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Courtyards, Fences, & Gates
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APPENDIX B

General Conditions

05/09/2022

General Conditions

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Article 1 Definitions

1.1 Definitions. The following definitions apply to all of the Contract Documents unless otherwise indicated. Defined terms and titles of documents are capitalized in the Contract Documents, with the exception of the words “day,” “furnish,” and “install.”

Allowance means an amount included in the Bid Proposal for Work that may or may not be included in the Project, depending on conditions that will not become known until after bids are opened. If the Contract Price includes an Allowance and the cost of performing the Work covered by that Allowance is greater or less than the Allowance, the Contract Price will be increased or decreased accordingly.

Architect/Engineer means the licensed individual(s) or firm(s) retained by Owner to provide architectural or engineering services for the Project.

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

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

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

Construction Manager means the individual(s) or firm retained by Owner to provide construction management services for the Project. If no Construction Manager has been retained for this Project, any reference to Construction Manager is deemed to refer to Owner.

Contract means the signed agreement between Owner and Contractor.

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

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

Contract Time means the number of calendar days for performance of the Work, as set forth in the Contract and as amended by Change Order.

Contractor means the individual, partnership, corporation, or joint-venture who has signed the Contract with Owner to perform the Work.

Day means a calendar day unless otherwise specified.

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

DSA means the Division of the State Architect for the State of California.

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

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

Furnish means to purchase and deliver to the Worksite designated for installation.

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

Including Unless the context requires otherwise, the term "including" means "including, but not limited to."

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

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

Or Equal means any specification designating a material, product, thing, or service by specific brand or trade name, followed by the words “or equal,” is intended only to indicate quality and type of item desired, and Contractor may request use of any equal material, product, thing, or service.

Owner means the public agency which has signed the Contract with Contractor for performance of the Work, acting through its governing body, officers, employees, and authorized representatives.

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

Project means the public works project referenced in the Contract.

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

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

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

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

Technical Specifications means Specifications.

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

Worksite means the place or places where the Work is performed.

Article 2 Roles and Responsibilities

2.1 Architect/Engineer or Owner

(A) **General.** Architect/Engineer as the Owner's representative, is responsible for the overall design of the Project, and is authorized to act on Owner's behalf to ensure performance of the Work in compliance with the Contract Documents.

(B) **Authority.** Architect/Engineer has authority to stop the Work when necessary to ensure compliance with the requirements of the Contract Documents. Architect/Engineer also has authority to reject any and all Work or materials which do not conform to the requirements of the Contract Documents.

(C) **Interpretation.** Architect/Engineer will decide all questions pertaining to performance of the Work, and will provide written decisions on all matters relating to the execution and progress of the Work or interpretation of the Contract Documents. The Architect/Engineer's decision regarding interpretation of the Drawings or Specifications is final and conclusive.

2.2 Contractor.

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

(B) **Responsibility for the Work.** Contractor is responsible for supervising and directing all aspects of the Work to facilitate the efficient and timely completion of the Work. Contractor is solely responsible for, and required to exercise full control over, construction means, methods, techniques, sequences, procedures, and coordination of all portions of the Work with that of all other Contractors and Subcontractors, except to the extent that the Contract Documents provide other specific instructions.

(C) **Project Administration.** Contractor must provide sufficient and competent administration, staff, and skilled workforce necessary to perform and timely complete the Work in accordance with the Contract

Documents. Before starting the Work, Contractor must designate in writing and provide complete contact information, including phone numbers and email address, for the officer or employee in Contractor's organization who is to serve as Contractor's primary representative for the Project, and who has authority to act on Contractor's behalf. A Subcontractor may not serve as Contractor's primary representative.

- (D) ***On-Site Superintendent.*** Contractor must, at all times during performance of the Work, provide a qualified and competent full-time superintendent, acceptable to Owner, and assistants, as necessary, who must be physically present at the Project site while any aspect of the Work is being performed, and who shall have authority to direct the performance of the Work. Failure to comply may result in temporary suspension of the Work, at Contractor's sole expense and with no extension of Contract Time, until the superintendent is physically present to supervise the Work. Contractor must provide written notice to Owner, as soon as practicable, before replacing the superintendent.
- (E) ***Standards; Compliance.*** Contractor must, at all times, ensure that the Work is performed in a good workmanlike manner following best practices and in full compliance with the Contract Documents and all applicable laws, regulations, codes, standards, and permits.
- (F) ***Responsible Party.*** Contractor is solely responsible to Owner for the acts or omissions of any party or parties performing portions of the Work or providing equipment, materials or services for or on behalf of Contractor or its Subcontractors. If any person employed by Contractor fails or refuses to comply with the Engineer's directions regarding the performance of the Work, or is determined by the Engineer to be incompetent to perform the Work, or acts in a disorderly or improper manner at the Worksite, that person shall be permanently dismissed from the Project at the request of the Engineer.
- (G) ***Correction of Defects.*** Contractor must promptly correct, at Contractor's sole expense, any Work that is determined by Owner, Architect/Engineer, or the Inspector to be deficient or defective in workmanship, materials, and equipment.
- (H) ***Contractor's Records.*** Contractor must maintain all of its records relating to the Project in any form, including paper documents, photos, videos and electronic records. Project records subject to this provision include, but are not limited to, Project cost records and records relating to preparation of Contractor's bid.

- (1) Contractor's cost records must include all supporting documentation, including original receipts, invoices, and payroll records, evidencing its direct costs to perform the Work, including, but not limited to, costs for labor, materials and equipment. Each cost record should include, at a minimum, a description of the expenditure with references to the applicable requirements of the Contract Documents, the amount actually paid, the date of payment, and whether the expenditure is part of the original Contract Price, related to an executed Change Order, or otherwise categorized by Contractor as extra work. Contractor's failure to comply with this provision as to any claimed cost operates as a waiver of any rights to recover the claimed cost.
- (2) Contractor must continue to maintain its Project records in an organized manner for a period of four years after Owner's acceptance of the Project or following termination, whichever occurs first. Subject to prior notice to Contractor, Owner is entitled to inspect or audit any of Contractor's Project records relating to the Project or to investigate Contractor's plant or equipment during Contractor's normal business hours.

2.3 Subcontractors.

- (A) **General.** All Work which is not performed by Contractor with its own forces must be performed by Subcontractors, subject to the fifty percent (50%) limitation set forth in the Instructions and Information for Bidders. Owner reserves the right to approve or reject any and all Subcontractors proposed to perform the Work.
- (B) **Contractual Obligations.** Contractor must require every Subcontractor to be bound to the provisions of the Contract Documents as they apply to the Subcontractor's portion(s) of the Work, and to likewise bind their subcontractors or suppliers. Nothing in these Contract Documents creates a contractual relationship between a Subcontractor and Owner, but Owner is deemed to be a third-party beneficiary of the contract between Contractor and each Subcontractor.

Copies of subcontracts shall be available to the Engineer upon request. Before a Subcontractor commences work on the Project, Contractor shall provide the Engineer a written statement with the name of the subcontractor, a description of each portion of the Work performed by the subcontractor, and the percentage of the overall Work to be performed by the subcontractor.

- (C) **Termination.** If the Contract is terminated, each Subcontractor's agreement must be assigned by Contractor to Owner, subject to the prior rights of

any surety, provided that the Owner accepts the assignment by written notification, and assumes all rights and obligations of Contractor pursuant to each such subcontract agreement.

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

2.4 **Coordination of Work.**

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

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

2.5 **Submittals.** Unless otherwise specified, Contractor must submit to Architect/Engineer for review and approval, all schedules, Shop Drawings, samples, product data and similar submittals required by the Contract Documents, or upon request by the Architect/Engineer. All submittals, including requests for information (RFIs) are subject to the provisions of this Section.

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

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

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

(D) **Required Corrections.** If corrections are required, Contractor must promptly make and submit any required corrections in full conformance with the requirements of this Section.

(E) **Effect of Review and Approval.** Review and approval of a submittal by the Architect/Engineer will not relieve Contractor from complying with the requirements of the Contract Documents.

(F) **Enforcement.** Any Work performed or material used without prior approval of a required submittal will be performed at Contractor's risk, and Contractor may be required to bear the costs incident thereto, including the cost of removing and replacing such Work, repairs to other affected portions of the Work, and the cost of additional time or services required of the Architect/Engineer, Construction Manager, or Inspector.

Article 3 Contract Documents

3.1 Interpretation of Contract Documents.

(A) **Drawings and Specifications.** The Drawings and Specifications included in the Contract Documents are complementary. If Work is shown on one but not on the other, Contractor must perform the Work as though fully described on both, consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. The Drawings and Specifications are deemed to include and require everything necessary and reasonably incidental to completion of the Work, whether or not particularly mentioned or shown. Contractor must perform all work and services and supply all things reasonably related to and inferable from the Contract Documents. In the event of a conflict between the Drawings and Specifications, the Specifications will control.

