



**CITY OF SOUTH SAN FRANCISCO
ENGINEERING DIVISION**

PART II

PROJECT NAME: **NEW PARK AT LINDEN AND PINE AVENUE**
PROJECT NUMBER: **PK2305**

CONTRACTOR NAME: **AZUL WORKS, INC.**
1400 EGBERT AVENUE
SAN FRANCISCO, CA 94124

BID NUMBER: **2716**

AGREEMENT FOR PUBLIC IMPROVEMENTS

GENERAL PROVISIONS

**315 MAPLE AVENUE
SOUTH SAN FRANCISCO, CALIFORNIA 94080
(650) 829-6652**

FORM OF AGREEMENT FOR PUBLIC IMPROVEMENTS
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FORM OF AGREEMENT FOR PUBLIC IMPROVEMENTS

THIS AGREEMENT made and entered into this ____, day of _____, ____, between the CITY OF SOUTH SAN FRANCISCO, a municipal corporation and political subdivision of the State of California, hereinafter called "CITY", and **Azul Works, Inc.**, hereinafter called "CONTRACTOR"¹.

WITNESSETH:

WHEREAS, City has taken appropriate proceedings to authorize construction of the public work and improvements herein provided and execution of this contract.

WHEREAS, a notice was duly published for bids for the contract for the improvements hereinafter described.

WHEREAS, on _____, notice duly given, the City Council ("Council") of said City awarded the contract for the construction of the improvements hereinafter described to the Contractor, which Contractor said Council found to be the lowest responsible bidder for said improvements.

WHEREAS, City and Contractor desire to enter into this agreement for the construction of said improvements pursuant to the terms, definitions, and conditions set forth in the General Provisions and other Contract Documents.

IT IS AGREED as follows:

1. Scope of Work. Contractor shall perform the Work described briefly as follows:

The Work consists of the furnishing of all labor, materials, tools, equipment, and services necessary for the construction of the **NEW PARK AT LINDEN AND PINE AVENUE** _____; in accordance with the Contract Documents.

Also included are any such other items or details not mentioned above that are required by the Contract Documents, which are to be constructed or furnished and installed as shown on the plans, as specified herein and as directed by the Engineer.

The aforementioned improvements are further described in the "Contract Documents" hereinafter referred to.

2. The Contract Documents. The complete contract consists of the following documents: This Agreement; Notice Inviting Bids; the Accepted Bid; the complete plans, profiles, detailed drawings, Standard Plans and Specifications, including Standard Specifications, General Provisions, Special Provisions and Technical Provisions; Faithful Performance Bond; Payment Bond; Bid Schedule and Wage Scale.

All rights and obligations of City and Contractor are fully set forth and described in the contract documents.

¹The term "Contractor" as used herein is employed without distinction as to either number or gender and shall include whenever the context shall permit all agents, representatives, employees, servants, subcontractors and business or social invitees.

All of the above-named documents are intended to cooperate, so that any work called for in one and not mentioned in the other, or vice versa, is to be executed the same as if mentioned in all said documents. The documents comprising the complete contract will hereinafter be referred to as "the Contract Documents."

3. Equipment - Performance of Work. Contractor shall furnish all tools, equipment, apparatus, facilities, labor, and materials necessary to perform and complete in a good and workmanlike manner the Work of general construction as called for, and for the manner designated in, and in strict conformity with, the plans and specifications for said Work entitled:

The equipment, apparatus, facilities, labor, and materials shall be furnished and said Work performed and completed as required in said plans and specifications under the direction and supervision and subject to the approval of the Engineer of said City or the Engineer's designated assistant.

4. Contract Price. City shall pay, and Contractor shall accept, in full payment for the Work agreed to be done the sum of 3,295,000 (\$). Said price is determined by the lump sum price contained in Contractor's bid. The lump sum price and unit prices are set forth in the completed Bid forms attached hereto and made a part hereof as if set forth herein verbatim. In the event work is performed or materials furnished in addition to those set forth in Contractor's bid and the specifications herein, such work and materials will be paid for at the unit prices therein contained. Said amount shall be paid in installments as hereinafter provided.

5. Time for Performance. The Contractor shall complete the Work called for under the contract in all parts and requirements within 295 CALENDAR DAYS as defined in the Special Provisions. The Engineer shall furnish the Contractor a monthly statement showing the number of working days charged to the contract for the preceding month, the number of working days specified for the completion of the contract, and the number of working days remaining to complete the contract.

6. Rights of City to Increase Working Days. If such Work is not completed within the time specified, the Engineer shall have the right to increase the number of working days in the amount it may determine will best serve the interest of the City. If it desires to increase said number of working days, it shall have the further right to charge to Contractor and deduct from the final payment for the Work the actual cost of engineering, inspection, superintendence, and other overhead expenses which are directly chargeable to Contractor and which accrue during the period of such extension, except that the cost of the final service and preparation of the final estimates shall not be included in such charges, provided, however, that no extension of time for the completion of such Work shall be allowed unless at least twenty (20) days prior to the time herein fixed for the completion thereof or the time fixed by the Engineer for such completion as extended, Contractor shall have filed application for extension thereof, in writing with the Engineer.

7. Option of City to Terminate Agreement in Event of Failure to Complete Work. If Contractor shall have refused or failed to prosecute the Work or any severable part thereof, with such diligence as will insure its work, or any completion within the time specified, or any extensions thereof, or shall have failed to complete said work within such time, or if Contractor should be adjudged a bankrupt, or if Contractor should make a general assignment for the benefit of Contractor's creditors, or if a receiver should be appointed in the event of Contractor's insolvency, or if Contractor, or any Subcontractor, should violate any of the provisions of this Agreement, the Engineer may give written notice to Contractor, and Contractor's sureties of its intention to terminate this Agreement, such notice to

contain the reasons for such intention to terminate this Agreement, and unless within five (5) days after the serving of such notice, such violation shall cease and satisfactory arrangements for the correction thereof be made, this Agreement may, at the option of City, upon expiration of said time, cease and terminate.

