$2,735,304
<b>Total Cost per Driver Hour</b>	<b>\$52.23</b>			<b>\$2,987,556</b>
Customer Service (1.25 FTE X \$30.39 per hour)	N/A	\$37.99	N/A	\$227,180
<b>Total Cost per Service Hour</b>		<b>\$37.99</b>		<b>\$227,180</b>
Estimated Access for All Regulatory Fee***			\$0.10	\$21,736
<b>Total Cost to West Sacramento (Incl. Fare Revenue), Before PUCTRA Fees</b>				<b>\$3,291,472</b>
Estimated PUCTRA Regulatory Fee****				\$9,899
<b>Total Cost to West Sacramento (Incl. Fare Revenue), Incl. PUCTRA Fees</b>				<b>\$3,301,372</b>
<b>Sources of Funding:</b>				
Fare Revenue from FY 22 23				\$150,000
Fare Revenue from FY 23 24				\$313,642
<b>Funding from City of West Sacramento (Excl. Fare Revenue)</b>				<b>\$2,837,730</b>
<b>Total</b>				<b>\$3,301,372</b>
<b>Driver Hours Summary:</b>				
<b>Total Implied Driver Hours</b>				<b>57,200</b>
<b>Implied Driver Hours (Weekly)</b>				<b>1,100</b>
<b>Service Hours Summary:</b>				
<b>Total Implied Service Hours</b>				<b>5,980</b>
<b>Total Implied Service Hours (Weekly)</b>				<b>115</b>

**\* Items to be invoiced in full upon the start of Year 6.**

**\*\* Includes driver pay, vehicle cost (incl. WAV retrofits and spares where applicable), insurance, dedicated IT operations and supply admin, technology access, local & central operations support, T&E, rent, and office expenses.**

**\*\*\* TNC Access for All Fees to be invoiced to West Sacramento on a pass through basis.**

**\*\*\*\* PUCTRA Fees to be invoiced to West Sacramento on a pass through basis.**

# FINAL BUDGET

FISCAL YEAR 2023-2024

June 12, 2023

Yolobus

## Introduction from the Executive Director

On behalf of the entire YoloTD team, I am pleased to share with you the enclosed budget for the 2023-2024 fiscal year.

**Improving transit service:** As transit ridership continues to rebound post-COVID, this budget restores and expands select services in response to demand.

- Increasing frequencies on the Intercity Route 42A/B to 30 minutes all day, representing a 25% increase in service over current levels.
- Restoring express service from South Davis to downtown Sacramento
- Restoring evening service in West Sacramento

These service expansions are dependent on having sufficient drivers available to operate the service. Labor shortages continue to be an issue throughout the industry. This budget assumes service expansions would begin in January 2024, midway through the budget year.

**Fixing the I-80 commute:** This budget continues our multi-year commitment to improving multimodal travel on the Interstate 80 corridor. This year, we will continue working with our partners at Caltrans to establish the first-in-the-region Express Lanes on I-80 in Yolo County. We will also complete the planning and policy work necessary to establish a tolling authority, complete an environmental review for the new lanes, and get ready to break ground on the first phase in 2025.

**Active Transportation Corridors:** We are gearing up to launch the planning and community engagement process for the Yolo Active Transportation Corridors project, which will plan a network of multiuse bicycle and pedestrian paths connecting the communities of Yolo County.

**Maintaining Reliable Service while Transitioning to a Zero-Emission Fleet:** With the pending approval of our state-mandated fleet conversion plan, we will begin directing resources toward replacing our aging fleet of buses with new, cleaner technology and planning the necessary infrastructure to support a growing fleet of battery-electric buses. Meanwhile, in the short run, we are planning to purchase 2 CNG buses to replace vehicles that are beyond their useful life, in order to maintain service reliability during the transition to a zero-emission fleet.

**Beeline Microtransit Service:** This budget supports the launch our newly rebranded microtransit service, *Beeline by Yolobus*, in Woodland in August 2023.

**Downtown Woodland Transit Center:** This budget funds the relocation of our Woodland transit center from the County Fair Fashion Mall to a more central location in downtown Woodland.

**Internal restructuring:** To support our growing body of planning work, this budget proposes restructuring our leadership team from three positions to four. We are eliminating the Deputy Director of Planning and Operations, replacing it with two new positions: Director of Planning and Director of Transit Operations. These two new positions will work alongside our Director of Finance Administration, with all three reporting to the Executive Director. This new position will be offset by a reduction in the number of Planning/Operations staff employed by the District, maintaining a total staff number of 14 FTE.

As always, we thank you for your continued partnership in serving the transportation needs of our Yolo County communities and look forward to your feedback and input.

*Autumn Bernstein*  
Executive Director

## Budget Overview

The Yolo County Transportation District (YoloTD) provides fixed route, microtransit and paratransit services within Yolo County and between Yolo County and the City of Sacramento. YoloTD is also responsible for multimodal transportation planning within Yolo County. The YoloTD Budget for Fiscal Year 2023-24 (beginning July 1, 2023 and ending June 30, 2024), consists of the following:

### FY 2023-24 YoloTD Budget Overview Table

Program	FY 2023-24 Operating Budget	Multi-Year Projects			Total FY 2023-24
		Prior Year Balances Carrying Fwd	FY 23-24 Appropriation	Total Multi- year Projects	
Administration	\$3,186,000				\$3,186,000
Fixed Route	\$12,096,000	\$2,993,581	\$2,213,000	\$5,206,581	\$15,089,581
Microtransit	\$1,359,000	\$0			\$1,359,000
Paratransit	\$3,050,000	\$0			\$3,050,000
Multi-Modal	\$0	\$900,000	\$2,350,000	\$3,250,000	\$3,250,000
<b>Total</b>	<b>\$19,691,000</b>	<b>\$3,893,581</b>	<b>\$4,563,000</b>	<b>\$8,456,581</b>	<b>\$28,147,581</b>

<b>FY 2022-23 Budget</b>	\$17,789,000		\$5,498,200	\$23,287,200
<b>Change</b>	\$1,902,000		\$2,958,381	\$4,860,381
<b>Percent Change</b>	11%		54%	21%



## Section 1: Annual Operating Budget

### 1.1 Administration Operating Budget

Table 1.1a shows the proposed \$3.2 million FY 2023-24 Administration budget, which includes labor costs, other central administrative expenses, and the costs and revenues associated with selling fuel to outside users at our compressed natural gas (CNG) refueling station.

The proposed Administration budget represents an increase of \$26 thousand (1%) compared to the FY 2022-23 budget, including the following:

- a. The net increase in salary and benefit costs of \$0.2 million (7%), after allocation of certain salary and benefit costs to grant-funded projects. While this budget postpones determination of a specific COLA adjustment, it includes an allowance for salary adjustments that may be later recommended to the Board for potential retroactive application to July 2023.
- b. The proposed staffing shown in Table 1.1b anticipates:
  1. Replacing the position of Deputy Director for Operations and Planning into two separate positions: Director of Transit Operations and Director of Planning. Salary ranges for these two new positions have not yet been determined. YoloTD anticipates completing a compensation survey during the summer of 2023, and will come back to the Board with recommendations for salary ranges for the new positions, along with any updates to existing positions that may be indicated by the survey.
  2. Reducing the number of Senior Planners by two while adding an Assistant Transportation Planner.
  3. Adding a Finance Associate position to expand administrative capacity in anticipation of a substantial increase in grant funding and workload associated with the Yolo 80 Managed Lanes project. The budget assumes the cost of this position will be allocated to grant funds.
  4. Adding a limited-term Associate Transportation Planner, to be funded by YoloTD's Yolo 80 Managed Lanes Tolling Advance Planning grant (MM-3).
- c. The benefits budget continues to reflect the expectation that YoloTD's retiree health benefits will not draw upon the operating budget, thanks to investment earnings on YoloTD's retiree health benefit trust fund.
- d. Other operating expenses include items such as facility security and cleaning, and office supplies and furnishings.