(B) **Duty to Notify.** If Contractor becomes aware of any ambiguity, discrepancy, omission, or error in the Drawings or Specifications, Contractor must immediately notify the Architect/Engineer and request clarification of such, by submitting a written request for information (RFI) in the manner specified by Owner. The Architect/Engineer's clarifications or interpretations will be final and binding.

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

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

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

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

- (A) Change Orders;
- (B) Addenda;
- (C) Contract;
- (D) Notice to Proceed;
- (E) Notice of Award;
- (F) Special Conditions;
- (G) General Conditions;
- (H) Payment and Performance Bonds;
- (I) Specifications;
- (J) Drawings;
- (K) Contractor's Bid Proposal and attachments;
- (L) Notice Inviting Bids;
- (M) Instructions for Bidders; and
- (N) Any documents prepared by and on behalf of a third party, that were not prepared specifically for this Project, e.g., Caltrans Standard Specifications or Caltrans Special Provisions.

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

(A) **Conflicts or Inconsistencies.** If there is a conflict or inconsistency between any provision in the Standard Specifications and a provision of

these Contract Documents, as determined by the Architect/Engineer, the provision in the Contract Documents will govern.

(B) **Meanings.** Terms used in the Standard Specifications are to be interpreted as follows:

- (1) Any reference to the “Engineer” is deemed to mean Owner, Architect/Engineer or Owner’s Representative.
- (2) Any reference to the “Special Provisions” is deemed to mean the Special Conditions.
- (3) Any reference to the “State” is deemed to mean Owner.

3.4 For Reference Only. Contractor is responsible for the careful review of any document, study, or report appended to the Contract Documents solely for informational purposes and identified as “For Reference Only.” Nothing in any document, study, or report so appended and identified is intended to supplement, alter, or void any provision of the Contract Documents. However, Contractor is advised that Owner or its representatives may be guided by information or recommendations included in such reference documents, particularly when making determinations as to the acceptability of proposed materials, methods, or changes in the Work. Contractor must promptly notify Architect/Engineer of any perceived or actual conflict between the Contract Documents and any document provided For Reference Only.

Article 4 Bonds, Indemnity, and Insurance

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

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

- 4.2 Indemnity.** To the fullest extent permitted by law, Contractor must indemnify, defend, and hold harmless Owner, its agents and consultants, Architect/Engineer, and Construction Manager (individually, an “Indemnitee,” and collectively the “Indemnitees”) from and against any and all liability, loss, damage, claims, expenses (including, without limitation, attorney fees, expert witness fees, paralegal fees, and fees and costs of litigation or arbitration) (collectively, “Liability”) of every nature arising out of or in connection with the acts or omissions of Contractor, its employees, Subcontractors, representatives, or agents, in bidding or performing the Work or its failure to comply with any of its obligations under the Contract, except such Liability caused by the active negligence, sole negligence, or willful misconduct of an Indemnitee. This indemnity requirement applies to any Liability arising from alleged defects in the content or manner of submission of the Contractor’s bid for the Contract. Contractor’s failure or refusal to timely accept a tender of defense pursuant to this provision will be deemed a material breach of this Contract. Owner will timely notify Contractor upon receipt of any third-party claim relating to the Contract, as required by Public Contract Code Section 9201.
- 4.3 Insurance.** No later than ten days following issuance of the notice of award, Contractor is required to procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of Contractor and its Subcontractors relating to or arising from the performance of the Work, and must remain in full force and effect at all times during the period covered by the Contract until the date of recordation of the notice of completion. All required insurance must be issued by a company licensed to do business in the State of California, and each such insurer must have an A.M. Best’s financial strength rating of “A” or better and a financial size rating of “VIII” or better. If Contractor fails to provide any of the required coverage in full compliance with the requirements of the Contract Documents, Owner may, at its sole discretion, purchase such coverage at Contractor’s expense and deduct the cost from payments due to Contractor, or terminate the Contract for default.

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

- (1) ***Commercial General Liability Insurance (“CGL”):*** The CGL policy must be issued on an occurrence basis, written on a comprehensive general liability form, and shall include coverage for liability arising from Contractor’s or its Subcontractor’s acts or omissions in the performance of the Work, including contractor’s protected coverage, blanket contractual, completed operations, vehicle coverage and employer’s non-ownership liability coverage, with limits of at least \$2,000,000.00 per occurrence. The CGL policy must name Owner, Architect, and Design Consultants as

an additional insured for all liability arising out of the operations by or on behalf of the named insured, and must protect Owner, its officers, employees, and agents against any and all liability for personal injury, death, or property damage or destruction arising directly or indirectly in the performance of the Contract. The CGL coverage may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or umbrella policies, provided each such policy complies with the requirements set forth herein.

(2) *Builder's Risk Insurance:* The Builder's Risk Insurance policy must be issued on occurrence basis, for all-risk coverage on a 100% completed value basis on the insurable portion of the Project for the benefit of Owner.

(3) *Workers' Compensation Insurance and Employer's Liability:* The policy must comply with the requirements of the California Workers' Compensation Insurance and Safety Act, with of at least \$1,000,000.00. If Contractor is self-insured, Contractor must provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

(4) *Commercial Automobile Coverage:* The Automobile policy shall be issued on an occurrence basis with policy limits of at least \$1,000,000 per occurrence.

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

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

(D) *Required Endorsements.* The CGL Policy and the Builder's Risk Policy must include the following specific endorsements:

(1) The inclusion of more than one insured will not operate to impair the rights of one insured against another, and the coverages afforded will apply as though separate policies have been issued to each insured.

(2) The insurance provided is primary and no insurance held or owned by Owner may be called upon to contribute to a loss.

(3) This policy does not exclude explosion, collapse, underground excavation hazard, or removal of lateral support.

(E) **Subcontractors.** Contractor must ensure that each Subcontractor is required to maintain the same insurance coverage required under this Section 4.3, with respect to its performance of Work on the Project, including those requirements related to the additional insureds and waiver of subrogation.

4.4 Warranty Bond. As a condition precedent to Final Completion, Contractor must submit a warranty bond, using the form provided by Owner, to guarantee its Work as specified in Article 11, Completion and Warranty Procedures. The warranty bond must be issued by a surety admitted in California for 15% of the final Contract Price or as otherwise specified in the Contract Documents. If an issuing surety cancels the bond or becomes insolvent, within seven days following written notice from Owner, Contractor must substitute a surety acceptable to Owner.

Article 5 Contract Time

5.1 Time is of the Essence. Time is of the essence in Contractor's performance and completion of the Work, and Contractor must diligently prosecute the Work and complete it within the Contract Time.

(A) **General.** Contractor must commence the Work on the date indicated in the notice to proceed, and must fully complete the Work, in strict compliance with all requirements of the Contract Documents, and within the Contract Time.

(B) **Rate of Progress.** Contractor and its Subcontractors must, at all times, provide workers, materials, and equipment sufficient to maintain the rate of progress necessary to ensure full completion of the Work within the Contract Time. If Owner determines that Contractor is failing to prosecute the Work at a sufficient rate of progress, Owner may, in its sole discretion, direct Contractor to provide additional workers, materials, or equipment, or to work additional hours or days without additional cost to Owner, in order to achieve a rate of progress satisfactory to Owner. If Contractor fails to comply with Owner's directive in this regard, Owner may, at Contractor's expense, separately contract for additional workers, materials, or equipment or use Owner's own forces to achieve the necessary rate of progress. Alternatively, Owner may terminate the Contract based on Contractor's default.

5.2 Schedule Requirements. All schedules must be prepared using standard scheduling software acceptable to Architect/Engineer, and must provide schedules in electronic and paper form as requested.

(A) ***As-Planned (Baseline) Schedule.*** Within 15 calendar days following issuance of the notice of award (or as otherwise specified in the Special Conditions), Contractor must submit to Owner for review and approval an as-planned (baseline) schedule showing in detail how Contractor plans to perform and fully complete the Work within the Contract Time using critical path methodology. The as-planned schedule must include the work of all trades required for the Work, and must be sufficiently comprehensive and detailed to enable progress to be monitored on a day-by-day basis. For each activity, the as-planned schedule must be dated, provided in the format specified in the Contract Documents or as required by the Architect/Engineer, and must include, at a minimum, a description of the activity, the start and completion dates, and the duration.

(B) ***Progress Schedules.*** Contractor must submit an updated progress schedule and three-week look-ahead schedule, in the format specified by Architect/Engineer, for review and approval with each application for a progress payment. The progress schedule must show how the actual progress of the Work to date compared to the as-planned schedule, and must identify any actual or potential impacts to the critical path.