8. Termination of Contract for Convenience. The City also reserves the right to terminate the contract at any time upon a determination by the Engineer in the Engineer's sole discretion that termination of the contract is in the best interest of the City. If the City elects to terminate the contract for convenience, the termination of the contract and the total compensation payable to the Contractor shall be governed by the following:

(A) The City will issue the Contractor a written notice signed by the Engineer, specifying that the contract is terminated. Upon receipt of said written notice, the Contractor will be relieved of further responsibility for damage to the Work (excluding materials) as specified in Section 7-1.16, "Contractor's Responsibility for the Work and Materials," of the Standard Specifications and, except as otherwise directed in writing by the Engineer, the Contractor shall:

- (1) Stop all work under the contract except that specifically directed to be completed prior to acceptance.
- (2) Perform work the Engineer deems necessary to secure the project for termination.
- (3) Remove equipment and plant from the site of the Work.
- (4) Take such action as is necessary to protect materials from damage.
- (5) Notify all subcontractors and suppliers that the contract is being terminated and that their contracts or orders are not to be further performed unless otherwise authorized in writing by the Engineer.
- (6) Provide the Engineer with an inventory list of all materials previously produced, purchased or ordered from suppliers for use in the Work and not yet used in the Work, including its storage location, and such other information as the Engineer may request.
- (7) Dispose of materials not yet used in the Work as directed by the Engineer. It shall be the Contractor's responsibility to provide the City with good title to all materials purchased by the City hereunder, including materials for which partial payment has been made as provided in Section 9-1.06, "Partial Payments," of the Standard Specifications and with bills of sale or other documents of title for such materials.
- (8) Subject to the prior written approval of the Engineer, settle all outstanding liabilities and all claims arising out of subcontracts or orders for materials terminated hereunder. To the extent directed by the Engineer, the Contractor shall assign to the City all the right, title, and interest of the Contractor under subcontracts or orders for materials terminated hereunder.
- (9) Furnish the Engineer with the documentation required to be furnished by the Contractor under the provisions of the contract, including, on projects as to which Federal and State funds are involved, all documentation required under the Federal and State requirements included in the contract.
- (10) Take such other actions as the Engineer may direct.

(B) Acceptance of the contract as hereinafter specified shall not relieve the Contractor of responsibility for damage to materials. The Contractor shall continue to be responsible for damage to materials after issuance of the Notice of Termination, except as follows:

(1) The Contractor's responsibility for damage to materials for which partial payment has been made as provided in Section 9-1.06, "Partial Payments," of the Standard Specifications and for materials furnished by the City for use in the Work and unused shall terminate when the Engineer certifies that such materials have been stored in the manner and at the locations the Engineer has directed.

(2) The Contractor's responsibility for damage to materials purchased by the City subsequent to the issuance of the notice that the contract is to be terminated shall terminate when title and delivery of such materials has been taken by the City.

(3) When the Engineer determines that the Contractor has completed the Work under the contract directed to be completed prior to termination and such other work as may have been ordered to secure the project for termination, the Contractor will recommend that the Engineer formally accept the contract to the extent performed, and immediately upon and after such acceptance by the Engineer, the Contractor will not be required to perform any further Work thereon and shall be relieved of the Contractor's contractual responsibilities for injury to persons or property which occurs after the formal acceptance of the project by the Engineer.

(C) Termination of the contract shall not relieve the surety of its obligation for any just claims arising out of the work performed.

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

(1) The reasonable cost to the Contractor, without profit, for all work performed under the contract, including mobilization, demobilization and work done to secure the project for termination. In determining the reasonable cost, deductions will be made for the cost of materials to be retained by the Contractor, amounts realized by the sale of materials, and for other appropriate credits against the cost of the work. When, in the opinion of the Engineer, the cost of a contract item of work is excessively high due to costs incurred to remedy or replace defective or rejected work, the reasonable cost to be allowed will be the estimated reasonable cost of performing such work in compliance with the requirements of the plans and specifications and the excessive actual cost shall be disallowed.

(2) A reasonable allowance for profit on the cost of the work performed as determined under Subsection (1), provided the Contractor establishes to the satisfaction of the Engineer that it is reasonably probable that the Contractor would have made a profit had the contract been completed and provided further, that the profit allowed shall in no event exceed four (4) percent of said cost.

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

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

- (5) A reasonable credit to the City for defective or incomplete work not corrected.

All records of the Contractor and subcontractors necessary to determine compensation in accordance with the provisions of this Section 8 shall be open to inspection or audit by representatives of the City at all times after issuance of the Notice of Termination and for a period of three (3) years, thereafter, and such records shall be retained for that period.

After acceptance of the Work by the Engineer, the Engineer may make payments on the basis of interim estimates pending issuance of the Final Estimate in accordance with Section 9-1.07B, "Final Payment and Claims," of the Standard Specifications when, in the Engineer's opinion, the amount thus paid, together with all amounts previously paid or allowed, will not result in total compensation in excess of that to which the Contractor will be entitled. All payments, including payment upon the Final Estimate shall be subject to deduction for prior payments and amounts, if any, to be kept or retained under the provisions of the contract.

If this contract is terminated by the City for cause, and it is later determined that the proper basis for a termination for cause did not exist, the termination shall be deemed to have been a termination for convenience and governed by the terms of this contract dealing with such termination.

If the contract is terminated by the City for cause or convenience, such termination shall neither act as a waiver by the City of its right to require the Contractor to correct defects in the Work performed by the Contractor nor void any warranties applicable to the Work performed under the contract.

The provisions of this Section 8 shall be included in all subcontracts.