The revenues supporting the Administration budget consist primarily of:

- a. \$1.5 million in Transportation Development Act State Transit Assistance and Local Transportation Fund (STA/LTF), increasing \$0.1 million from FY 2022-23. Table 1.1c provides further details.
- b. \$1.2 million in Yocha Dehe Wintun Nation/Cache Creek Casino Mitigation Funds, reduced from \$1.4 million budgeted in FY 2022-23. This is based on updated estimates as to the cost of service benefiting the casino area.
- c. Other general revenues that YoloTD can use to support its general operations, including low carbon/renewable energy credits, outside fuel sale royalties, advertising revenue, and interest revenue.

**Table 1.1a. Annual Operating Budget - Administration**

	<b>Final</b>	<b>Draft</b>	
<b>Administration Operating Revenues</b>	<b>FY 22-23</b>	<b>FY 23-24</b>	<b>Change</b>
STA/LTF	\$1,370,000	\$1,511,000	\$141,000
Cache Creek Mitigation	\$1,442,000	\$1,193,000	(\$249,000)
Low Carbon/Renewable Energy Credits	\$200,000	\$200,000	\$0
Net Outside Fuel Sales	\$48,000	\$140,000	\$92,000
Interest Revenue	\$50,000	\$100,000	\$50,000
Advertising Revenue	\$50,000	\$42,000	(\$8,000)
<b>Total Administration Operating Revenues</b>	<b>\$3,160,000</b>	<b>\$3,186,000</b>	<b>\$26,000</b>

	<b>Final</b>	<b>Draft</b>	
<b>Administration Operating Expenses</b>	<b>FY 22-23</b>	<b>FY 23-24</b>	<b>Change</b>
Regular Employee Salaries	\$1,578,000	\$1,922,000	\$344,000
Intern/Temp Employee Salaries	\$54,000	\$56,000	\$2,000
Overtime	\$5,000	\$5,000	\$0
Employee Salaries allocated to Projects	\$0	(\$180,000)	(\$180,000)
<b>Subtotal Salaries</b>	<b>\$1,637,000</b>	<b>\$1,803,000</b>	<b>\$166,000</b>
PERS Employer Contribution	\$143,000	\$191,000	\$48,000
PERS UAL Payment	\$210,000	\$176,000	(\$34,000)
Health Insurance Employer Contribution	\$216,000	\$240,000	\$24,000
Retiree Health Insurance	\$0	\$0	\$0
Medicare Contribution	\$24,000	\$29,000	\$5,000
Other Employee Benefits	\$20,000	\$20,000	\$0
Benefits allocated to Projects	\$0	(\$44,000)	(\$44,000)
<b>Subtotal Benefits</b>	<b>\$613,000</b>	<b>\$612,000</b>	<b>(\$1,000)</b>
<b>Subtotal Personnel Costs</b>	<b>\$2,250,000</b>	<b>\$2,415,000</b>	<b>\$165,000</b>
Technology	\$97,000	\$105,000	\$8,000
Marketing & Communications	\$156,000	\$105,000	(\$51,000)
Other Operating Expenses	\$129,000	\$132,000	\$3,000
Legal Services	\$85,000	\$85,000	\$0
Employee Training	\$57,000	\$57,000	\$0
Utilities	\$51,000	\$51,000	\$0
Memberships	\$31,000	\$31,000	\$0
Unitrans Pass-Thru for Uninc Area Service	\$24,000	\$24,000	\$0
Facilities Maintenance	\$18,000	\$19,000	\$1,000
Directors Stipends and Expenses	\$12,000	\$12,000	\$0
Contingencies	\$250,000	\$150,000	(\$100,000)
<b>Total Administrative Operating Expenses</b>	<b>\$3,160,000</b>	<b>\$3,186,000</b>	<b>\$26,000</b>

**Table 1.1b. Authorized FTE and Classification Ranges, Effective July 1, 2023**

*Note: YoloTD is planning to complete a compensation survey during FY 2023-24 to benchmark salary ranges against comparable jurisdictions. This survey will be used to provide proposed ranges for new classifications proposed in the budget and may result in proposed new ranges for continuing positions. Any updates to the salary ranges would be presented to the YoloTD Board for review and approval prior to going into effect.*

Classification Title	FTE		Annual Salary Range	
	22-23	23-24	Low	High
<b>Regular Positions</b>				
Executive Director	1	1	\$211,860	\$211,860
Transit Operations & Planning Director - split into two separate positions in FY 23-24	1	0	\$141,298	\$170,839
Director of Transit Operations- new in FY 23-24	0	1	TBD	TBD
Director or Planning- new in FY 23-24	0	1	TBD	TBD
Finance & Admin Director	1	1	\$137,435	\$168,958
IT Specialist	1	1	\$101,849	\$128,202
IT Systems Support Tech	1	1	\$56,019	\$69,245
Senior Transportation Planner	3	1	\$80,609	\$129,475
Associate Transportation Planner	1	1	\$68,357	\$99,001
Assistant Transportation Planner	1	2	\$83,273	\$85,022
Communications/Marketing Specialist	1	1	\$68,357	\$99,166
Executive Assistant/Clerk of the Board	1	1	\$74,474	\$96,922
Senior Finance and HR Associate	2	2	\$63,823	\$80,656
Finance Associate	0	1	TBD	TBD
<b>Total Authorized Regular FTE</b>	<b>14</b>	<b>15</b>		
<b>Limited Term Positions (Subject to Availability of Designated Funding)</b>				
Associate Transportation Planner	0	1	\$68,357	\$99,001
<b>Total Authorized Limited Term FTE</b>	<b>0</b>	<b>1</b>		