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

(D) ***Effect of Approval.*** Contractor and its Subcontractors must perform the Work in accordance with the most current approved schedule unless otherwise directed by Owner. Owner's approval of a schedule does not operate to extend the time for completion of the Work or any component of the Work, and will not affect Owner's right to assess liquidated damages for Contractor's unexcused delay in completing the Work within the Contract Time.

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

(F) ***Reservation of Rights.*** Owner reserves the right to direct the sequence in which the Work must be performed or to make changes in the sequence of the Work in order to facilitate the performance of work by Owner or others, or to facilitate Owner's use of its property. The Contract Time or Contract Price may

be adjusted to the extent such changes in sequence actually increase or decrease Contractor's time or cost to perform the Work.

(G) ***Authorized Working Days and Times.*** Contractor is limited to working Monday through Friday, excluding Marinwood CSD-observed holidays, during Owner's normal business hours, except as expressly provided in the Special Conditions, or as authorized in writing by Owner. Owner reserves the right to charge Contractor for additional costs incurred by Owner due to Work performed on days or during hours not expressly authorized in these Contract Documents, including reimbursement of costs incurred for inspection, testing, and construction management services.

5.3 Delay and Extensions of Contract Time.

(A) ***Excusable Delay.*** The Contract Time may be extended if Contractor encounters an unavoidable delay in completing the Work within the Contract Time due to causes completely beyond Contractor's control, and which Contractor could not have avoided or mitigated through planning, foresight, and diligence ("Excusable Delay"). Grounds for Excusable Delay may include fire, earthquake, acts of terror or vandalism, epidemic, unforeseeable adverse government actions, unforeseeable actions of third parties, encountering unforeseeable hazardous materials, unforeseeable site conditions, suspension for convenience under Article 13, or unusually severe weather.

(B) ***Non-Excusable Delay.*** Excusable Delay does not include delay that is concurrent with non-Excusable Delay, and does not include delay caused by:

- (1) weather conditions which are normal for the location of the Project, as determined by reliable records, including monthly rainfall averages, for the preceding ten years;
- (2) Contractor's failure to order equipment and materials sufficiently in advance of the time needed for timely completion of the Work;
- (3) Contractor's failure to provide adequate notification to utility companies for connections or services necessary for the timely performance and completion of the Work;
- (4) foreseeable conditions Contractor could have ascertained from reasonably diligent inspection of the Worksite or review of the Contract Documents; or

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

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

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

(2) ***Delay Days and Costs.*** The request must specify the number of days of Excusable Delay claimed, or provide a realistic estimate if the duration of the delay is not yet known. The request must specify the amount of any delay-related costs that are claimed, or provide a realistic estimate if the amount is not yet known. Any estimate of delay duration or cost must be updated in writing and submitted with all required supporting documentation as soon as the actual time and cost is known.

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

(4) ***Burden of Proof.*** Contractor has the burden of proving 1) that the delay was an Excusable Delay, as defined above, 2) that Contractor has made reasonable efforts to mitigate the delay and its schedule and cost impacts, 3) that the delay will unavoidably result in delaying Final

Completion, and 4) that any delay costs claimed by Contractor were actually incurred and were reasonable under the circumstances.

(5) *Recoverable Costs.* If Contractor is granted an extension of time for Excusable Delay, recompense for delay costs shall be limited to actual, direct, reasonable, and substantiated costs, and will not include home office overhead, or markup for overhead and profit.

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

(7) *No Waiver.* Any grant of an extension of time or delay costs due to an Excusable Delay will not operate as a waiver of Owner's right to assess liquidated damages for unexcused delay.

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

5.4 Liquidated Damages. It is expressly understood that if Final Completion is not achieved within the Contract Time, Owner will suffer damages which are difficult to determine and accurately specify. If Contractor fails to achieve Final Completion within the Contract Time, Owner may charge Contractor in the amount specified in the Contract for each day that Final Completion is delayed beyond the Contract Time, as liquidated damages and not as a penalty.

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

(B) *Milestones.* Liquidated damages may also be separately assessed for failure to meet milestones specified elsewhere in the Contract Documents, regardless of impact on Contract Time and Final Completion.

(C) *Setoff.* Owner is entitled to set off the amount of liquidated damages assessed against any payments otherwise due to Contractor, including setoff against release of retention. If there are insufficient Contract funds remaining to cover the full amount of liquidated damages assessed, Owner is entitled to recover the balance from Contractor or its performance bond surety.

(D) ***Occupy or Use.*** Occupancy or use of the Project in whole or in part prior to Final Completion will not operate as a waiver of Owner's right to assess liquidated damages for Contractor's unexcused delay in achieving Final Completion.

Article 6 Contract Modification

6.1 Changes in Work. Owner reserves the right to make changes in the Work without invalidating the Contract. Owner may direct or Contractor may request changes in the Work, and any such changes will be formalized in a Change Order, which may include commensurate changes in the Contract Price or Contract Time as applicable. Contractor must promptly comply with Owner-directed changes in the Work in accordance with the intent of the original Contract Documents, even if Contractor and Owner have not yet reached agreement as to adjustments to the Contract Price or Contract Time.

(A) ***Owner-Directed Change.*** In the event of a dispute over entitlement to or the amount of a change in Contract Time or a change in Contract Price related to an Owner-directed change, Contractor must perform the Work as directed and may not delay its work or cease work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute.

(B) ***Contractor's Obligations.*** In the event that Owner and Contractor dispute whether a portion or portions of the Work are already required by the Contract Documents as opposed to changed or extra Work, Contractor must perform the Work as directed and may not delay its Work or cease Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute.

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

(D) ***Dispute Resolution.*** Contractor's sole recourse for an unresolved dispute related to changes in the Work is to comply with the dispute resolution provisions set forth in Article 12, below.

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

(A) **Time for Submission.** Any request for a change in the Contract Price must be submitted in writing to Architect/Engineer within ten calendar days of the date that Contractor first encounters the circumstances, information or conditions giving rise to the Change Order request, even if the total amount of the requested change in the Contract Price or impact on the Contract Time is not yet known at that time.

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

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

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

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

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

6.3 Adjustments to Contract Price. The amount of any increase or decrease to the Contract Price will be determined based on one of the following methods in the order provided:

(A) **Unit Pricing.** Amounts previously provided by Contractor in the form of unit prices, the schedule of values, or Allowances, will apply (with no separate allowance made for profit or overhead) first if unit pricing, a

schedule of values, or an Allowance amount has previously been submitted for the affected Work; or, if none

- (B) **Lump Sum.** A mutually agreed upon lump sum; or, if none
- (C) **Time and Materials.** On a time and materials basis, which may include a not-to-exceed limit, calculated as the total of the following sums:
 - (1) All direct labor costs plus 15% for overhead and profit;
 - (2) All direct material costs, including sales tax, plus 15% for overhead and profit;
 - (3) All direct plant and equipment rental costs, plus 15% for overhead and profit;
 - (4) All direct subcontract costs plus 10% for overhead and profit; and
 - (5) Increased premium costs computed at 1½ % of total of the previous four sums.

6.4 Unilateral Change Order. If Owner disagrees with the amount of compensation or extension of time that Contractor has requested, Owner may elect to issue a unilateral Change Order, directing performance of the Work, and authorizing a change in the Contract Price or Contract Time in the amount Owner believes is merited. Contractor's sole recourse to dispute the terms of a unilateral Change Order is to submit a timely Claim pursuant to Article 12, below.

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

Article 7 General Construction Provisions

7.1 Permits and Taxes.

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

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

7.2 Temporary Facilities. Contractor must provide, at Contractor's sole expense, any and all temporary facilities, including onsite office, sanitary facilities, storage, scaffolds, barricades, walkways, and any other temporary structure required to safely perform the Work along with any utility services incidental thereto.

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

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

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

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

7.4 Protection of Work and Property.

(A) ***General.*** Contractor is responsible at all times for protecting the Work and materials and equipment to be incorporated into the Work from damage until the Notice of Completion has been recorded. Except as specifically authorized by Owner, Contractor must confine its operations to the area of the Project site indicated in the Drawings. Contractor is liable for any damage caused to Owner's real or personal property, the real or personal property of adjacent property owners, or the work or personal property of other contractors working for Owner.

(B) ***Unforeseen Conditions.*** If Contractor encounters facilities, utilities, or other unknown conditions not shown on or reasonably inferable from the Drawings or apparent from inspection of the Project site, Contractor must promptly notify Architect/Engineer, and must avoid taking any action which could cause damage to the facilities or utilities pending further direction from the Architect/Engineer. If Architect/Engineer's subsequent direction to Contractor

affects Contractor's cost or time to perform the Work, Contractor may submit a Change Order request as set forth in Article 6, above.