In the event of conflict between the termination provisions of this Section 8 and any other provision or the contract, this Section 8 shall prevail.

9. Liquidated Damages. If the overall deadline for project completion and/or any of the milestone deadlines are not met and/or particular contract requirements are not met, damages will be sustained by the City, and it is and will be impracticable and extremely difficult to ascertain and determine the actual damage which the City will sustain. As such, the Contract will be subject to the liquidated damages named in the Special Provisions or \$ 2,500 per day, whichever is greater, and should the Contractor fail to meet any milestone deadline or overall project deadline or fail to meet particular contract requirements as named in the general provisions.

10. Performance by Sureties. In the event of any termination as herein before provided, City shall immediately give written notice thereof to Contractor and Contractor's sureties and the sureties shall have the right to take over and perform the Agreement, provided, however, that if the sureties, within five (5) days after giving them said notice of termination, do not give the City written notice of their intention to take over the performance of the Agreement and do not commence performance thereof within five (5) days after notice to the City of such election, City may take over the Work and prosecute the same to completion by contract or by any other method it may deem advisable, for the account, and at the expense, of Contractor, and the sureties shall be liable to City for any excess cost or damages occasioned City thereby; and, in such event, City may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plant, and other property belonging to Contractor as may be on the site of the Work and necessary therefore. Should Contractor contract in an individual capacity, the surety bond shall contain the following provision: "Should Contractor contract in the Contractor's individual capacity, the death of the Contractor shall not relieve the surety of its obligations."

11. Care of the Work. Contractor has examined the site of the Work and is familiar with its topography and condition, location of property lines, easements, building lines, and other physical factors, and limitations affecting the performance of this Agreement. Contractor, at Contractor's expense, shall obtain any permission necessary for any operations conducted off the property owned or controlled by City. Contractor shall be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance.

12. Payments to Contractor.

(A) Monthly Progress Payments. On or before the tenth day of each and every month during the progress of the Work following the Notice to Proceed, Contractor shall submit to the City Engineer a complete itemized statement of all labor and materials incorporated into the improvement during the preceding month and the portion of the contract sum applicable thereto. On approval in writing of said statement by the Engineer, the payment request shall be submitted to the City Council for approval and within ten (10) days after approval thereof by the City Council, City shall pay Contractor a sum based upon ninety-five percent (95%) of the contract price apportionment of the labor and materials incorporated into the improvement under the contract during the month covered by said statement.

(B) Notice of Completion and Final Payment. City shall file with the County Recorder's Office a Notice of Completion within ten (10) days after said improvements shall have been completed and accepted by City and written proof of said filing shall be delivered to the City Clerk.

The remaining five percent (5%), less that amount withheld by City to correct defective work or otherwise complete the contract, shall be paid to Contractor thirty (30) days after recordation of the notice of completion of the Work, on duly certified voucher therefore, after Contractor shall have furnished City with a release of, or bond against all claims against City, if required by City, arising under and by virtue of this contract, and work done, and materials furnished hereunder. In the event that there are any claims specifically excepted by Contractor, if permitted by City, from the operation of the release, there shall be retained by City stated amounts to be set forth therein and approved by the Engineer. If there be any claims filed against the Work, City shall withhold final payment until the validity of such claims shall have been properly determined and in this regard City is hereby empowered to pay directly to claimant the full amount of any valid claims.

(C) Escrow Account for Retention. Pursuant to Section 22300 of the Public Contract Code of the State of California, securities may be substituted for any moneys withheld by a public agency to ensure performance under a contract.

At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the City, or with a State or Federally Chartered Bank as the escrow agent, who shall release such securities to Contractor following the expiration of thirty (30) days from the date of filing of a Notice of Completion of the Work by City, unless such securities are to be withheld by City to correct defective work or otherwise complete the contract or are subject to withholding by City to satisfy stop notices or other calms and costs associated therewith.

The request for substitution of securities to be deposited with the City, or with a State or Federally Chartered Bank as escrow agent, shall be submitted on the form entitled "Supplemental Agreement No. [REDACTED] Substitution of Securities for Funds Withheld", which, when executed by the Contractor and the City, shall constitute a Supplemental Agreement forming a part of this Contract. The City shall have thirty (30) days from receipt of any written request, properly completed and signed by the Contractor and, if applicable, accompanied by an escrow agreement in a form acceptable to City, to

approve said request and effect the substitution. City shall not unreasonably withhold approval of said request. City shall determine the value of any security so deposited. Such Supplemental Agreement, see Attachment A, and any escrow agreement shall provide for the release of the securities to Contractor as set forth herein and shall also set forth the manner in which City may convert the securities or portions thereof to cash and apply the proceeds to the accomplishment of any purposes for which moneys may be withheld and utilized as described in this Contract, including but not limited to the completion of the contract, correction of defective work and the answering of any stop notice claims and litigation cost thereof.

Securities eligible for investment under this Section shall be those listed in California Government Code Section 16430 or bank or savings and loan certificates of deposit.

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

13. Contract Security. Concurrently with the execution hereof, Contractor shall furnish: (1) a surety bond in an amount equal to at least one hundred percent (100%) of the contract price as security for the faithful performance of this contract; and (2) a separate surety bond in an amount equal to at least one hundred percent (100%) of the contract price as security for the payment of all persons performing labor and furnishing materials in connection with this contract in accordance with Section 9554 of the Civil Code of the State of California. Sureties on each of said bonds and the form thereof shall be issued by a California-admitted surety, satisfactory to the City and be approved by the Engineer.