**Table 1.1c. FY 2023-24 YoloTD Jurisdictions STA and LTF Allocations**

	Davis			Woodland		
	Final	Prelim	Change	Final	Prelim	Change
	FY 2022-23	FY 2023-24		FY 2022-23	FY 2023-24	
STA Estimate by Jurisdiction	\$805,612	\$1,016,790	26.2%	\$561,365	\$717,563	27.8%
LTF Estimate by Jurisdiction	\$4,761,442	\$4,519,271	-5.1%	\$4,347,051	\$4,189,604	-3.6%
<b>Total STA/LTF by Jurisdiction</b>	<b>\$5,567,054</b>	<b>\$5,536,061</b>	<b>-0.6%</b>	<b>\$4,908,416</b>	<b>\$4,907,167</b>	<b>0.0%</b>
<b>STA/ LTF to YoloTD</b>						
YoloTD Admin	\$515,000	\$453,124	-12.0%	\$454,000	\$420,070	-7.5%
Fixed Route	\$1,864,000	\$1,851,000	-0.7%	\$1,312,000	\$662,000	-49.5%
Paratransit Service	\$419,000	\$604,000	44.2%	\$483,000	\$842,000	74.3%
Microtransit Service	\$0	\$0		\$208,000	\$620,064	198.1%
<b>STA to YoloTD</b>	<b>\$805,612</b>	<b>\$1,016,790</b>	<b>26.2%</b>	<b>\$561,365</b>	<b>\$717,563</b>	<b>27.8%</b>
<b>LTF to YoloTD</b>	<b>\$1,992,388</b>	<b>\$1,891,334</b>	<b>-5.1%</b>	<b>\$1,895,635</b>	<b>\$1,826,572</b>	<b>-3.6%</b>
<b>Total YoloTD STA + Share of LTF</b>	<b>\$2,798,000</b>	<b>\$2,908,124</b>	<b>3.9%</b>	<b>\$2,457,000</b>	<b>\$2,544,135</b>	<b>3.5%</b>
STA Retained by Jurisdiction	\$0	\$0	0.0%	\$0	\$0	0.0%
LTF Retained by Jurisdiction	\$2,769,054	\$2,627,937	-5.1%	\$2,451,416	\$2,363,032	-3.6%
<b>Total Retained by Jurisdiction</b>	<b>\$2,769,054</b>	<b>\$2,627,937</b>	<b>-5.1%</b>	<b>\$2,451,416</b>	<b>\$2,363,032</b>	<b>-3.6%</b>
<b>West Sacramento</b>						
	Final	Prelim	Change	Final	Prelim	Change
	FY 2022-23	FY 2023-24		FY 2022-23	FY 2023-24	
STA Estimate by Jurisdiction	\$495,904	\$630,458	27.1%	\$65,443	\$88,560	35.3%
LTF Estimate by Jurisdiction	\$3,840,137	\$3,681,030	-4.1%	\$506,771	\$517,073	2.0%
<b>Total STA/LTF by Jurisdiction</b>	<b>\$4,336,041</b>	<b>\$4,311,488</b>	<b>-0.6%</b>	<b>\$572,214</b>	<b>\$605,633</b>	<b>5.8%</b>
<b>STA/ LTF to YoloTD</b>						
YoloTD Admin	\$401,000	\$369,078	-8.0%	\$0	\$17,958	n/a
Fixed Route	\$2,314,000	\$2,245,725	-3.0%	\$0	\$0	n/a
Paratransit Service	\$285,000	\$416,000	46.0%	\$29,000	\$41,000	41.4%
Microtransit Service	\$0	\$0		\$127,000	\$122,000	-3.9%
<b>STA to YoloTD</b>	<b>\$495,904</b>	<b>\$630,458</b>	<b>27.1%</b>	<b>\$65,443</b>	<b>\$88,560</b>	<b>35.3%</b>
<b>LTF to YoloTD</b>	<b>\$2,504,096</b>	<b>\$2,400,345</b>	<b>-4.1%</b>	<b>\$90,557</b>	<b>\$92,398</b>	<b>2.0%</b>
<b>Total YoloTD STA + Share of LTF</b>	<b>\$3,000,000</b>	<b>\$3,030,803</b>	<b>1.0%</b>	<b>\$156,000</b>	<b>\$180,958</b>	<b>16.0%</b>
STA Retained by Jurisdiction	\$0	\$0	0.0%	\$0	\$0	0.0%
LTF Retained by Jurisdiction	\$1,336,041	\$1,280,685	-4.1%	\$416,214	\$424,675	2.0%
<b>Total Retained by Jurisdiction</b>	<b>\$1,336,041</b>	<b>\$1,280,685</b>	<b>-4.1%</b>	<b>\$416,214</b>	<b>\$424,675</b>	<b>2.0%</b>
<b>Yolo County</b>						
	Final	Prelim	Change	Final	Prelim	Change
	FY 2022-23	FY 2023-24		FY 2022-23	FY 2023-24	
STA Estimate by Jurisdiction	\$252,859	\$428,364	69.4%	\$2,181,000	\$2,882,000	32.1%
LTF Estimate by Jurisdiction	\$1,958,067	\$2,501,069	27.7%	\$15,413,000	\$15,408,000	0.0%
<b>Total STA/LTF by Jurisdiction</b>	<b>\$2,210,926</b>	<b>\$2,929,433</b>	<b>32.5%</b>	<b>\$17,594,000</b>	<b>\$18,290,000</b>	<b>4.0%</b>
<b>STA/ LTF to YoloTD</b>						
YoloTD Admin	\$0	\$250,769		\$1,370,000	\$1,511,000	10.3%
Fixed Route	\$0	\$67,595		\$5,490,000	\$4,826,000	-12.1%
Paratransit Service	\$25,000	\$10,000		\$1,241,000	\$1,913,000	54.1%
Microtransit Service	\$124,000	\$100,000		\$459,000	\$842,000	83.4%
<b>STA to YoloTD</b>	<b>\$149,000</b>	<b>\$428,364</b>	<b>187.5%</b>	<b>\$2,077,000</b>	<b>\$2,882,000</b>	<b>38.8%</b>
<b>LTF to YoloTD</b>	<b>\$0</b>	<b>\$0</b>	<b>n/a</b>	<b>\$6,483,000</b>	<b>\$6,211,000</b>	<b>-4.2%</b>
<b>Total YoloTD STA + Share of LTF</b>	<b>\$149,000</b>	<b>\$428,364</b>	<b>187.5%</b>	<b>\$8,560,000</b>	<b>\$9,093,000</b>	<b>6.2%</b>
STA Retained by Jurisdiction	\$103,859	\$0	-100.0%	\$104,000	\$0	-100.0%
LTF Retained by Jurisdiction	\$1,958,067	\$2,501,069	27.7%	\$8,930,000	\$9,197,000	3.0%
<b>Total Retained by Jurisdiction</b>	<b>\$2,061,926</b>	<b>\$2,501,069</b>	<b>21.3%</b>	<b>\$9,034,000</b>	<b>\$9,197,000</b>	<b>1.8%</b>
<b>Total (Rounded)</b>						
	Final	Prelim	Change	Final	Prelim	Change
	FY 2022-23	FY 2023-24		FY 2022-23	FY 2023-24	
STA Estimate by Jurisdiction	\$252,859	\$428,364	69.4%	\$2,181,000	\$2,882,000	32.1%
LTF Estimate by Jurisdiction	\$1,958,067	\$2,501,069	27.7%	\$15,413,000	\$15,408,000	0.0%
<b>Total STA/LTF by Jurisdiction</b>	<b>\$2,210,926</b>	<b>\$2,929,433</b>	<b>32.5%</b>	<b>\$17,594,000</b>	<b>\$18,290,000</b>	<b>4.0%</b>
<b>STA/ LTF to YoloTD</b>						
YoloTD Admin	\$0	\$250,769		\$1,370,000	\$1,511,000	10.3%
Fixed Route	\$0	\$67,595		\$5,490,000	\$4,826,000	-12.1%
Paratransit Service	\$25,000	\$10,000		\$1,241,000	\$1,913,000	54.1%
Microtransit Service	\$124,000	\$100,000		\$459,000	\$842,000	83.4%
<b>STA to YoloTD</b>	<b>\$149,000</b>	<b>\$428,364</b>	<b>187.5%</b>	<b>\$2,077,000</b>	<b>\$2,882,000</b>	<b>38.8%</b>
<b>LTF to YoloTD</b>	<b>\$0</b>	<b>\$0</b>	<b>n/a</b>	<b>\$6,483,000</b>	<b>\$6,211,000</b>	<b>-4.2%</b>
<b>Total YoloTD STA + Share of LTF</b>	<b>\$149,000</b>	<b>\$428,364</b>	<b>187.5%</b>	<b>\$8,560,000</b>	<b>\$9,093,000</b>	<b>6.2%</b>
STA Retained by Jurisdiction	\$103,859	\$0	-100.0%	\$104,000	\$0	-100.0%
LTF Retained by Jurisdiction	\$1,958,067	\$2,501,069	27.7%	\$8,930,000	\$9,197,000	3.0%
<b>Total Retained by Jurisdiction</b>	<b>\$2,061,926</b>	<b>\$2,501,069</b>	<b>21.3%</b>	<b>\$9,034,000</b>	<b>\$9,197,000</b>	<b>1.8%</b>

**State Transit Assistance (STA)** funds are derived from a Statewide tax on diesel fuel. The State Controller's Office allocates the tax revenue by formula. STA funding can only be used for transportation planning and mass transportation purposes.

**Local Transportation Fund (LTF)** allocations are derived from a ¼ cent of the general sales tax collected statewide and is intended to "improve existing public transportation services and encourage regional transportation coordination."

## 1.2 Fixed Route Annual Operating Budget and Service Levels

Table 1.2a shows the proposed \$12.1 million FY 2023-24 Fixed Route operating budget. The proposed service levels are provided in Table 1.2b. The proposed Fixed Route budget represents an increase of \$0.3 million (2%) above FY 2022-23, primarily due to:

- a. Increase of \$0.5 million (5%) in contracted transportation and fuel costs, based on the proposed service levels shown in Table 1.2b, taking into account the per-mile and per-hour annual escalators provided in the transportation contract with Transdev.
- b. Decrease of \$0.25 million in the contingency budget due to reduced volatility in fuel prices compared to a year ago.