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

(D) **Damage to Existing Facilities.** Any existing facilities that are broken or damaged by the installation of Work shall be repaired or replaced with the same kind of material, the same finish, and in not less than the same dimensions as the original work. All such repairs or replacements shall match the appearance of the existing facilities as nearly as possible.

7.5 Noninterference. Contractor must take reasonable measures to avoid interfering with Owner's use of its property at or adjacent to the Project site, including use of roadways, entrances, parking areas, walkways, and structures.

7.6 Materials and Equipment.

(A) **General.** Unless otherwise specified, all materials and equipment required for the Work must be new and of the best grade for the intended purpose, and furnished in sufficient quantities to ensure the proper and expeditious performance of the Work. Unless otherwise specified, all materials and equipment required for the Work are deemed to include all components required for complete installation and intended operation, and must be installed in accordance with the manufacturer's recommendation. Contractor is responsible for all shipping, handling, and storage costs associated with the materials and equipment required for the Work, and is responsible for protecting the Work and all of the required materials, supplies, tools and equipment at Contractor's sole cost until Owner accepts the Project.

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

(C) **Domestic Materials.** Only unmanufactured materials that have been produced in the United States, and only manufactured materials that have been

manufactured in the United States may be used for this Project, as required by Government Code Section 4300 et seq.

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

7.7 Substitutions.

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

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

(C) ***Substantiation.*** All data substantiating the proposed substitute as an "equal" item must be submitted with the written request for substitution. Contractor's failure to timely provide necessary substantiation is ground for rejection of the proposed substitution, without further review.

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

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

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

7.8 Testing and Inspection.

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

(B) **Scheduling and Notification.** Contractor must schedule all tests required by the Contract Documents in time to avoid any delay to the progress of the Work. Contractor must provide timely notice to all necessary parties as specified in the Contract Documents.

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

(1) Contractor will be responsible for the costs of any subsequent tests which are required to substantiate compliance with the Contract Documents, and any associated remediation costs.

(2) Contractor will be responsible for inspection costs, at Owner's established rates, for inspection time lost because the Work is not ready or Contractor fails to appear for a scheduled inspection.

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

(D) **Contractor's Obligations.** Any Work that fails to comply with the requirements of the Contract Documents must be promptly repaired, replaced, or corrected by Contractor, at Contractor's sole expense, even if that Work was previously inspected or included in a progress payment. Contractor is solely responsible for any delay occasioned by remediation of noncompliant Work. Inspection of the Work does not in any way relieve Contractor of its obligations to perform the Work as specified.

(E) **Distant Locations.** If required off-site testing or inspection must be conducted at a location more than 100 miles from the Project site, Contractor is

solely responsible for the additional travel costs required for testing and/or inspection at such locations.

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

7.9 Clean up. Contractor must regularly remove debris and waste materials and maintain the Worksite in clean and neat condition.

(A) ***General.*** Prior to discontinuing work in an area, Contractor must clean the area and remove all rubbish along with its construction equipment, tools, machinery, waste and surplus materials. Contractor must, at all times, minimize and confine dust and debris resulting from construction activities.

(B) ***Completion.*** At the completion of the Work, Contractor must remove from the Worksite all of its equipment, tools, surplus materials, waste materials and debris. Before demobilizing from the Worksite, Contractor must ensure that all surfaces are cleaned, sealed, waxed, or finished as applicable, and that all marks, stains, paint splatters, and the like have been properly removed from the completed Work and the surrounding areas.

(C) ***Non-Compliance.*** If Contractor fails to commence compliance with its cleanup obligations within two business days following written notification from Owner or its representative, Owner may undertake appropriate cleanup measures without further notice and the cost will be deducted from any amounts due or to become due the Contractor.

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

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

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

- 7.11 As-built Drawings.** Contractor and its Subcontractors must maintain on the Worksite a separate complete set of the Drawings which will be used solely for the purpose of recording changes made in any portion of the Work in order to create accurate record drawings at the end of the Project.
- (A) ***Duty to Update.*** The as-built drawings must be updated as changes occur, on a daily basis if necessary. Progress payments may be delayed, in whole or in part, until the as-built drawings are brought up to date to the satisfaction of the Architect/Engineer. Actual locations to scale must be identified on the as-built drawings for all runs of mechanical and electrical work, including all site utilities, etc., installed underground, in walls, floors, or otherwise concealed. Deviations from the original Drawings must be shown in detail. The location of all main runs, whether piping, conduit, ductwork, drain lines, etc., must be shown by dimension and elevation.
- (B) ***Final Completion.*** Contractor must verify that all changes in the work are depicted in the as-built drawings and must deliver the complete set of as-built drawings to the Owner and Architect/Engineer for review and approval as a condition precedent to Final Completion.
- 7.12 Existing Utilities.** As required by Government Code Section 4215, if, during the performance of the Work, Contractor discovers utility facilities not identified by Owner in the Contract Documents, Contractor must immediately provide written notice to Owner and the utility. Owner assumes responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the Project site, if those utilities are not identified in the Contract Documents. Contractor will be compensated in accordance with the provisions of the Contract Documents for the costs of locating, repairing damage not due to Contractor's failure to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Drawings or Specifications with reasonable accuracy, and for equipment on the Project necessarily idled during such work. Contractor will not be assessed liquidated damages for delay in completion of the Work, to the extent such delay was caused by Owner's failure to provide for removal or relocation of the utility facilities.
- 7.13 Notice of Excavation.** Government Code Section 4216.2, requires that except in an emergency, Contractor must contact the appropriate regional notification center, or Underground Services Alert at 800-642-2444 (for Northern California), at least two working days, but not more than 14 calendar days before starting any excavation if the excavation will be conducted in an area that is known, or reasonable should be known, to contain subsurface installations, and if practical, Contractor must delineate with white paint or other suitable markings the area to be excavated.

7.14 Trenching and Excavations.

- (A) ***Duty to Notify.*** Contractor must promptly, and before the following conditions are disturbed, provide written notice to Owner if the Contractor finds any of the following conditions:
- (1) Material that Contractor believes may be a hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing law;
 - (2) Subsurface or latent physical conditions at the Worksite differing from those indicated by information about the Worksite made available to bidders prior to the deadline for submitting bids; or
 - (3) Unknown physical conditions at the Worksite of any unusual nature, differing materially different from those ordinarily encountered and generally recognized as inherent in work of the character required by the Contract Documents.
- (B) ***Owner Investigation.*** Owner will promptly investigate the conditions and if Owner finds that the conditions do materially differ or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the Work, Owner will issue a Change Order.
- (C) ***Disputes.*** In the event that a dispute arises between the Owner and the Contractor regarding any of the conditions specified in subsection (A) above, Contractor will not be excused from any scheduled completion date provided for in the Contract Documents, but must proceed with all Work to be performed under the Contract. Contractor will retain any and all rights provided either by the Contract or by law which pertain to the resolution of disputes between Contractor and Owner.

- 7.15 Trenching of Five Feet or More.** As required by Labor Code Section 6705, if the Contract Price exceeds \$25,000 and the Work includes the excavation of any trench or trenches of five feet or more in depth, a detailed plan must be submitted to Owner or its civil or structural engineer, for acceptance in advance of the excavation. The detailed plan must show the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation. If the plan varies from the shoring system standards, it

must be prepared by a registered civil or structural engineer. Use of a shoring, sloping, or protective system less effective than that required by the Construction Safety Orders is prohibited.

- 7.16 New Utility Connections.** Owner will pay connection charges and meter costs for new permanent utilities required by the Contract Documents, if any. Contractor must notify Owner sufficiently in advance of the time needed to request service from each utility provider so that connections and services are initiated in accordance with the Project schedule.
- 7.17 Lines and Grades.** Contractor is required to use any benchmark provided by Architect/Engineer. Unless otherwise specified in the Contract Documents, Contractor must provide all lines and grades required to execute the Work.
- 7.18 Historic or Archeological Items.**
- (A) ***Contractor's Obligations.*** Contractor must ensure that all persons performing Work at the Project site are required to immediately notify the Inspector or Owner's Representative, upon discovery of any potential historic or archeological items, including historic or prehistoric ruins, burial grounds, archaeological or vertebrate paleontological site, including fossilized footprints or other archeological, paleontological or historical feature on the Project site (collectively, "Historic or Archeological Items").
- (B) ***Discovery; Cessation of Work.*** Upon discovery of any potential Historic or Archeological Items, Work must be stopped within an 85-foot radius of the find and may not resume until authorized in writing by Owner's Representative. If required by Owner, Contractor must assist in protecting or recovering the Historic or Archeological Items, any such assistance to be compensated as extra work on a time and materials basis under Article 6, Contract Modification. Any suspension of Work required due to discovery of Historic or Archeological Items will be treated as a suspension for convenience under Article 13.
- 7.19 Environmental Control.** Contractor must not pollute any drainage course or its tributary inlets with fuels, oils, bitumens, acids, insecticides, herbicides or other harmful materials. Contractor and its Subcontractors shall at all times in the performance of the Work comply with all applicable federal, state, and local laws and regulations concerning pollution of waterways.