14. Hold-Harmless Agreement and Contractor's Insurance. Contractor agrees to, and shall, hold City, its elective and appointive boards, officers, agents, and employees harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Contractor's or any of Subcontractor's operations under this Agreement, whether such operations be by Contractor or by any Subcontractor or Subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for, Contractor or any Subcontractor or Subcontractors. Contractor agrees to, and shall, defend City and its elective and appointive boards, officers, agents, and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid operations, provided as follows:

(A) The City does not, and shall not, waive any rights against Contractor which it may have by reason of the aforesaid hold-harmless agreement, because of the acceptance by City, or the deposit with City by Contractor, of any of the insurance policies hereinafter described in Paragraph 15, "Insurance" hereof.

(B) That the aforesaid hold-harmless agreement by Contractor shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations of Contractor or any Subcontractor, regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

15. Insurance. The Contractor shall take out and maintain during the life of this Agreement the following policies of insurance:

(A) Workers' Compensation and Employers' Liability Insurance providing full statutory coverage.

reinsurance shall not be required to contribute to any liability or loss until and unless the approximate limit of liability afforded hereunder is exhausted."

The above requirements that the City be named as additional insured, that the insurance shall be primary to any other, and that the insurance not be cancelled without notice, shall be provided in the form of an endorsement signed by an authorized representative of the insurance company providing coverage, who shall declare his or her authority to sign on behalf of the insurer.

16. Proof of Carriage of Insurance. Contractor shall furnish City through the Engineer, concurrently with the execution hereof, with satisfactory proof of carriage of the insurance required and that each carrier shall give City at least thirty (30) days prior notice of the cancellation or change of any policy during the effective period of this contract. Further, if the Contractor's insurance policy includes a self-insured retention that must be paid by a named insured as a precondition of the insurer's liability, or which has the effect of providing that payments of the self-insured retention by others, including additional insureds or insurers do not serve to satisfy the self-insured retention, such provisions must be modified by special endorsement so as to not apply to the additional insured coverage required by this agreement so as to not prevent any of the parties to this agreement from satisfying or paying the self-insured retention required to be paid as a precondition to the insurer's liability. Additionally, the certificates of insurance must note whether the policy does or does not include any self-insured retention and also must disclose the deductible.

17. Emergency – Services During an Emergency.

(A) The Contractor shall be obligated to assist the City in the event of a declared emergency event, as determined by the City, in accordance with the requirements of this section.

(B) The Contractor shall make available to the City all mobilized equipment and available personnel active on the project and shall provide supervision of such personnel under the direction of the City in order to perform required work to respond to an emergency condition.

(C) The Contractor shall be compensated for such assistance in accordance with Section 13 of Article IX of the General Provisions, titled, "Extra Work".

18. Additional Time for Performance – Procurement of Materials. If, because of war or other declared national emergency, the Federal or State government restricts, regulates or controls the procurement and allocation of labor or materials, or both, and if solely because of said restrictions, regulation or controls, Contractor is, through no fault of Contractor, unable to perform this agreement, or the work is thereby suspended or delayed, any of the following steps may be taken:

(A) City may, pursuant to resolution of the Council, grant Contractor additional time for the performance of this agreement, sufficient to compensate in time, for said delay or suspension.

To qualify for such extension of time, Contractor, within ten (10) days of Contractor's discovering such inability to perform, shall notify the Engineer in writing thereof and give specific reason therefore; Engineer shall thereupon have sixty (60) days within which to procure such needed materials or labor as is specified in this agreement, or permit substitution, or provide for changes in Work in accordance with other provisions of this agreement. Substituted materials, or changes in the Work, or both, shall be ordered in writing by the Engineer and the concurrence of the Council shall not be necessary. All reasonable expenses of such procurement incurred by the Engineer shall be defrayed by Contractor; or

(B) If such necessary materials or labor cannot be procured through legitimate channels within sixty (60) days after the filing of the aforesaid notice, either party may, upon thirty (30) days written notice to the other, terminate this agreement. In such event, the Contractor shall be compensated for all work executed upon a unit or upon a cost-plus ten percent (10%) basis, whichever is the lesser. Materials on the ground, in process of fabrication or in route upon the date of notice of termination specially ordered for the project and which cannot be utilized by Contractor, shall be compensated for by City at cost, including freight, provided that Contractor shall take all steps possible to minimize this obligation; or

(C) City Council, by resolution, may suspend this agreement until the cause of inability is removed, but for a period not to exceed (30) days. If this agreement is not cancelled and the inability of Contractor to perform continues, without fault on Contractor's part, beyond the time during which the agreement may have been suspended, as herein provided, City Council may further suspend this agreement, or either party hereto may, without incurring any liability, elect to declare this agreement terminated upon the ground of impossibility of performance. In the event City declares this agreement terminated, such declaration shall be authorized by the City Council, by resolution, and Contractor shall be notified in writing thereof within five (5) days after the adoption. In such event, the Contractor shall be entitled to proportionate compensation at the agreement rate for such portion of the agreement as may have been performed; or

(D) City may terminate this agreement, in which case Contractor shall be entitled to proportionate compensation at the agreement rate for such portion of the agreement as may have been performed. Such termination shall be authorized by resolution of the Council. Notice thereof shall be forthwith given in writing to Contractor and this agreement shall be terminated upon receipt by Contractor of such notice. In the event of the termination in this subparagraph (D), none of the covenants, conditions or provisions hereof shall apply to the work not performed and City shall be liable to Contractor only for the proportionate compensation last herein mentioned.

19. Provisions Cumulative. The provisions of this Agreement are cumulative, and in addition to and not in limitation of, any other rights or remedies available to City.

20. Notices. All notices shall be in writing and delivered in person or transmitted by certified mail, postage prepaid.

Notices required to be given to City shall be addressed as follows:

City Clerk
City Hall, 400 Grand Avenue
South San Francisco, California 94080

Notices required to be given to Contractor shall be addressed as follows:

Notices required to be given sureties of Contractor shall be addressed as follows:

Notices required to be given to the Escrow Agent of Contractor, if any, shall be addressed as follows:

21. Interpretation. As used herein, any gender includes each other gender, the singular includes the plural, and vice versa.