The revenues supporting the Fixed Route budget are comprised of:

- a. \$4.8 million in STA/LTF from member jurisdictions, as shown in Table 1.1c.
- b. \$3.0 million in remaining FTA 5307 American Rescue Plan Act (ARPA) funds that provide zero-match federal dollars to support transit operating costs.
- c. \$1.0 million in passenger fares.
- d. \$0.9 million in FTA 5307 CARES Act funding, leaving an estimated \$3.5 million in allocated CARES Act funds available to support future year operations.
- e. \$1.2 million in Federal Transit Administration (FTA) 5307 Urbanized Area Formula Funds.
- f. \$0.4 million in FTA 5307 Congestion Mitigation and Air Quality (CMAQ) funding to support Route 42 expansion.
- g. \$0.3 million in FTA 5307 funds from Sacramento Regional Transit (SacRT) and \$0.3 million from UC Davis to support the Causeway Connection Route 138.
- h. \$0.2 million in State Transit Assistance (STA) State of Good Repair (SGR) funds to support vehicle maintenance.
- i. Low Carbon Transportation Operating Program (LCTOP) are not proposed to be used for the Operating budget this year, but rather are proposed to provide a nonfederal match for federal funds placed in our multiyear capital project FR-1 for the future purchase of zero-emission electric buses.
- j. YoloTD's limited FTA 5311 Rural Formula funds previously used to support the Fixed Route budget are instead applied to support the Microtransit budget for Knight's Landing and Winters.

**Table 1.2a. Annual Operating Budget - Fixed Route**

	<b>Final</b>	<b>Draft</b>	
<b>Fixed Route Operating Revenues</b>	<b>FY 22-23</b>	<b>FY 23-24</b>	<b>Change</b>
STA/LTF	\$5,490,000	\$4,826,000	(\$664,000)
FTA 5307 ARPA	\$0	\$3,012,000	\$3,012,000
FTA 5307 CARES	\$1,633,000	\$891,000	(\$742,000)
FTA 5307 Formula Funds	\$1,686,000	\$1,180,000	(\$506,000)
Passenger Fares	\$971,000	\$1,000,000	\$29,000
FTA 5307/CMAQ for Route 42 Expansion	\$405,000	\$405,000	\$0
FTA/SacRT 5307 Causeway Connection	\$223,000	\$285,000	\$62,000
UC Davis Funds for Causeway Connection	\$223,000	\$285,000	\$62,000
STA-SGR State of Good Repair Funds	\$195,000	\$212,000	\$17,000
Low Carbon Transportation Operating Program (LCTOP)	\$699,000	\$0	(\$699,000)
FTA/Caltrans 5311 Rural Formula and CRSAA Funds	\$303,000	\$0	(\$303,000)
<b>Total Fixed Route Operating Revenues</b>	<b>\$11,828,000</b>	<b>\$12,096,000</b>	<b>\$268,000</b>

	<b>Final</b>	<b>Draft</b>	
<b>Fixed Route Operating Expenses</b>	<b>FY 22-23</b>	<b>FY 23-24</b>	<b>Change</b>
Contracted Transportation	\$8,799,000	\$9,258,000	\$459,000
Fuel	\$964,000	\$1,032,000	\$68,000
Insurance	\$857,000	\$776,000	(\$81,000)
Vehicle Maintenance	\$195,000	\$262,000	\$67,000
Technology	\$289,000	\$260,000	(\$29,000)
Utilities	\$189,000	\$230,000	\$41,000
Facilities Maintenance	\$50,000	\$50,000	\$0
Marketing & Communications	\$44,000	\$45,000	\$1,000
Electric Vehicle Charging	\$41,000	\$33,000	(\$8,000)
Contingencies	\$400,000	\$150,000	(\$250,000)
<b>Total Fixed Route Operating Expenses</b>	<b>\$11,828,000</b>	<b>\$12,096,000</b>	<b>\$268,000</b>

### Fixed Route Bus Service Assumptions

Staff have considered and incorporated several service changes to account for demand from customers (pre-COVID and Post-COVID). The FY 2023-2024 planned service level includes the addition of 9,100 service hours and a decrease of 165,000 service miles over FY 2022-2023 budget hours and miles. The increase in hours is due to increases in Route 42A, 42B and 37 service. The decrease in miles is due to an error in last year’s budgeted miles.

### Fixed-Route Services

- Route 42A/42B: Intercity service connecting Woodland, Davis, West Sacramento, Sacramento International Airport, and Downtown Sacramento. 42A operates in a clockwise direction, 42B operates in a counterclockwise direction. Planned service changes include expansion to 30-minute frequency though out weekday and weekend service. The service expansion includes 16 additional trips and is budgeted for only half the fiscal year. This represents a 25% increase in service over current service levels.
- Route 37: Services southern West Sacramento. Service schedule adjusted to better connect with other local services and addition of weekend and evening service.
- Route 40: Serves northern West Sacramento in a counterclockwise direction. Service schedule adjusted to provide weekday service to 9:30 PM (current service ends at 6:30 PM). Service span was reduced during COVID

and resuming later evening service will benefit the Disadvantaged Communities served by this route.

- Route 41: Serves northern West Sacramento in a clockwise direction. Service schedule adjusted to provide weekday service to 9:10 PM (current service ends at 6:10 PM). Service span was reduced during COVID and resuming later evening service will benefit the Disadvantaged Communities served by this route.
- Route 240: Serves West Capital Ave and IKEA Shopping center. Service schedule adjusted to provide weekday service to 9:00 PM (current service ends at 7:00 PM). Service span was reduced during COVID and resuming later evening service will benefit the Disadvantaged Communities served by this route.
- Route 43/43R Express: Express service connecting Davis to Sacramento. Suspended due to driver shortage. Limited return in April of 2021. FY 2023-2024 resumes three trips in the morning and evening peaks, and one trip of the 43R reverse commute route in the morning and evening peak periods. This would return the service to approximately 60% of pre-suspension levels.
- Route 44: Express service connecting south Davis to Sacramento. Suspended during COVID and to support YoloGo services. The service plan is to resume three morning and evening peak period trips to meet demand from south Davis, specifically due to the Route 42 route adjustment. This would return the service to approximately 100% of pre-suspension levels.
- Route 230: Express service connecting West Davis to Sacramento. The service plan is to resume three morning and evening peak period trips to meet anticipated demand. This would return the service to 100% of pre-suspension levels.
- Route 202: Local Woodland service operating in a clockwise direction. Introduction of a new fixed route service which would provide hourly headways but have an hour and a half travel time. The new service would also have expanded the hours of service. This new service would replace Route 211 and will go to the Board in May, concurrent with the draft budget.
- Route 203: Local Woodland service operating in a counterclockwise direction. Introduction of a new fixed route service which would provide hourly headways but have an hour and a half travel time. The new service would also have expanded the hours of service. This new service would replace Route 211 and will go to the Board in May, concurrent with the draft budget.
- Causeway Connection: Express service connecting UC Davis, Davis, Sacramento, and the UC Davis Medical Center. No planned service changes.

Table 1.2b shows planned service levels by route:

**Table 1.2b. Fixed Route Service Hours and Miles**

Route	Community / Destinations	Total Bus Trips	Budgeted FY 2022-23		Proposed FY 2023-24	
			Hours	Miles	Hours	Miles
42A 42B	Intercity Woodland, Davis, West Sacramento, Sacramento International Airport, Downtown Sacramento	M-F: 54 - 70 loops* Sat-Sun: 54 - 70 loops* *includes 6 months increased service	23,373	573,907	29,267	659,947
			23,729	518,941	27,682	614,622
37	Southport Gateway West Sacramento Transit Center Downtown Sacramento	M-F: 12 - 15 loops* Sat-Sun: 0 - 13 loops* *includes 6 months increased service	4,603	102,093	4,845	86,953
40	Northern West Sacramento Ikea Ct West Sacramento Transit Center Downtown Sacramento	M-F: 12 - 15 loops* Sat: 11 - 14 loops* Sun: 9 - 11 loops* *includes 6 months increased service	5,582	97,140	4,803	63,303
41	Northern West Sacramento Ikea Ct West Sacramento Transit Center Downtown Sacramento	M-F: 12 - 15 loops* Sat: 12 - 15 loops* Sun: 0 - 11 loops* *includes 6 months increased service	4,140	79,140	4,173	54,742
240	Ikea Ct Reed Ave Harbor Blvd West Sacramento Transit Center Downtown Sacramento	M-F: 12 - 15 loops* Sat: 12 - 15 loops* Sun: 10 - 12 loops* *includes 6 months increased service	5,309	102,248	4,724	61,186
45	West/Central Woodland Downtown Sacramento Express	1AM trips M-F 1 PM trips M-F	2,668	71,401	827	22,818
211	County Fair Mall, West Woodland Loop	M-F: 12 loops Sat: 12 loops Sun: 11 loops	4,026	51,100	4,389	57,742
212	County Fair Mal, East Woodland Loop	M-Sun: 11 loops	4,062	51,903	4,088	64,098
215	Woodland Madison Esparto Capay Cache Creek Casino Resort	12 westbound trips 7 days/wk 12 eastbound trips 7 days/wk	9,808	250,784	10,135	253,383
43 43R	Davis, Downtown Sacramento Express  <u>Reverse Commute:</u> Downtown Sacramento, U.C. Davis Express	43: M-F AM: 1 - 3 trips* 43: M-F PM: 1 - 3 trips* 43R: M-F AM: 1 trip 43R: M-F PM: 1 trip *includes 6 months increased service	3,016	80,755	2,306	53,414
44	South Davis Downtown Sacramento Express	M-F AM: 0 - 3 trips* M-F PM: 0 - 3 trips* *includes 6 months increased service	2,156	38,446	1,469	38,230
230	West Davis, Downtown Sacramento Express	M-F AM: 1 - 3 trips* M-F PM: 1 - 3 trips* *includes 6 months increased service	2,957	78,267	1,959	50,974
<b>Causeway Connection</b>	Service between UCD Med Ctr and UCD Main campus, with limited stops between	M-F: 14 trips	3,950	107,927	4,303	95,540
	<b>Total</b>	<b>150 Weekday Bus Trips 85 Saturday Bus Trips 81 Sun/Hol Bus Trips</b>	<b>99,377</b>	<b>2,204,051</b>	<b>104,969</b>	<b>2,176,951</b>
<b>FY 24-25 Projected Total, Annualizing New Trips</b>					<b>123,895</b>	<b>2,512,089</b>



### 1.3. Microtransit Annual Operating Budget

Table 1.3 shows the \$1.4 million Microtransit annual operating budget, which covers ongoing demand-responsive microtransit service in Knights Landing and Winters, and new Woodland service expected to launch in August 2023.

The proposed budget is \$0.5 million (55%) more than the FY 2022-23 budget, primarily due to including a full year of Woodland microtransit service for FY 2023-24 (compared to the six months assumed for the FY 2022-23 budget).

Revenue Sources include:

- a. \$0.8 million in STA/LTF from Woodland, Winters and Yolo County, as shown in Table 1.1c.
- b. \$0.2 million in FTA 5307 formula funds supporting Woodland Microtransit.
- c. FTA 5311 rural formula funds supporting the Knights Landing and Winters operations.
- d. \$25 thousand in STA-SGR Funds to support vehicle maintenance.
- e. \$25 thousand in passenger fares.

**Table 1.3. Annual Operating Budget - Microtransit**

	Final	Draft	
Microtransit Operating Revenues	FY 22-23	FY 23-24	Change
STA/LTF	\$459,000	\$842,000	\$383,000
FTA 5307 Formula Funds	\$219,000	\$243,000	\$24,000
FTA/Caltrans 5311 Rural Formula Funds	\$0	\$224,000	\$224,000
STA-SGR State of Good Repair Funds	\$20,000	\$25,000	\$5,000
Passenger Fares	\$7,000	\$25,000	\$18,000
FTA/Caltrans 5311 CRRSAA	\$173,000	\$0	(\$173,000)
<b>Total Microtransit Operating Revenues</b>	<b>\$878,000</b>	<b>\$1,359,000</b>	<b>\$481,000</b>

	Final	Draft	
Microtransit Operating Expenses	FY 22-23	FY 23-24	Change
Contracted Transportation - Woodland	\$208,000	\$588,000	\$380,000
Contracted Transportation - Winters	\$126,000	\$169,000	\$43,000
Contracted Transportation - Knights Landing	\$115,000	\$134,000	\$19,000
Technology	\$196,000	\$231,000	\$35,000
Insurance	\$82,000	\$137,000	\$55,000
Fuel	\$81,000	\$65,000	(\$16,000)
Vehicle Maintenance	\$20,000	\$25,000	\$5,000
Contingencies	\$50,000	\$10,000	(\$40,000)
<b>Total Microtransit Operating Expenses</b>	<b>\$878,000</b>	<b>\$1,359,000</b>	<b>\$481,000</b>

## 1.4. Paratransit Annual Operating Budget

Table 1.4 shows the \$3.0 million Paratransit operating budget, which covers demand-responsive paratransit services for individuals with disabilities that prevent them from being able to use YoloTD's fixed route service. The proposed budget is \$1.1 million more than FY 2022-23 levels, reflecting the increased demand seen during FY 2022-23 as demand has rebounded from the greatly reduced travel during the COVID pandemic.

Revenue Sources include:

- a. \$1.9 million in STA/LTF, as shown in Table 1.1c.
- b. \$0.8 million in FTA 5307 Urbanized Area Formula Funds.
- c. \$150 thousand in passenger and organization-paid fares.
- d. \$80 thousand in Cache Creek mitigation funds to reimburse for paratransit trips serving nearby areas.
- e. \$65 thousand in STA-SGR funds to support vehicle maintenance.

**Table 1.4. Annual Operating Budget - Paratransit**

	Final	Draft	
Paratransit Operating Revenues	FY 22-23	FY 23-24	Change
STA/LTF	\$1,241,000	\$1,913,000	\$672,000
FTA 5307 Formula Funds	\$516,000	\$842,000	\$326,000
Passenger Fares	\$35,000	\$145,000	\$110,000
Cache Creek Mitigation	\$23,000	\$80,000	\$57,000
STA-SGR State of Good Repair Funds	\$60,000	\$65,000	\$5,000
Organization-Paid Fares	\$48,000	\$5,000	(\$43,000)
<b>Total Paratransit Operating Revenues</b>	<b>\$1,923,000</b>	<b>\$3,050,000</b>	<b>\$1,127,000</b>

	Final	Draft	
Paratransit Operating Expenses	FY 22-23	FY 23-24	Change
Contracted Transportation	\$1,440,000	\$2,504,000	\$1,064,000
Fuel	\$147,000	\$224,000	\$77,000
Insurance	\$126,000	\$206,000	\$80,000
Vehicle Maintenance	\$60,000	\$65,000	\$5,000
Technology	\$50,000	\$41,000	(\$9,000)
Contingencies	\$100,000	\$10,000	(\$90,000)
<b>Total Paratransit Operating Expenses</b>	<b>\$1,923,000</b>	<b>\$3,050,000</b>	<b>\$1,127,000</b>

## 2. General Reserve

In February 2022, the YoloTD Board of Directors adopted a General Reserve policy establishing a target of that an amount equivalent to 25% of the annual operating budget expenses should be set aside to provide for continuity of service-critical operations during times of unexpected revenue shortfalls or emergency expenditures. As shown in Table 1.5, the General Reserve currently holds \$4.447 million. The proposed combined FY 2023-24 operating budget of \$19.691 million would require a further deposit of \$476 thousand to the General Reserve from available fund balances to maintain the 25% target level at \$4.923 million.

**Table 1.5. General Reserve Deposit Calculation**

	<b>Final FY 22-23</b>	<b>Draft FY 23-24</b>	<b>Change</b>
<b>Total Operating Expenses</b>	<b>\$17,789,000</b>	<b>\$19,691,000</b>	<b>\$1,902,000</b>
<b>General Reserve (25% Operating Budget):</b>	<b>\$4,447,000</b>	<b>\$4,923,000</b>	<b>\$476,000</b>

## Section 2. Multiyear Capital and Planning Projects

### 2.1. Capital and Planning Projects

This budget continues to establish multiyear capital and planning priorities including the Yolo 80 Managed Lanes Project, the Yolo Active Transportation Corridors (YATC) project, and the Zero Emission Fleet Transition Plan. It also adds a new, Board-approved priority: the Downtown Woodland Transit Center.