- (A) ***Stormwater Permit.*** Contractor must comply with all applicable conditions of the State Water Resources Control Board National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Stormwater Runoff Associated with Construction Activity (“Stormwater Permit”).

- (B) ***Contractor’s Obligations.*** If required for the Work, a copy of the Stormwater Permit is on file in Owner’s principal administrative offices, and the Contractor must comply with the same without adjustment of the Contract Price or the Contract Time. The Contractor must timely and completely submit required reports and monitoring information required by the conditions of the Stormwater Permit, the Contractor must comply with all other applicable state, municipal or regional laws, ordinances, rules or regulations governing discharge of stormwater, including applicable municipal stormwater management programs.

Article 8 Payment

- 8.1 Schedule of Values.** Prior to submitting its first application for payment, Contractor must prepare and submit to Owner and Architect/Engineer a schedule of values apportioned to the various divisions and phases of the Work. Each line item contained in the schedule of values must be assigned a value such that the total of all items shall equal the Contract Price. The items must be sufficiently detailed to enable accurate evaluation of the percentage of completion claimed in each application for payment, and the assigned value consistent with any itemized or unit pricing submitted with Contractor's bid.
- 8.2 Progress Payments.** Following the last day of each month, or as otherwise required by the Special Conditions or Specifications, Contractor will submit to Owner and Architect/Engineer for approval, a monthly application for payment for Work performed during the preceding month based on the estimated value of the Work performed during that preceding month.
- (A) ***Application for Payment.*** Each application for payment must be itemized to include labor, materials, and equipment incorporated into the Work, and materials and equipment delivered to the Worksite, as well as authorized and approved Change Orders. Each pay application must be supported by the Contractor's schedule of values and any other substantiating data required by the Contract Documents.
Each application for payment shall be accompanied by completed "Contract Balance Form," a copy of which is provided at the end of Article 8.
- (B) ***Payment of Undisputed Amounts.*** Owner will pay the undisputed amount due, as certified by Architect/Engineer, within thirty (30) days after Contractor has submitted a complete and accurate payment application, subject to Public Contract Code Section 20104.50. Owner will deduct a percentage from each progress payment as retention, as set forth in Section 8.5, below, and may deduct additional amounts as set forth in Section 8.3, below.
- 8.3 Adjustment of Payment Application.** Owner may adjust or reject a payment application, including application for Final Payment, in whole or in part, based upon any of the circumstances listed below. Contractor will be notified in writing of the basis for the adjustment, and will be promptly paid once the basis for that adjustment has been remedied and no longer exists.

- (A) Contractor's unexcused failure to perform the Work as required by the Contract Documents, including correction or completion of punch list items;
- (B) Loss or damage caused by Contractor or its Subcontractor(s) arising out of or relating to performance of the Work;
- (C) Contractor's failure to pay its Subcontractors and suppliers when payment is due;
- (D) Failure to timely correct rejected, nonconforming, or defective Work;
- (E) Unexcused delay in performance of the Work;
- (F) Any unreleased stop notice, retained as 125% of the amount claimed;
- (G) Failure to submit any required schedule or schedule update in the manner and within the time specified in the Contract Documents;
- (H) Failure to maintain or submit as-built documents in the manner and within the time specified in the Contract Documents;
- (I) Work performed without approved Shop Drawings, when approved Shop Drawings are required before proceeding with the Work;
- (J) Contractor's payroll records are delinquent or inadequate; and
- (K) Any other costs or charges that may be offset against payments due, as provided in the Contract Documents, including liquidated damages.

8.4 Acceptance of Work. Neither Owner's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of any part of the Work.

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

(A) ***Substitution of Securities.*** As provided by Public Contract Code Section 22300, Contractor may request in writing that it be allowed, at its sole expense, to substitute securities for the retention withheld by Owner. Any escrow agreement entered into pursuant to this provision will fully comply

with Public Contract Code Section 22300, and will be subject to approval as to form by Owner's legal counsel.

- (B) ***Release of Undisputed Retention.*** All undisputed retention, less any amounts that may be assessed as liquidated damages, retained for stop notices, or otherwise withheld under Section 8.3 or 8.6 will be released as Final Payment to Contractor no sooner than 35 days following recordation of the notice of completion, and no later than 60 days following acceptance of the Project by Owner's governing body or authorized designee, or, if the Project has not been accepted, no later than 60 days after the Project is otherwise considered complete under Public Contract Code Section 7107(c).
- 8.6 Setoff.** Owner is entitled to set off any amounts due from Contractor against any payments due to Contractor. Owner's entitlement to setoff includes progress payments as well as Final Payment and release of retention.
- 8.7 Payment to Subcontractors and Suppliers.** Each month, Contractor must promptly pay each Subcontractor and supplier the value of the portion of labor, materials, and equipment incorporated into the Work or delivered to the Worksite by the Subcontractor or supplier during the preceding month. Such payments must be made in accordance with the requirements of the law, and those of the Contract Documents and applicable subcontract or supplier contract.
- (A) ***Withholding for Stop Notice.*** Owner will withhold 125% of the amount claimed by an unreleased stop notice, a portion of which may be retained by Owner for the costs incurred in handling the stop notice claim, including attorneys' fees and costs, as authorized by law.
- (B) ***Joint Checks.*** Owner reserves the right to issue joint checks made payable to the Contractor and its Subcontractors or suppliers. As a condition to release of payment by a joint check, the joint check payees may be required to execute a joint check agreement in a form provided or approved by Owner. The joint check payees will be jointly and severally responsible for the allocation and disbursement of funds paid by joint check. Payment by joint check will not be construed to create a contractual relationship between Owner and a Subcontractor or supplier of any tier beyond the scope of the joint check agreement.
- 8.8 Final Payment.** Final Completion, acceptance of the Work by Owner, and recordation of the Notice of Completion, and any release required by the Contract Documents are conditions precedent to Final Payment and

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

- 8.9 Release of Claims.** Owner may, at any time, require that payment of the undisputed portion of any progress payment or Final Payment be contingent upon Contractor furnishing Owner with a written release of all claims against Owner arising from or related to the portion of Work covered by those undisputed amounts. Any disputed amounts may be specifically excluded from the release.
- 8.10 Warranty of Title.** Contractor warrants that title to all work, materials, or equipment incorporated into the Work and included in a request for payment will pass over to Owner free of any claims, liens, or encumbrances upon payment to Contractor.

CONTRACT BALANCE FORM (NOTE: SAMPLE FORM)

Project Name: Marinwood CSD PARK MAINTENANCE FACILITY

Note: A detailed invoice MUST be attached to this Contract Balance Form.



CONTRACTOR NAME: _____	DATE: _____
MAILING ADDRESS: _____	TELEPHONE NO.: _____
_____	FAX NO.: _____
_____	PROJECT NO.: _____
	INVOICE NO.: _____



- 1. ORIGINAL CONTRACT AMOUNT: \$ _____
- 2. APPROVED CHANGE ORDERS TOTAL: \$ _____
- 3. REVISED CONTRACT AMOUNT: (1+2) \$ _____
- 4. PREVIOUS BALANCE PAID: \$ _____
- 5. REMAINING BALANCE: (3-4) \$ _____
- 6. CURRENT PROGRESS PAYMENT DUE: \$ _____
(before retention)
- 7. 5% RETENTION FROM WORK DONE: (-)\$ _____
- 8. CURRENT BALANCE DUE: (6-7) \$ _____
- 9. REMAINING BALANCE OF REVISED CONTRACT AMOUNT: (5-8) \$ _____
(including retention)

Article 9 Labor Provisions

- 9.1 Discrimination Prohibited.** Discrimination against any prospective or present employee engaged in the Work on grounds of race, color, ancestry, national origin, ethnicity, religion, sex, sexual orientation, age, disability, or marital status is strictly prohibited. Contractor and its Subcontractors are required to comply with all applicable Federal and California laws including the California Fair Employment Practice Act, Government Code Sections 12900 et seq., Government Code Section 11135, and Labor Code Sections 1735, 1777.5, 1777.6, and 3077.5.
- 9.2 Labor Code Requirements.**
- (A) ***Eight Hour Day.*** Under Labor Code Section 1810, eight hours of labor constitute a legal day's work under this Contract.
- (B) ***Penalty.*** Under Labor Code Section 1813, Contractor will forfeit to Owner as a penalty, the sum of \$25.00 for each day during which a worker employed by Contractor or any Subcontractor is required or permitted to work more than eight hours in any one calendar day or more than 40 hours per calendar week, except if such workers are paid overtime under Labor Code Section 1815.
- (C) ***Apprentices.*** Contractor is responsible for compliance with the requirements governing employment and payment of apprentices, as set forth in Labor Code Section 1777.5, which is fully incorporated by reference.
- (D) ***Notices.*** Under Labor Code Section 1771.4, Contractor is required to post all job site notices prescribed by law or regulation.
- 9.3 Prevailing Wages.** Each worker performing Work under this Contract that is covered under Labor Code Section 1720, including cleanup at the Project site, must be paid at a rate not less than the prevailing wage as defined in Sections 1771 and 1774 of the Labor Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>. Contractor must post a copy of the applicable prevailing rates at the Worksite.
- (A) ***Penalties.*** Under Labor Code Section 1775, Contractor and any Subcontractor will forfeit to Owner as a penalty up to \$200.00 for each calendar day, or portion a day, for each worker paid less than the applicable prevailing wage rate. Contractor must also pay each worker the

difference between the applicable prevailing wage rate and the amount actually paid to that worker.