IN WITNESS WHEREOF, two (2) identical counterparts of this Agreement, consisting of twelve (12) pages (being pages A-1 through A-12), each of which counterparts shall for all purposes be deemed an original of said Agreement, have been duly executed by the parties hereinabove named, on the day and year first hereinabove written.

ATTEST:

City Clerk

CITY: City of South San Francisco,
a municipal corporation

By: _____
Laura Snideman, City Manager

CONTRACTOR: _____

ATTEST:

By: _____

(If Contractor is an individual, so state. If Contractor is a Corporation, a corporate seal or signatures of the President or Vice President and the Secretary Treasurer are required).

ATTACHMENT A

**ESCROW AGREEMENT FOR
SECURITY DEPOSITS IN LIEU OF RETENTION**

THIS ESCROW AGREEMENT is made and entered into by and between the City of South San Francisco whose address is 400 Grand Ave., P.O. Box 711, South San Francisco, CA 94083, hereinafter referred to as "City," and AZUL WORKS, INC., whose address is 1400 EGBERT AVENUE, SAN FRANCISCO, CA 94124, hereinafter called "Contractor" and _____, whose address is _____, hereinafter called "Escrow Agent."

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

1. Pursuant to Section 22300 of the Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by Owner pursuant to the Construction Contract entered into between the Owner and Contractor for _____ in the amount of _____ dollars (\$ _____) dated _____ (hereinafter referred to as the "Contract"). Alternately, on written request of the Contractor, the Owner shall make payments of the retention earnings directly to the Escrow Agent. When the Contractor deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the Owner within 10 days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between the Owner and Contractor. Securities shall be held in the name of _____, and shall designate the Contractor as the beneficial owner.

2. The Owner shall make progress payments to the Contractor for those funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.

3. When the Owner makes payment of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Contractor until the time that the escrow created under this contract is terminated. The Contractor may direct the investment of the payments into securities. All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the Owner pays the Escrow Agent directly.

4. Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the Owner. These expenses and payment terms shall be determined by the Owner, Contractor, and Escrow Agent.

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

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

7. The Owner shall have a right to draw upon the securities in the event of default by the Contractor. Upon seven day's written notice to the Escrow Agent from the Owner of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the Owner.

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

9. Escrow Agent shall rely on the written notifications from the Owner and the Contractor pursuant to Sections (5) to (8), inclusive, of this Agreement, and the Owner and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.

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

On behalf of Owner:

Title

Name

Signature

Address

On behalf of Contractor:

Title

Name

Signature

Address

On behalf of Escrow Agent:

Title

Name

Signature

Address

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

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

Owner:

Contractor:

Title

Title

Name

Name

Signature

Signature

Approved as to form:

Attest:

City Attorney

Date

City Clerk

GENERAL PROVISIONS

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SECTION I
DEFINITION OF TERMS

1. Bidder. Any individual, firm or corporation submitting a proposal for the work contemplated, acting directly or through a duly authorized representative.
2. Calendar Day. A calendar day shall be any day including all legal holidays, Saturdays, and Sundays.
3. City. The City of South San Francisco, State of California, acting through the City Council, or other duly authorized agents.
4. Contract. The written agreement covering the performance of the work. The complete contract includes the Agreement for Public Improvements, the Notice Inviting Bids, the proposal, plans, specifications, contract bonds, and all supplemental agreements affecting the work.
5. Contractor. The person or persons, firm, partnership, corporation, or combination thereof, private or municipal, who have entered into the contract with the City, or the City's legal representative.
6. Engineer or Works Engineer. The duly appointed Engineer of the City of South San Francisco, acting directly or through properly authorized agents limited by the particular duties entrusted to them.
7. Inspector. The Inspector or Inspectors of the Engineer of the City of South San Francisco, limited by the particular duties entrusted to them.
8. Notice of Award. Written notice from the City to the successful lowest responsive and responsible bidder stating that upon compliance with all contract prerequisites and conditions, the City will execute the Contract with that bidder for the Work.
9. Notice to Proceed. Written notice from the City to the Contractor setting a date on which Contract time will start and authorizing the Contractor to proceed with the Work.
10. Plans. The drawings, or reproduction thereof, approved by the Engineer, pertaining to the work, and made a part of the contract, including City's Standard Drawings and 2015 Caltrans' Standard Plans.
11. Specifications. The information, directions, provisions, and requirements pertaining to the work, and contained herein including Special Provisions, Technical Specifications, General Provisions, those administrative subsections of Caltrans' Standard Specifications that are specifically referenced in this Contract and the non-administrative sections (Sections 10 through 96) of the 2015 Caltrans' Standard Specifications.

12. Superintendent of Streets. The Engineer (Ex-officio Superintendent of Streets) of the City of South San Francisco, acting directly or through properly authorized agents.
13. The Work. The improvement, structure, project, or construction contemplated in the contract, the furnishing of all necessary labor, materials, tools and other devices, and the doing or performing by the Contractor of all things required to be done for the fulfillment of the contract as provided therein.
14. Working Day. A working day is defined as any day, except as follows:
 - a. Saturdays, Sundays and Legal Holidays;
 - b. Days on which the Contractor is prevented by inclement weather or conditions resulting immediately there from adverse to the current controlling operation or operations, as determined by the Engineer, from proceeding with at least 75 percent of the normal labor and equipment force engaged on such operation or operations for at least 60 percent of the total daily time being currently spent on the controlling operation or operations;
 - c. Days on which the Contractor is prevented, by reason of requirements in the "Maintaining Traffic and Working Hours" section of the Special Provisions, from working on the controlling operation or operations for at least 60 percent of the total daily time being currently spent on such controlling operation or operations;
 - d. Days on which the current controlling operation or operations are defined to include any feature of the work (e.g., an operation or activity, or a settlement or curing period) considered at the time by the Engineer, which if delayed or prolonged, will delay the time of completion of the Work; or
 - e. Days which are Legal Holidays, as defined as those holidays observed by the City of South San Francisco as specified in the current Memorandum of Understanding (MOU) between the City of South San Francisco and the American Federation of State, County and Municipal Employees, Local 1569, AFL-CIO, except that half holidays in the MOU shall be considered full holidays under the Contract.