We are currently in the process of developing a 10-year capital improvement plan, which we will bring to the Board for approval in early 2024. That plan will inventory our capital assets and identify those places where additional capital investment is needed.

Table 2.1 displays \$4.6 million in proposed new appropriations for multiyear capital and planning projects. The new funding includes:

- FR-1 Electric Buses- Multiyear Reserve for Future Purchases: \$463 thousand in new LCTOP funding is proposed to be set aside to serve as a match for potential future federal funding to support electric bus purchases consistent with state mandates.
- FR-10 Two 40' Replacement CNG Buses: \$1.6 million in federal grant funding and State of Good Repair funds are proposed for the purchase of two replacement CNG buses that are urgently needed to replace vehicles that are well past their useful life and maintain service reliability. This purchase is consistent with YoloTD's zero emission fleet transition plan, which recognizes the need for a limited number of replacement CNG buses while the District develops the infrastructure to allow for a fully zero emission fleet.
- FR-11 Downtown Woodland Transit Center: \$150 thousand of new funding is proposed to continue efforts authorized by the Board in FY 2022-23 for a new Transit Center in downtown Woodland, to replace the transit center at the County Fair Fashion Mall.
- MM-1 Yolo Active Transportation Corridors: \$350 thousand in additional grant funds (supplementing the \$850 thousand already appropriated) are proposed to fund ongoing consulting services assisting YoloTD with the Active Transportation Corridors planning project.
- MM-3 Yolo 80 Managed Lanes Tolling Advance Planning: \$2 million in grant funding to conduct steps necessary to secure tolling authoring prior to procurement, toll system design, and back-office support. including the addition of two new positions to add capacity specifically focused on the I-80 project: a term-limited Assistant Planner, and a Finance Associate. Yolo 80 Managed Lanes is a regionally significant freeway expansion project to improve mobility on Interstate 80 throughout the length of Yolo County (including a short segment of US 50) in partnership with Caltrans District 3. This project will construct new tolled managed lanes along 17 miles of Interstate 80 to reduce congestion, prioritize transit, provide bicycle facilities, and support local communities. YoloTD appropriated \$150 thousand for consulting services related to this project in FY 2022-23 (Project MM-2). The project has been awarded \$86 million in federal INFRA funds for design and construction. An additional grant application pending with the state Trade

**Table 2.1. YoloTD Multi-year Capital and Planning Project Budgets with FY 2023-24 Budget Appropriation**

Multiyear Capital and Planning Projects	Appropriations through FY 22-23	Actual or Encumbered to date	FY 22-23 Balance	Proposed FY 23-24 Appropriation	Total Multi-year Project Budget
<b>FR-1. Electric Buses - Multi-year Reserve for Future Purchases</b>					
<b>Expenditure Budget</b>					
Vehicle Equipment Purchase	\$880,000	\$0	\$880,000	\$463,000	\$1,343,000
<b>Total FR-1 Expenditure Budget</b>	<b>\$880,000</b>	<b>\$0</b>	<b>\$880,000</b>	<b>\$463,000</b>	<b>\$1,343,000</b>
<b>Revenue Sources</b>					
FTA 5307/5339 Formula Funds	\$880,000	\$0	\$880,000	\$0	\$880,000
LCTOP - FY 2022-23 allocation	\$0	\$0	\$0	\$463,000	\$463,000
<b>Total FR-1 Revenue Budget</b>	<b>\$880,000</b>	<b>\$0</b>	<b>\$880,000</b>	<b>\$463,000</b>	<b>\$1,343,000</b>
<b>FR-10 Two Replacement 40' CNG Buses</b>					
<b>Expenditure Budget</b>					
Vehicle Equipment Purchase	\$0	\$0	\$0	\$1,600,000	\$1,600,000
<b>Total FR-10 Expenditure Budget</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$1,600,000</b>	<b>\$1,600,000</b>
<b>Revenue Sources</b>					
FTA 5307 Formual Funds	\$0	\$0	\$0	\$1,280,000	\$1,280,000
State of Good Repair Funds	\$0	\$0	\$0	\$320,000	\$320,000
<b>Total FR-10 Revenue Budget</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$1,600,000</b>	<b>\$1,600,000</b>
<b>FR-11 Downtown Woodland Transit Center</b>					
<b>Expenditure Budget</b>					
Planning Services	\$75,000	\$75,000	\$0	\$150,000	\$150,000
<b>Total FR-11 Expenditure Budget</b>	<b>\$75,000</b>	<b>\$75,000</b>	<b>\$0</b>	<b>\$150,000</b>	<b>\$150,000</b>
<b>Revenue Sources</b>					
FTA 5307 Formual Funds	\$0	\$0	\$0	\$120,000	\$120,000
Available Fund Balance/STA	\$75,000	\$75,000	\$0	\$30,000	\$30,000
<b>Total FR-11 Revenue Budget</b>	<b>\$75,000</b>	<b>\$75,000</b>	<b>\$0</b>	<b>\$150,000</b>	<b>\$150,000</b>
<b>MM-1 Yolo Active Transportation Corridors</b>					
<b>Expenditure Budget</b>					
Consulting Services	\$850,000	\$0	\$850,000	\$350,000	\$1,200,000
<b>Total MM-1 Expenditure Budget</b>	<b>\$850,000</b>	<b>\$0</b>	<b>\$850,000</b>	<b>\$350,000</b>	<b>\$1,200,000</b>
<b>Revenue Sources</b>					
and Equity (RAISE) Grant	\$850,000	\$0	\$850,000	\$350,000	\$1,200,000
<b>Total MM-1 Revenue Budget</b>	<b>\$850,000</b>	<b>\$0</b>	<b>\$850,000</b>	<b>\$350,000</b>	<b>\$1,200,000</b>
<b>MM-3 Tolling Authority</b>					
<b>Expenditure Budget</b>					
FY 23-24 Allocated YoloTD Salaries and Benefits	\$0	\$0	\$0	\$250,000	\$250,000
Consulting Services	\$0	\$0	\$0	\$1,750,000	\$1,750,000
<b>Total MM-3 Expenditure Budget</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$2,000,000</b>	<b>\$2,000,000</b>
<b>Revenue Sources</b>					
SACOG Grant	\$0	\$0	\$0	\$2,000,000	\$2,000,000
<b>Total MM-3 Revenue Budget</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$2,000,000</b>	<b>\$2,000,000</b>
<b>Total Projects with New Funding</b>	<b>\$4,118,581</b>	<b>\$225,000</b>	<b>\$3,893,581</b>	<b>\$4,563,000</b>	<b>\$8,456,581</b>

Corridors Enhancement Program (TCEP) would provide \$103 million in capital funding.

Table 2.2 displays \$2.2 million in other YoloTD pending and ongoing multi-year capital and planning project budgets carried forward from prior years.