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

9.4 Payroll Records. Contractor must comply with the provisions of Labor Code Sections 1776 and 1812, which are fully incorporated by this reference.

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

- (1) The information contained in the payroll record is true and correct.
- (2) The Contractor or Subcontractor has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any Work performed by its employees on the Project.

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

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

Standards Enforcement, these penalties will be withheld from progress payments then due.

- 9.5 Labor Compliance.** Under Labor Code section 1771.4, the Contract for this Project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.

Article 10 Safety Provisions

- 10.1 Safety Precautions and Programs.** Contractor and its Subcontractors are fully responsible for safety precautions and programs, and for the safety of persons and property in the performance of the Work. Contractor and its Subcontractors must comply with all applicable safety laws, rules and regulations and seek to avoid injury, loss, or damage to persons or property by taking reasonable steps to protect its employees and other persons at the Worksite, materials and equipment stored on or off site, and property at or adjacent to the Worksite.
- (A) **Reporting Requirements.** Contractor must immediately provide a written report to Owner of all recordable accidents and injuries occurring at the Worksite. If Contractor is required to file an accident report with a government agency, Contractor will provide a copy of the report to Owner.
- (B) **Legal Compliance.** Contractor's safety program must comply with the applicable legal and regulatory requirements. Contractor must provide Owner with copies of all notices required by law or regulation.
- (C) **Contractor's Obligations.** Any damage or loss caused by Contractor arising from the Work which is not insured under property insurance must be promptly remedied by Contractor.
- (D) **Remedies.** If Owner determines, in its sole discretion, that any part of the Work or Worksite is unsafe, Owner may, without assuming responsibility for Contractor's safety program, require Contractor or its Subcontractor to cease performance of the Work or to take corrective measures to the Owner's satisfaction. If Contractor fails to promptly take the required corrective measures, Owner may perform them and deduct the cost from the Contract Price. Contractor agrees it is not entitled to submit a Claim for damages, for an increase in Contract Price, or for a change in Contract Time based on Contractor's compliance with the Owner's request for corrective measures pursuant to this provision.

- 10.2 Hazardous Materials.** Unless otherwise specified, this Contract does not include the removal, handling, or disturbance of any asbestos or other Hazardous Materials. If Contractor encounters materials on the Worksite that Contractor reasonably believes to be asbestos or other Hazardous Materials, and the asbestos or other Hazardous Materials have not been rendered harmless, Contractor may continue Work in unaffected areas reasonably believed to be safe, but must immediately cease work on the area affected and report the condition to the Owner. No asbestos, asbestos-containing products or other Hazardous Materials may be used in performance of the Work.
- 10.3 Material Safety.** Contractor must maintain Material Safety Data Sheets (“MSDS”) at the Worksite, as required by law, for materials or substances used or consumed in the performance of the Work. The MSDS shall be accessible and available to Contractor’s employees, Subcontractors, Owner, and Owner’s representatives.
- (A) ***Contractor Obligations.*** Contractor is solely responsible for the proper delivery, handling, use, storage, removal, and disposal of all materials brought to the Worksite and/or used in the performance of the Work.
- (B) ***Labeling.*** Contractor must ensure proper labeling on any material brought onto the Worksite so that any persons working with or in the vicinity of the material may be informed as to the identity of the material, any potential hazards, and requirements for proper handling, protections, and disposal.

Article 11 Completion and Warranty Provisions

11.1 Final Completion.

- (A) **Final Inspection.** When the Work required by this Contract is fully performed, Contractor must provide written notification to Architect/Engineer requesting final inspection. Based on this inspection, Architect/Engineer will prepare a punch list of items that are incomplete, incorrectly installed, or not operating as required by the Contract Documents. The omission of any such item from this punch list will not relieve the Contractor from fulfilling all requirements of the Contract Documents.
- (B) **Punch List.** Architect/Engineer will promptly deliver the punch list to Contractor and will specify the time by which all of the punch list items must be completed or corrected. The Architect/Engineer may include Owner's estimated cost to complete each punch list item if Contractor fails to do so within the specified time.
- (C) **Requirements for Final Completion.** Final Completion will be achieved upon completion or correction of all punch list items, as verified by inspection, and upon satisfaction of all other Contract requirements, including any commissioning required under the Contract Documents, and submission of all final submittals, including a warranty bond as required under Section 4.4, instructions and manuals as required under Section 7.10, and as-built drawings as required under Section 7.11, all to Owner's satisfaction. Once Final Completion is achieved, and the Project has been formally accepted by Owner, Owner will file a notice of completion with the County Recorder.
- (D) **Final Payment.** Final Payment and release of retention, less any sums withheld pursuant to the provisions of the Contract Documents, will not be made sooner than 35 days after recordation of the notice of completion. If Contractor fails to complete all of the punch list items within the specified time, Owner may elect to accept the Project and record the notice of completion, and withhold up to 150% of Owner's estimated cost to complete the remaining items from Final Payment.

11.2 Warranty.

- (A) **General.** Contractor warrants that all materials and equipment will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Contractor further warrants that the Work will be free from material

defects not intrinsic in the design or materials required in the Contract Documents. At Owner's request, Contractor must furnish satisfactory evidence of the quality and type of materials and equipment furnished. Contractor's warranty does not extend to damage caused by normal wear and tear, or improper use or maintenance.

- (B) **Warranty Period.** Contractor's warranty must guarantee its Work for a period of one year from the date of recordation of the notice of completion (the "Warranty Period"), except when a longer guarantee is provided by a supplier or manufacturer or is required by the Specifications or Special Conditions. Contractor must obtain from its Subcontractors, suppliers and manufacturers any special or extended warranties required by the Contract Documents.
- (C) **Warranty Documents.** As a condition precedent to acceptance, Contractor must supply Owner with all warranty and guarantee documents relevant to equipment and materials incorporated into the Work and guaranteed by their suppliers or manufacturers.
- (D) **Subcontractors.** The warranty obligations in the Contract Documents apply to Work performed by Contractor and its Subcontractors, and Contractor expressly agrees to act as co-guarantor of such Work.
- (E) **Contractor's Obligations.** Upon written notice from Owner to Contractor of any defect in the Work discovered during the Warranty Period, Contractor or its responsible Subcontractor must promptly correct the defective Work at its own cost. Contractor's obligation to correct defects discovered during the Warranty Period will continue past the expiration of the Warranty Period as to any defects in Work for which Contractor was notified prior to expiration of the Warranty Period.
- (F) **Owner's Remedies.** If Contractor and/or its responsible Subcontractor fails to correct defective Work within ten days following notice by Owner, or sooner, if required by the circumstances, Contractor expressly agrees that Owner may correct the defects to conform with Contract Documents at Contractor's sole expense, and Contractor agrees to reimburse Owner for its costs within 30 days following Owner's submission of a demand for payment pursuant to this provision. If Owner is required to initiate legal action to compel Contractor's compliance with this provision, and Owner is the prevailing party in such action, Contractor is solely responsible for all of Owner's attorney's fees and legal costs expended to enforce Contractor's warranty obligations herein in addition to any and all costs incurred by Owner to correct the defective Work.