SECTION II

PROPOSAL REQUIREMENTS

1. General Information. Sealed proposals, addressed to the City Council of the City of South San Francisco, will be received by the Purchasing Officer and will be publicly opened and read at the time and place stated in the Notice Inviting Bids.

Any bid may be withdrawn at any time prior to the hour fixed in the Notice Inviting Bids for the opening of the bids provided that a request in writing, executed by the bidder or the bidder's duly authorized representative, for the withdrawal of such shall not prejudice the right of a bidder to file a new bid.

2. Proposal Form. The City will furnish to each bidder a standard proposal form, which, when filled out and executed, shall be submitted as their bid. Bids not presented on forms so furnished may, in the City's sole discretion, be deemed non-responsive and rejected on that basis.

On all bid items for which bids are to be received on a unit price basis, the unit price for all items bid shall be shown, as well as the extended price (unit price multiplied by the number of units shown on the proposal form) for each bid item bid. In the case of any discrepancy between the extended price for any bid item bid and the unit price, the unit price multiplied by the number of units shall prevail. In the event of any discrepancy between the total contract amount and the sum of the extended prices of all items, the sum of the extended prices of all items shall prevail.

The proposal shall set forth the item prices and totals, in clearly legible figures and words, in the respective spaces provided, and shall be signed by the bidder, who shall fill out all blanks in the proposal form as therein required.

The bidder shall also fill out all blanks in the proposal forms for any alternative to the project proposed by the City; failure to do so may, in the City's sole discretion, result in the proposal being considered non-responsive and rejected on that basis.

3. Bid Prices to Cover Entire Work. Payment for the work done under this contract shall be as set forth on the Bidder's Sheet for Proposal. Bidder shall include the entire cost of the work contemplated in the contract, as required by the plans, drawings, specifications, Special Provisions, and General Provisions: and, furthermore, it shall be understood and agreed that the cost of all labor, materials and equipment and all incidental expenses of whatever nature necessary to complete the Work is included.

Any part of the Work which is not mentioned in the Specifications, and/or in the Special Provisions, but is shown on the plans, or any part not shown on the plans but described in the Specifications and/or in the Special Provisions, or any part not shown in the plans nor described in the Specifications or Special Provisions, but which is reasonably implied by either, or is necessary or usual in the performance of such work, shall be performed as incidental work, without extra cost to the City, by the Contractor as if fully described in the Specifications or Special Provisions and shown on the plans, and the expense thereof shall be included in the total bid.

4. Examination of Plans, Specifications, Special Provisions, and Site of Work. The bidder is required to examine carefully the site of and the proposal, plans, specifications, and correct forms for the work contemplated, and it will be assumed that the bidder has investigated and is satisfied as to the conditions to be encountered, as to the character, quality, and quantities of work to be performed and materials to be furnished, and as to the requirements of the specifications, the special provisions and the contract. It is mutually agreed that submission of a proposal shall be considered prima facie evidence that the bidder has made such examination.

The City will not be responsible for any loss or unanticipated cost incurred by the Contractor as a result of the Contractor's failure to estimate in advance all conditions pertaining to the Work, including underground facilities and sewers that may have to be relocated.

5. Proposal Guaranty. All bids shall be presented under sealed cover and shall be accompanied by cash, cashier's check, certified check, or bidder's bond, made payable to the City of South San Francisco, for an amount equal to at least ten percent (10%) of the amount of said bid, and no bid shall be considered unless such cash, cashier's check, or certified check, or bidder's bond is enclosed therewith.

6. Rejection of Proposals Containing Alterations, Erasures, or Irregularities. Proposals may be rejected if they show any alterations of form, additions not called for, conditional or alternative bids, incomplete bids, erasures, or irregularities of any kind.

7. Competency of Bidders - Proposal Requirements. Before entering into a contract, the bidder shall satisfy the City that he or she possesses adequate equipment and has the necessary experience and forces to perform the Work in the manner set forth in these specifications. He shall be a licensed Contractor in the State of California and with the Department of Industrial Relations. A City of South San Francisco license will be required before the contract for the Work is signed by the City.

8. Subcontractors. Proposals shall comply with the Subletting and Subcontracting Fair Practices Act (Public Contract Code Section 4100 et seq.). Pursuant to Section 4104 of said Act, bidder shall, in the bid set forth:

a. The name and the location of the place of business of each subcontractor who will perform work or labor or render service to the prime Contractor in or about the construction of the Work or improvement in an amount in excess of one-half (1/2) of one percent (1%) of the prime Contractor's total bid, or ten thousand dollars (\$10,000), whichever is greater.

b. The portion of the Work, which will be done by each such subcontractor under this Act. The prime Contractor shall list only one subcontractor for each of such portions as is defined by the prime Contractor in the Contractor's bid.

SECTION III

AWARD AND EXECUTION OF CONTRACT

1. Award of Contract. The City reserves the right to reject any and all proposals. The award of the contract, if it is awarded, will be to the lowest responsible bidder, and will be made within sixty (60) calendar days after the opening of the proposal. All bids will be compared on the basis of the Engineer's cost estimate.

2. Return of Proposal Guaranties. Within ten (10) working days after the execution of the Contract, the City will return the proposal guaranties accompanying the proposals that are not to be considered in making the award. All other proposal guaranties will be held until the contract has been finally executed, after which they will be returned to the respective bidders whose proposals they accompany.