**Table 2.2. Other YoloTD Pending and Ongoing Capital and Planning Project Budgets Carried Forward from Prior Years**

<b>Multiyear Capital and Planning Projects</b>	<b>Appropriations through FY 22-23</b>	<b>Actual or Encumbered to date</b>	<b>FY 22-23 Balance</b>	<b>Proposed FY 23-24 Appropriation</b>	<b>Total Multi-year Project Budget</b>
<b>FR-3. Fixed Route Planning Efforts</b>					
<b>Expenditure</b>					
Professional Svcs - Zero Emission Fleet	\$200,000	\$0	\$200,000	\$0	\$200,000
Professional Svcs - Short Range Transit Plan	\$200,000	\$0	\$200,000		\$200,000
Professional Svcs - 10 Year Capital Plan	\$100,000	\$0	\$100,000		\$100,000
<b>Total FR-3 Expenditure</b>	<b>\$500,000</b>	<b>\$0</b>	<b>\$500,000</b>	<b>\$0</b>	<b>\$500,000</b>
<b>Revenue Sources</b>					
FTA 5307 Funds	\$400,000	\$0	\$400,000		\$400,000
Available Fund Balance	\$100,000	\$0	\$100,000		\$100,000
<b>Total FR-3 Revenue</b>	<b>\$500,000</b>	<b>\$0</b>	<b>\$500,000</b>	<b>\$0</b>	<b>\$500,000</b>
<b>FR-4. General Transit Feed Specification (GTFS) Real-Time Enhancements</b>					
<b>Expenditure</b>					
Equipment	\$520,000	\$0	\$520,000		\$520,000
<b>Total FR-4 Expenditure</b>	<b>\$520,000</b>	<b>\$0</b>	<b>\$520,000</b>	<b>\$0</b>	<b>\$520,000</b>
<b>Revenue Sources</b>					
FTA 5339/5307 Funds	\$416,000	\$0	\$416,000		\$416,000
Available Fund Balance/STA	\$104,000	\$0	\$104,000		\$104,000
<b>Total FR-4 Revenue</b>	<b>\$520,000</b>	<b>\$0</b>	<b>\$520,000</b>	<b>\$0</b>	<b>\$520,000</b>
<b>FR-5. Automatic Passenger Counters (APCs)</b>					
<b>Expenditure Budget</b>					
Equipment	\$420,000	\$0	\$420,000		\$420,000
<b>Total FR-5 Expenditure</b>	<b>\$420,000</b>	<b>\$0</b>	<b>\$420,000</b>	<b>\$0</b>	<b>\$420,000</b>
<b>Revenue Sources</b>					
FTA 5339/5307 Funds	\$336,000	\$0	\$336,000		\$336,000
Available Fund Balance/STA	\$84,000	\$0	\$84,000		\$84,000
<b>Total FR-5 Revenue</b>	<b>\$420,000</b>	<b>\$0</b>	<b>\$420,000</b>	<b>\$0</b>	<b>\$420,000</b>
<b>FR-9. Bus Washer/Water Recycler Replacement</b>					
<b>Expenditure Budget</b>					
Equipment and Installation Services	\$673,581	\$0	\$673,581		\$673,581
<b>Total FR-9 Expenditure</b>	<b>\$673,581</b>	<b>\$0</b>	<b>\$673,581</b>	<b>\$0</b>	<b>\$673,581</b>
<b>Revenue Sources</b>					
CARES Act Funding	\$400,000	\$0	\$400,000		\$400,000
FY 2021-22 STA-SGR Funds	\$273,581	\$0	\$273,581		\$273,581
<b>Total FR-9 Revenue</b>	<b>\$673,581</b>	<b>\$0</b>	<b>\$673,581</b>	<b>\$0</b>	<b>\$673,581</b>
<b>MM-2. 80 Managed Lanes Advisory, Legal &amp; Technical Services</b>					
Professional Services	\$200,000	\$150,000	\$50,000		\$50,000
<b>Total MM-2 Expenditure</b>	<b>\$200,000</b>	<b>\$150,000</b>	<b>\$50,000</b>	<b>\$0</b>	<b>\$50,000</b>
<b>Revenue Sources</b>					
Available Fund Balance	\$200,000	\$150,000	\$50,000	\$0	\$50,000
<b>Total MM-2 Revenue</b>	<b>\$200,000</b>	<b>\$150,000</b>	<b>\$50,000</b>	<b>\$0</b>	<b>\$50,000</b>
<b>Total Continuing Projects (no new Funding)</b>	<b>\$2,313,581</b>	<b>\$150,000</b>	<b>\$2,163,581</b>	<b>\$0</b>	<b>\$2,163,581</b>

### Section 3. Five-Year Operating Budget Outlook

Table 3 provides a five-year operating budget outlook, presenting future expenditures and revenues in constant 2023 dollars. This framework ignores the likely increases in both revenues and expenditures due to inflation. If base revenues grow more slowly than expenditures, this will result in larger funding gaps than shown.

This outlook shows that the effect of annualizing the six months of increased service in the FY 2023-24 budget would require approximately \$1.5 million annually in future years, plus a one-time deposit of \$368 thousand in the general reserve in FY 2024-25.

On the revenue side, the table shows the effect of the loss of one-time federal ARPA and CARES Act funding, assuming YoloTD's ARPA funds are depleted in FY 2023-24 and CARES Act funds are depleted in FY 2024-25, along with the expiring of various federal competitive grants supporting the FY 2024-25 budget.

The combined effect of expenditure increases and expiring revenue sources results in a funding gap that grows from \$3 million in FY 2024-25 to \$6 million in future years.

Proposed initial strategies for closing the \$6 million gap include:

- Additional drawdown of Federal 5307 formula grants that provide 50% support for operations to backfill the loss of 100%-funding ARPA and CARES Act funds (~\$1.9 million per year).
- Seeking new competitive grants to backfill for expiring grants (~\$0.7 million per year).
- Drawing down a portion of YoloTD's estimated \$8.4 million in accumulated unrestricted fund balance from prior years. Table 3 shows one such scenario, which would use 50% of that fund balance to assist with the transition to obtaining other revenue sources, leaving 50% available for capital or other one-time needs.
- Ramping up the use of state LTF funds, which under state law are prioritized for transit but can be used flexibly in small counties such as Yolo, when there are no "unmet transit needs." Currently, \$9.2 million in LTF funds are not used for transit and are therefore made available to local jurisdictions for other transportation needs, such as local streets and roads. Table 3 shows an amount of additional LTF rising from \$0.5 million in FY 2024-25 to \$3.5 million in FY 2027-28 are used for transit, leaving ~\$5.7 million in LTF annually for flexible use by local jurisdictions.

Other potential funding solutions include:

- Enhanced state funding currently sought by transit advocates and major transit agencies (BART, SF Muni and LA Metro) to backfill the loss of Federal CARES Act and ARPA support.
- Fare increases.
- Use of I-80 toll revenues once the I-80 toll lane project is completed.
- A local sales tax or other revenue measure to support transit and/or other transportation needs, potentially backfilling the increased use of LTF for transit. Under state law, the YoloTD Board of Directors has the authority to put a countywide transportation sales tax measure before the voters.

**Table 3. Five-Year Outlook in Constant 2023 Dollars**

*Note: Use of constant 2023 dollars is a simplifying assumption which removes the need to forecast cost inflation. If actual base revenues grow at a slower rate than base expenditures, then the funding gap would be larger than the amount shown*

	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27	FY 2027-28
<b>Expenditures</b>					
Base FY2023-24 Operating Expenditure Budget	\$19,691,000	\$19,691,000	\$19,691,000	\$19,691,000	\$19,691,000
Impact of annualizing fixed route service	\$0	\$1,472,000	\$1,472,000	\$1,472,000	\$1,472,000
Additional 25% deposit to General Reserve from budget increase	\$0	\$368,000	\$0	\$0	\$0
<b>Scenario Expenditure Budgets in 2023 Dollars:</b>	<b>\$19,691,000</b>	<b>\$21,531,000</b>	<b>\$21,163,000</b>	<b>\$21,163,000</b>	<b>\$21,163,000</b>
<b>Revenues</b>					
State Transit Assistance	\$2,882,000	\$2,882,000	\$2,882,000	\$2,882,000	\$2,882,000
Local Transportation Fund (FY 23-24 Level)	\$6,211,000	\$6,211,000	\$6,211,000	\$6,211,000	\$6,211,000
Cache Creek Mitigation Funds	\$1,273,000	\$1,273,000	\$1,273,000	\$1,273,000	\$1,273,000
STA-SGR State of Good Repair Funds	\$302,000	\$302,000	\$302,000	\$302,000	\$302,000
Fare Revenue	\$1,175,000	\$1,175,000	\$1,175,000	\$1,175,000	\$1,175,000
Fuel Sales/Advertising/Fuel Credits/Interest Etc.	\$482,000	\$482,000	\$482,000	\$482,000	\$482,000
UC Davis Causeway Connection Support	\$285,000	\$285,000	\$285,000	\$285,000	\$285,000
FTA 5307 Formula Funds	\$2,265,000	\$2,265,000	\$2,265,000	\$2,265,000	\$2,265,000
FTA 5311 Formula Funds	\$224,000	\$224,000	\$224,000	\$224,000	\$224,000
FTA Competitive Grants (42 Expansion, Causeway Connection)	\$690,000	\$285,000	\$0	\$0	\$0
ARPA 100% reimbursement funds (\$3M available)	\$3,012,000	\$0	\$0	\$0	\$0
CARES Act 100% reimbursement funds (\$4.4M available)	\$891,000	\$3,498,000	\$0	\$0	\$0
<b>Total Base Revenues</b>	<b>\$19,692,000</b>	<b>\$18,882,000</b>	<b>\$15,099,000</b>	<b>\$15,099,000</b>	<b>\$15,099,000</b>
<b>Base Funding Gap</b>	<b>n/a</b>	<b>\$2,649,000</b>	<b>\$6,064,000</b>	<b>\$6,064,000</b>	<b>\$6,064,000</b>
<b>Potential Funding Solutions</b>					
Increased use of 5307 Formula Funds (Backfill 50% ARPA/CARES)		\$200,000	\$1,900,000	\$1,900,000	\$1,900,000
Obtain new competitive grants to backfill expiring CMAQ		\$405,000	\$690,000	\$690,000	\$690,000
Use of unrestricted fund balance carried forward from prior years.		\$1,500,000	\$1,500,000	\$1,000,000	\$0
Additional use of LTF/other potential funding strategies		\$544,000	\$1,974,000	\$2,474,000	\$3,474,000
<b>Subtotal Potential Strategies to Close Gap</b>		<b>\$2,649,000</b>	<b>\$6,064,000</b>	<b>\$6,064,000</b>	<b>\$6,064,000</b>
<b>Remaining Funding Gap</b>		<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>