- 11.3 Use Prior to Final Completion.** Owner reserves the right to occupy or make use of the Project, or any portions of the Project, prior to Final Completion if Owner has determined that the Project or portion of it is in a condition suitable for the proposed occupation or use, and that it is in its best interest to occupy or make use of the Project, or any portions of it, prior to Final Completion. Owner will notify Contractor in writing of its intent to occupy or make use of the Project or any portions of the Project, pursuant to this provision.
- (A) ***Non-Waiver.*** Occupation or use prior to Final Completion will not operate as acceptance of the Work or any portion of it, nor will it operate as a waiver of any of Owner's rights or Contractor's duties pursuant to these Contract Documents, and will not affect nor bear on the determination of the time of substantial completion with respect to any statute of repose pertaining to the time for filing an action for construction defect.
- (B) ***Owner's Responsibility.*** Owner will be responsible for the cost of maintenance and repairs due to normal wear and tear with respect to those portions of the Project that are being occupied or used before final completion. The Contract Price or the Contract Time may be adjusted pursuant to the applicable provisions of these Contract Documents if, and only to the extent that, any occupation or use under this Section actually adds to Contractor's cost or time to perform the Work.
- 11.4 Substantial Completion.** For purposes of determining "substantial completion" with respect to any statute of repose pertaining to the time for filing an action for construction defect, "substantial completion" is deemed to mean the last date that Contractor or any Subcontractor performs Work on the Project prior to recordation of the Notice of Completion, except for warranty work performed under this Article.

Article 12 Dispute Resolution

- 12.1 Claims.** This Article applies to and provides the exclusive procedures for any Claim arising from or related to the Contract or performance of the Work.
- (A) **Definition.** “Claim” means a separate demand by Contractor, submitted in writing, for change in the Contract Time or Contract Price that has previously been submitted to Owner in accordance with the requirements of the Contract Documents, and which has been rejected by Owner, in whole or in part.
- (B) **Limitations.** A Claim may only include the portion of a previously rejected demand that remains in dispute between Contractor and Owner. With the exception of any dispute regarding the amount of money actually paid to Contractor as Final Payment, Contractor is not entitled to submit a Claim demanding a change in the Contract Time or the Contract Price, which has not previously been submitted to Owner in full compliance with Article 5 and Article 6, and subsequently rejected in whole or in part by Owner.
- (C) **Scope of Article.** This Article is intended to provide the exclusive procedures for submission and resolution of Claims of any amount, and applies in addition to the provisions of Public Contract Code Sections 20104, et seq.
- 12.2 Claims Submission.** The following requirements apply to any Claim subject to this Article:
- (A) **Substantiation.** The Claim must be submitted to Owner in writing and must include all of the documents necessary to substantiate the Claim including the change order request that was rejected in whole or in part, and Owner’s rejection. Any Claim for additional payment must include a complete, itemized breakdown of all labor, materials, taxes, insurance, and subcontract, or other costs. Substantiating documentation such as payroll records, receipts, invoices, or the like, must be submitted in support of each claimed cost. Any Claim for an extension of time or delay costs must be substantiated with schedule analysis and narrative depicting and explaining claimed time impacts.

(B) ***Submission Deadlines.***

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

12.3 Claims Under \$50,000. For any Claim of less than \$50,000.00, Owner will respond in writing within 45 days of receipt of the Claim, or may first request, in writing, within 30 days of receipt of the Claim, any additional documentation supporting the Claim or relating to defenses to the Claim that Owner may have against Contractor. If Contractor fails to submit the additional documentation to Owner within 15 days of receipt of Owner's request, the claim will be deemed waived.

- (A) ***Additional Information.*** If additional information is thereafter required, it may be requested and provided upon mutual agreement of Owner and Contractor.
- (B) ***Owner's Response.*** Owner's written response to the Claim, as further documented, will be submitted to Contractor within 15 days after receipt of the further documentation or within a period of time no greater than that taken by Contractor in producing the additional information, whichever is greater.
- (C) ***Non-Waiver.*** Any failure by Owner to respond within the times specified above may not be construed as acceptance of the Claim in whole or in part, or as a waiver of any provision of these Contract Documents.

12.4 Claims From \$50,000 to \$375,000. For any Claim of over \$50,000.00, and less than or equal to \$375,000.00, Owner will respond in writing within 60 days of receipt of the Claim, or may request, in writing, within 30 days of receipt of the Claim, any additional documentation supporting the Claim or relating to the defenses to the Claim that Owner may have against Contractor. If Contractor fails to submit the additional documentation to Owner within 30 days of receipt of Owner's request, the claim will be deemed waived.

(A) ***Additional Information.*** If additional information is thereafter required, it may be requested and provided upon mutual agreement of Owner and Contractor.

(B) ***Owner's Response.*** Owner's written response to the Claim, as further documented, will be submitted to Contractor within 30 days of receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.

(C) ***Non-Waiver.*** Any failure by Owner to respond within the times specified above may not be construed as acceptance of the Claim in whole or in part, or as a waiver of any provision of these Contract Documents.

12.5 Claims Over \$375,000. For any Claim of over \$375,000.00, Owner will respond in writing within 90 days of receipt of the Claim. Owner may request, in writing, within 45 days of receipt of the Claim, any additional documentation supporting the Claim relating to defenses to the Claim that Owner may have against the Contractor. If Contractor fails to submit the additional documentation to Owner within 45 days of receipt of Owner's request, the claim will be deemed waived.

(A) ***Additional Information.*** If additional information is thereafter required, it may be requested and provided upon mutual agreement of Owner and Contractor.

(B) ***Owner's Response.*** Owner's response to the Claim, as further documented, will be submitted to Contractor within 45 days after receipt of the further documentation, or within a period of time no greater than that taken by Contractor in producing the additional information or requested documentation, whichever is greater.

- (C) ***Non-Waiver.*** Any failure by Owner to respond within the times specified above may not be construed as acceptance of the Claim in whole or in part, or as a waiver of any provision of these Contract Documents.

12.6 Meet and Confer.

- (A) ***Claims up to \$375,000.*** For Claims less than or equal to \$375,000.00, if Contractor disputes the Owner's written response, or Owner fails to respond within the specified time, Contractor must notify Owner in writing, either within 15 days of receipt of Owner's response, or within 15 days of Owner's failure to respond within the specified time, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. If Contractor fails to dispute Owner's response, in writing, within the specified times, Contractor's Claim will be deemed waived.

- (1) Upon receipt of the demand to meet and confer, Owner will schedule the meet and confer conference to be held within 30 days, or later if needed to ensure the mutual availability of all of the individuals that each party requires to represent its interests at the meet and confer conference.
- (2) The meet and confer conference will be scheduled at a location at or near Owner's principal office.
- (3) If the Claim or any portion remains in dispute following the meet and confer conference, the parties may agree to mediation, as set forth in Section 12.7, below, or if unable to agree, Contractor may file a claim as provided in Government Code Section 900 et seq. (a "Government Code Claim").

- (B) ***Claims over \$375,000.*** For any Claim greater than \$375,000.00, if Contractor disputes the Owner's written response, or Owner fails to respond within the specified time, Contractor must notify Owner in writing, either within 30 days of receipt of Owner's response, or within 30 days of Owner's failure to respond within the specified time, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. If Contractor fails to dispute Owner's response, in writing, within the specified times, Contractor's Claim will be deemed waived.

- (1) Upon receipt of the demand to meet and confer, Owner will schedule the meet and confer conference to be held within 60 days, or later if needed to ensure the mutual availability of all of the

individuals that each party requires to represent its interests at the meet and confer conference.

- (2) The meet and confer conference will be scheduled at a location at or near Owner's principal office.
- (3) For any Claim or any portion(s) of a Claim that remains in dispute following the meet and confer conference, the parties agree to make a good faith effort to resolve the dispute through mediation as a condition precedent to filing a Government Code Claim and initiating litigation.

12.7 Mediation and Government Code Claims.

(A) **Mediation.** Mediation under this Article will be scheduled within 60 days following conclusion of the meet and confer process, with a mediator that the parties mutually agreed upon. The mediation itself may take place more than 60 days following conclusion of the meet and confer process to ensure the mutual availability of the selected mediator and all of the individuals that each party requires to represent its interests. The parties must share the costs of mediation equally, except costs incurred by each party for representation by legal counsel or any other consultant.

(B) **Government Code Claims.**

- (1) Timely presentment of a Government Code Claim is a condition precedent to filing any legal action based on or arising from the Contract.
- (2) The time for filing a Government Code Claim will be tolled from the time the Contractor submits its written Claim pursuant to Section 12.2, above, until the time that Claim is denied as a result of the meet and confer process, including any period of time used by the meet and confer process. If the parties agree to mediation pursuant to Section 12.7, below, the time for filing a Government Code Claim will be tolled until conclusion of the mediation by impasse.

12.8 Tort Claims. This Article does not apply to tort claims and nothing in this Article is intended nor shall be construed to change the time periods for filing tort-based Government Code Claims.