3. Bid Protests. Any protest of the proposed award of Contract to the Bidder with the lowest responsible bid must be submitted in writing to the Office of the City Engineer, 315 Maple Avenue, South San Francisco, California, 94080, no later than 5 p.m. of the third (3rd) business day following the date of the Bid Opening (“Bid Protest Deadline”). Email is not an acceptable form for a bid protest submission. All protests shall comply with the following procedures:

- a. To be eligible to submit a bid protest, the party filing the protest must have actually submitted a bid on the Project. A subcontractor or supplier of a party filing a bid on this Project is not eligible to submit a bid protest. A party may not rely on the bid protest submitted by another Bidder, but must pursue its own protest in a timely manner as set forth herein.
- b. The bid protest must be accompanied by a non-refundable bid protest filing fee in the amount of \$2,000.00 in the form of a cashier’s check or certified check made out to “City of South San Francisco.” A protest that is submitted without this filing fee will be returned without further action or consideration.
- c. The bid protest must contain a complete statement of the basis for the protest, as well as all documentation supporting or justifying the protest. The bid protest must refer to the specific portions of the Contract Documents upon which the protest is based. The bid protest must be notarized and signed under penalty of perjury. Material submitted after the Bid Protest Deadline will not be considered.
- d. The protest must state the facts and refer to the specific portion of the document(s) or specifications or the specific statute that form the basis for the protest. The protest must include the name, address, email address, and telephone number of the person representing the protesting party, and the address to which notices should be directed.

- e. The party filing the protest must concurrently transmit a copy of the initial protest to the Bidder who is the subject of the protest.
- f. The Protested Bidder may submit a written response to the protest, provided the response is received by City before 5 p.m. two days after the Bid Protest Deadline or after actual receipt of the bid protest, whichever is sooner.
- g. The procedure and time limits set forth in this Section are mandatory and are the Bidder's sole and exclusive remedy in the event of a bid protest. The Bidder's failure to fully comply with these procedures shall constitute a waiver of any right to further pursue the bid protest, including filing of a challenge of the award pursuant to the California Public Contract Code, filing of a claim pursuant to the California Government Code, or initiation of any other legal proceedings.
- h. The City shall review all timely protests prior to formal award of the Contract. At the time of the City Council's consideration of the award of the Contract, the City Council may also consider the merits of any timely protests. The City Council may either accept the protest and award the Contract to the next lowest responsive and responsible Bidder, or reject the protest and award to the lowest responsive and responsible Bidder.
- i. These bid protest procedures shall not limit the City Council's ability to reject all bids.

4. Contract Bonds. The bidder to whom the contract is awarded shall execute a performance bond satisfactory to the City for the faithful performance of the Work in a sum equal to the amount of the contract.

A payment bond shall be furnished securing the claims of persons employed by the Contractor and the claims of persons who furnish materials, supplies, or equipment used or consumed by the Contractor in the performance of the Work. This bond shall be in a sum equal to the amount of the contract.

5. Liability Insurance Required. See Section 14, "Hold-Harmless Agreement and Contractor's Insurance" and Section 15, "Insurance," of the Agreement for Public Services.

6. Execution of Contract. The Contract shall be signed by the successful bidder and returned, together with the contract bonds, within ten (10) working days after the bidder has received the Notice of Award. Failure to execute the contract and file acceptable bonds within the specified time shall be just cause for the annulment of the award and the forfeiture of the proposal guaranty.

SECTION IV

SCOPE OF WORK

1. Work to be Done. The work to be done consists of furnishing all labor, materials, methods or processes, implements, tools, and machinery, except as otherwise specified, which are required to construct and put into complete order for use the Work described in the Special Provisions, and to leave the grounds in a neat condition.

2. Safety Program.

a. The Contractor shall conform to the rules and regulations pertaining to safety established by the California Division of Industrial Safety and to all requirements as set forth in the State of California Construction Safety Orders (CAL/OSHA), and in particular, Article 3 of these Safety Orders, regarding Accident Prevention and safety meetings. Within ten (10) working days following Notice of Award the Contractor must submit to the City a copy of the Contractor's Safety Plan.

b. Full compensation for furnishing all labor, materials, tools and equipment and doing all the work involved in this item of work as above specified, shall be considered as included in the prices paid for the various contract items of work and no additional compensation will be made therefore.

3. Removal of Obstructions. The Contract shall remove and dispose of all structures, debris, or other obstructions of any character to the Work to be performed.

4. City Directed Change Orders. The City may, at any time during the progress of the Work, direct any amendments to the Work or any of the Contract Documents. Such amendments shall in no way void the Contract, but will be applied to amend the Contract Price, if such amendments affect the Contract Price, the Project schedule (if such amendments affect the Project schedule), or any other provision of the Contract Documents based on a fair and reasonable valuation of the amendment in accordance with this Section IV.

5. Alterations. Subject to the provisions of Section 4-1.03, "Changes" of the Standard Specifications and unless otherwise specified, the City reserves the right to increase or decrease the quantity of any item or portion of the Work or to omit portions of the Work as may be deemed necessary or advisable by the Engineer, also to make such alterations or deviations, additions to, or omissions from the plans and Specifications, as may be determined during the progress of the Work to be necessary and advisable for the property completion thereof. Upon written order of the Engineer, the Contractor shall proceed with the Work as increased, decreased or altered.

When alterations in plans or quantities of work are ordered and performed, the Contractor shall accept payment in full at the contract unit price for the actual quantities of work done. No allowance will be made in any case for loss of anticipated profits. Increased or decreased work involving supplemental agreements will be paid for as stipulated in such agreements.

6. Contractor Proposed Change Orders. The Contractor shall submit proposed changes to the Engineer no later than 15 days before the proposed change.