Future of West Sacramento On-Demand Rideshare  
Rider Questionnaire

**We want your thoughts on the City of West Sacramento's On-Demand Rideshare Service (also known as "Via"). Via is an on-demand ride-sharing service that provides safe, shared rides anywhere within the City. You can learn more here:**

<https://www.cityofwestsacramento.org/services/via-rideshare>.

**The City is trying to understand what features or parameters are important to on-demand riders.**

- 1. It would be helpful to know a little more about you. Are you a:**
  - a. Year-round local resident
  - b. Seasonal local resident
  - c. Employed or Business Owner in West Sacramento but live elsewhere
  - d. Visitor / tourist
  - e. Other
  
- 2. Once you request a trip, you will have to wait for the vehicle to pick you up at a nearby location. What is the longest time you would be willing to wait?**
  - a. Less than 10 minutes
  - b. 10 minutes – 15 minutes
  - c. 15 minutes – 20 minutes
  - d. 20 minutes – 25 minutes
  - e. 25 + minutes
  
- 3. Once you request a trip, you may have to walk to meet the vehicle. What is the longest distance you would be willing to walk to meet your vehicle? Note: People who require mobility assistance may be eligible for door-to-door pick-up with verification.**
  - a. Not applicable; Need mobility assistance and requires door-to-door pick up
  - b. No walking; door-to-door pick up
  - c. Less than 3 minutes
  - d. 3 minutes – 5 minutes
  - e. 5 – 8 minutes
  
- 4. How much would you be willing and able to pay for a one-way trip with the On-Demand Rideshare Service? Currently, a regular one-**

**way fare is \$3.50 on the City's On-Demand Rideshare Service and \$2.00 on YoloBus for local routes.**

- a. \$0; not willing to pay
  - b. \$0 - \$1.00
  - c. \$1.01 – 2.00
  - d. \$2.01 – \$3.00
  - e. \$3.01 – \$4.00
  - f. \$4.01 – \$5.00
  - g. \$5.01 +
- 5. Currently, the On-Demand Rideshare has a target wait time of 15 minutes from ride request to pick-up. How much MORE would you be willing to pay if the target wait time is 10 minutes from ride request to pick-up?**
- a. \$0; not willing to pay
  - b. \$0.01 – \$1.00
  - c. \$1.01 – \$1.50
  - d. \$1.50 - \$2.00
  - e. \$2.00 +
- 6. Would you support a fixed fare based on distance travelled? For example, if you travelled less than 3 miles your fare would be \$3.50, 3-5 miles your fare would be \$4.50, and 5+ miles your fare would be \$5.50.**
- a. Yes
  - b. No
- 7. Please indicate which fares or passes you would consider purchasing if available. Please select all that may apply.**
- Single fare
  - Round trip
  - Daily
  - Weekly Pass (valid for 7 days from purchase date)
  - Monthly (valid for 31 days from purchase date)
- 8. What user groups should be eligible for discounted fares? Please answer in terms of your priority, 1 being the highest priority and 5 being the lowest priority.**
- Seniors (Age 62+)
  - People with Qualifying Disabilities

- Students/Youth
- U.S. Veterans
- Low-Income Households
- No one should receive discounted fares

**9. The West Sacramento On-Demand Rideshare Service (also known as “Via”) is funded by the City of West Sacramento and riders’ fares. Since the service began in 2018, costs have increased due to continued high ridership, a competitive labor market, higher gas prices, and inflation. Public agencies have limited resources and they must use them as effectively as possible. This means we must be thoughtful about how we trade-off, or prioritize, different aspects of the On-Demand Rideshare Service. Investing in one project, or one aspect of the service, leaves less money for another. The survey is centered on identifying priorities and tradeoffs, outlined below, to better inform how our on-demand service should be designed. Your input will be vital in helping the City consider changes in the design of the service. You can learn more about the On-Demand Rideshare Service here:**

<https://www.cityofwestsacramento.org/services/via-rideshare>.

**How should the City manage increasing costs for the On-Demand Rideshare Service? Please answer in terms of your priorities, 1 being the most acceptable action and 8 being least acceptable action. [Survey: Ranked choice 1-8; if ranked choice not possible, Y/N.]**

### ***Reduce Service Hours***

On-Demand Rideshare operates from 6:00am to 11:00pm on Monday through Friday, 9:00am through 11:00pm on Saturday, and from 8:00am to 8:00pm on Sunday. Reducing hours would save money by reducing driver hours and fuel consumption.

### ***Reduce Coverage Area***

On-Demand Rideshare operates curb-to-curb citywide. Reducing the coverage area may involve limiting On-Demand Rideshare to neighborhoods, locations, or streets. Reducing the coverage area would allow the service to run fewer vehicles. It would save money by reducing driver hours, the number of vehicles in operation, and fuel consumption.

### ***Increase Targeted Wait Time***

The On-Demand Rideshare has a target wait time of 15 minutes from ride request to pick-up. Increasing this would allow the service to run fewer vehicles. It would save money by reducing driver hours, the number of vehicles in operation, and fuel consumption.

### ***Increase Fares***

Single rides cost \$3.50 for regular fare and \$1.75 for a senior rider or disabled rider fare, and each passenger accompanying the account holder costs \$1.00. Additionally, a weekly pass allowing up to four free rides each day for seven days is \$15. Increasing the fare would increase the revenue earned per rider. Increasing the fare would also improve the service's performance by reducing the number of rides requested.

### ***Eliminate Weekly Passes***

A weekly pass costs \$15 and allows up to four free rides each day. Eliminating the pass would increase revenue and improve system performance by reducing the number of rides requested.

### ***Increase Permissible Walking Distance for Non-Disabled Riders***

Increasing the distance the On-Demand Rideshare Service asks riders to walk to be picked up could increase performance by reducing travel distance and time. It would do that by allowing the vehicles to remain on high-speed streets and having passengers walk farther to their destinations. This could save money by allowing the service to meet its wait time goals with fewer vehicles.

### ***Keep the On-Demand Rideshare service the same. Reallocate funding from other City programs to maintain service at its current level.***

This choice would require the City Council to take funding from other programs, such as police, fire, street maintenance, parks, recreation, youth services, etc., to maintain On-Demand Rideshare's operating hours, coverage area, wait time, fares, and walking distance.

### ***End the On-Demand Rideshare Service and use its funding for other transportation related programs.***

This choice would mean that the City terminates the On-Demand Rideshare Service and riders will need to rely on other options (YoloBus, SacRT, Lime, Bird, or personal transportation) for their transportation needs. Currently, the City uses funding allocated through the Transportation Development Act allocated to support the On-Demand Rideshare Service. As such, if it is terminated, funding will be distributed to other allowable uses such as street and road projects, construction, and maintenance.