- 12.9 Arbitration.** It is expressly agreed, under California Civil Code Section 1296, that in any arbitration to resolve a dispute relating to this Contract, the arbitrator's award must be supported by law and substantial evidence.
- 12.10 Damages.** Contractor is not entitled to recovery of any alleged home office overhead. The Eichleay Formula may not be used for any recovery under the Contract. Contractor is not entitled to consequential damages, including home office overhead or any form of overhead not directly incurred at the Worksite; lost profits; loss of productivity; lost opportunity to work on other projects; diminished bonding capacity; increased cost of financing for the Project; extended capital costs; non-availability of labor, material or equipment due to delays; or any other indirect loss arising from the Contract.
- 12.11 Multiple Claims.** In the interest of efficiency, Owner, acting in its sole discretion, may elect to process multiple Claims concurrently, in which case the applicable procedures above will be based on the total amount of such Claims rather than the amount of each individual Claim. Any such election will not operate to change or waive any other requirements of this Article.

Article 13 Suspension and Termination

- 13.1 Suspension for Cause.** In addition to all other remedies available to Owner, if Contractor fails to perform or correct work in accordance with the Contract Documents, Owner may immediately order the Work, or any portion of it, suspended until the cause for the suspension has been eliminated to Owner's satisfaction.
- (A) ***Failure to Comply.*** Contractor will not be entitled to an increase in Contract Time or Contract Price for a suspension occasioned by Contractor's failure to comply with the Contract Documents.
- (B) ***No Duty to Suspend.*** Owner's right to suspend the Work will not give rise to a duty to suspend the Work, and Owner's failure to suspend the Work will not constitute a defense to Contractor's failure to comply with the requirements of the Contract Documents.
- 13.2 Suspension for Convenience.** Owner reserves the right to suspend, delay, or interrupt the performance of the Work in whole or in part, for a period of time determined to be appropriate for Owner's convenience, and not due to any act or omission by Contractor or its Subcontractors. Upon notice by Owner pursuant to this provision, Contractor must immediately

suspend, delay, or interrupt the Work as directed by Owner. The Contract Price and the Contract Time will be equitably adjusted by Change Order to reflect the cost and delay impact occasioned by such suspension for convenience.

- 13.3 Termination for Default.** Contractor may be deemed in default for a material breach of or inability to perform the Contract, including Contractor's refusal or failure to supply sufficient skilled workers, proper materials, or equipment to perform the Work within the Contract Time; refusal or failure to make prompt payment to its employees, Subcontractors, or suppliers or to correct rejected work; disregard of laws, regulations, ordinances, rules, or orders of any public agency with jurisdiction over the Project; or if Contractor lacks financial capacity to complete the Work within the Contract Time; or is otherwise responsible for a material breach of the Contract requirements.
- (A) **Notice.** Upon Owner's determination that Contractor is in default, Owner may provide Contractor and its surety written notice of default and intent to terminate the Contract.
- (B) **Termination.** Within seven calendar days after notice of intent to terminate for default has been given, unless the default is cured or arrangements to cure the default have been made and memorialized in writing, to Owner's satisfaction, Owner may terminate the Contract by written notice to Contractor with a copy to Contractor's surety.
- (C) **Waiver.** Time being of the essence in the performance of the Work, if Contractor's surety fails to arrange for completion of the Work in accordance with the Performance Bond, within seven calendar days from the date of the notice of termination, Contractor's surety will be deemed to have waived its right to complete the Work under the Contract, and Owner may immediately make arrangements for the completion of the Work through use of its own forces, by hiring a replacement contractor, or by any other means that Owner determines advisable under the circumstances. Contractor and its surety will be jointly and severally liable for any additional cost incurred by Owner to complete the Work following termination. In addition, Owner will have the right to use any materials, supplies, and equipment belonging to Contractor and located at the Worksite for the purposes of completing the remaining Work.
- (D) **Wrongful Termination.** If a court of competent jurisdiction or an arbitrator later determines that the termination for default was wrongful, the termination will be deemed to be a termination for convenience, and Contractor's damages will be strictly limited to the compensation

provided for termination for convenience, in Section 13.4, below. Contractor waives any claim for any other damages for wrongful termination including consequential damages, lost opportunity costs or lost profits.

13.4 Termination for Convenience. Owner reserves the right to terminate all or part of the Contract for convenience upon written notice to Contractor. Upon receipt of such notice, Contractor must immediately stop the Work, comply with Owner's instructions to protect the completed Work and materials, and use its best efforts to minimize further costs. In the event of termination for convenience, the parties agree that the following will constitute full and fair compensation to Contractor, and that Contractor will not be entitled to any additional compensation:

- (A) **Completed Work.** The value of its Work satisfactorily performed to date, including Project overhead and profit based on Contractor's schedule of values;
- (B) **Demobilization.** Actual and substantiated demobilization costs; and
- (C) **Markup.** Five percent of the total value of the Work performed as of the date of notice of termination or five percent of the value of the Work yet to be completed, whichever is less.

13.5 Provisions Remaining in Effect. Upon termination pursuant to this Article, the provisions of the Contract Documents remain in effect as to any claim, indemnity obligation, warranties, guarantees, submittals of as built drawings, instructions, or manuals, or other such rights and obligations arising prior to the termination date.

Article 14 Miscellaneous Provisions

14.1 Assignment of Unfair Business Practice Claims. Under Public Contract Code Section 7103.5, Contractor and its Subcontractors agree to assign to Owner all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or subcontract. This assignment will be effective at the time Owner tenders Final Payment to Contractor, without further acknowledgement by the parties.

- 14.2 Provisions Deemed Inserted.** Every provision of law required to be inserted in the Contract Documents is deemed to be inserted, and the Contract Documents will be construed and enforced as though such provision has been included. If it is discovered that through mistake or otherwise that any required provision was not inserted, or not correctly inserted, the Contract Documents will be amended accordingly.
- 14.3 Waiver.** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of the Contract Documents will be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy will be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor will any waiver constitute a continuing waiver unless specified in writing by the waiving party.
- 14.4 Titles, Headings, and Groupings.** The titles and headings used and the groupings of provisions in the Contract Documents are for convenience only and may not be used in the construction or interpretation of the Contract Documents or relied upon for any other purpose.
- 14.5 Statutory and Regulatory References.** With respect to any amendments to any statutes or regulations referenced in these Contract Documents, the reference is deemed to be the version in effect on the date that that bids were due.

SPECIAL CONDITIONS

- 1.1 Shop Drawings.** Whenever shop drawings are required by the Contract Documents or by Engineer, Contractor shall submit five (5) prints of each shop drawing to Engineer. The term "shop drawing" includes detail design calculations, fabrication and installation drawings, lists, graphs, operation instructions, etc.
- 1.1.1** If three prints of the drawing are returned to Contractor marked "NO EXCEPTIONS TAKEN," further revision of the drawings will not be required. If one print of the drawing is returned to Contractor marked "REVISE AND RESUBMIT," Contractor shall revise the drawing and resubmit five (5) copies of the revised drawing to Engineer. Owner reserves the right to withhold payment due Contractor to cover additional costs of Engineer's review beyond the second submission.
- 1.1.2** Fabrication of an item shall not commence before Engineer has reviewed the pertinent shop drawings and returned copies to Contractor marked either "NO EXCEPTIONS TAKEN" or "MAKE CORRECTIONS NOTED."
- 1.1.3** Revisions indicated on shop drawings are deemed necessary to meet the existing requirements of the Contract Documents and shall not be taken as the basis of claims for extra work. Contractor shall have no claim for damages or extension of time due to any delay resulting from making the required revisions to shop drawings. Engineer's review of the shop drawings shall not relieve the Contractor of responsibility for any errors or omissions contained in the shop drawings nor shall such review operate to waive or modify any provision contained in the Contract Documents.
- 2.1** Not Used
- 2.2** Not Used
- 3.1 Disposal of Materials Outside of Street Right-of-Way.** Unless otherwise specified in the Specifications or Supplemental General Conditions, Contractor is solely responsible for disposing of materials off of the Marinwood CSD property to a legal disposal or recycling site.
- 4.1 Emergency Contact.** Prior to the commencement of Work on the Project, Contractor shall provide contact information to Engineer for the person designated by Contractor to respond to any emergency that arises on the Worksite

during the course of the Project. That person shall be responsible for responding to the Worksite within thirty (30) minutes following notification of an emergency by the County Sheriff or District Fire Department, regardless of the time of day.

5.1 Authorized Work Days and Hours.

5.1.1 Authorized Work Days. Except as expressly authorized in writing by Owner, Contractor is limited to performing Work on the Project on the following days of the week, excluding holidays observed by Owner: Monday through Friday

5.1.2 Authorized Work Hours. Except as expressly authorized in writing by Owner, Contractor is limited to performing Work on the Project during the following hours: 8:00 am – 5:00 pm

6.1 Contractor's Construction Schedule. Construction Manager will review Contractor's construction schedules and will verify that each schedule is prepared in accordance with the requirements of the Contract Documents.

7.1 Specifications of Appliances and Materials. See Appendices.

NOTE- Building Permits have already been secured by owner.