7. All Change Orders. All change orders or amendments to Contract Documents must be approved by the Engineer prior to the change or amendment and must be evidenced by a writing executed by authorized representatives of the City and the Contractor. The Engineer is expressly authorized to execute change orders and/or amendments to the Work and/or Contract Documents on behalf of the City. All change order proposals must specify any change in the Project schedule, or any project milestone, including, but not limited to, the Time for Completion, under the change order. It is understood that change orders that do not specify a change in any milestone, including, but not limited to, the Time for Completion, may be accomplished by the Time for Completion then in effect.

8. Change Order Pricing. Change order pricing for all change orders, whether additive, deductive, or both, will be governed by the following:

a. Prices specified in the Contract Documents will apply to cost impacts involving items for which the Contract Documents specify prices.

b. Cost impacts involving items for which the Contract Documents do not specify prices, charges or credits will be paid on a time and materials basis in accordance with the following. All costs listed in this Subsection (b) will constitute incidentals, full compensation for which will be deemed included in the markups for labor, material, and equipment specified below, and no additional compensation for such cost impacts will be allowed:

(1) Labor. The Contractor will be paid the cost of labor for workers (including foremen when authorized by the Engineer), used in the actual and direct performance of the work, plus a fixed mark up of 15% of such labor cost.

(2) Materials. Materials costs will be the direct costs for materials actually exhausted, consumed, or entering permanently into the Work, plus a fixed markup of 15% of such direct materials costs.

(3) Equipment. All equipment used will be paid in accordance with the established rates for equipment rental in the Contract Documents, plus a fixed markup of 10% of each such equipment rates.

(4) Subcontractors. The Contractor will be paid the cost of Subcontractors plus a fixed markup of 5%. The additional 5% markup shall reimburse the Contractor for additional administrative costs, and no other additional payment will be made by reason of performance of the extra work by a Subcontractor.

9. Liability For Unapproved Change Orders. The Contractor will be solely responsible for any and all losses, costs, or liabilities of any kind incurred by the Contractor, any subcontractor engaged in the performance of the Work, any party supplying material or equipment for the Work or any third party that is/are retained pursuant to Contractor-

proposed change orders prior to issuance of an approved change order executed according to the terms of this Section IV. The Contractor shall have all of the obligations and the City will have all of the rights and remedies that are specified in these Contract Documents concerning any work or resulting losses, costs, or liabilities pursuant to an unapproved Contractor-proposed change order.

10. Change Order Disputes.

a. Disputed City-Directed Change Orders. If the Contractor disputes a City-directed change order following a reasonable effort by the City and the Contractor to resolve the dispute, including, at a minimum, a meeting between appropriate representatives of the Contractor and the City, the Contractor must commence performing the Work consistent with the disputed change order within five (5) working days of the last meeting between representatives of the Contractor and the City to resolve the dispute, or within the time specified in the disputed City-directed change order, whichever is later. In performing work consistent with a disputed City-directed change order pursuant to this provision, the Contractor will have all of the Contractor's rights concerning claims pursuant to the Contract Documents and applicable law.

b. Disputed Contractor-Proposed Change Orders. If the City disputes a Contractor-proposed change order, the City and the Contractor will use reasonable efforts to resolve the dispute including, at a minimum, holding a meeting between appropriate representatives of the Contractor and the City. Regardless of and throughout any such efforts to resolve the dispute, the Contractor must continue performing the Work irrespective of and unmodified by the disputed change order. In continuing to perform the Work, the Contractor will retain all of the Contractor's rights under contract or law pertaining to resolution of disputes and protests between contracting parties. Disputes between the City and the Contractor concerning any Contractor-proposed change order or other amendment do not excuse the Contractor's obligation to perform the Work in accordance with the Contract Documents excluding such Contractor-proposed change order or other amendment by the Time for Completion or waive any other Project milestone or other requirement of the Contract Documents.

SECTION V

CONTROL OF WORK

1. Authority of the Engineer. The Engineer shall decide any and all questions which may arise as to the quality or acceptability of materials furnished and work performed, and as to the manner of performance and rate of progress of the Work; all questions which may arise as to the interpretation of the plans and specifications; all questions as to the acceptable fulfillment of the contract on the part of the Contractor; and all questions as to compensation. The Engineer's decision shall be final and he shall have authority to enforce and make effective such decisions and orders as the Contractor fails to carry out promptly.

2. Conformity with Plans. Finished surfaces in all cases shall conform to the lines, grades, cross-sections and dimensions shown on the approved plans.

3. Coordination of Plans, Specifications, and Special Provisions. These specifications, general provisions, special provisions, standard specifications, plans and all supplementary documents are essential parts of the contract, and a requirement occurring in one is as binding as though occurring in all. They are intended to be cooperative, to describe and to provide for a complete work.

4. Conflict Between Parts of Contract Documents. If there is any conflict between the requirements of the various contract documents, the following shall be the order of precedence (in order from highest precedence to lowest):

- a. Agreement for Public Improvements
- b. Special Provisions
- c. Technical Specifications
- d. Drawings
- e. City Standard Drawings
- f. General Provisions
- g. Standard Specifications
- h. Standard Plans

5. Interpretation of Plans and Specifications. Should it appear that the work to be done or any matter relative thereto are not sufficiently detailed or explained in the these specifications, plans, and the Special Provisions, the Contractor shall apply to the Engineer well in advance of the time a clarification is needed for such further explanations as may be necessary and shall conform to those explanations as part of the contract, so far as may be consistent with the original specifications. The Engineer's decision regarding definitions or clarifications will be final.

In the event of any discrepancy between any drawing and the figures written thereon, the figures shall be taken as correct.

6. Superintendence. Contractor shall give personal superintendence to the work on said improvements or have a competent foreman or superintendent, satisfactory to the Engineer, at the work site at all times during progress with authority to act for the

Engineer. Whenever the Contractor is not present on any part of the work site where it may be desired to give direction, orders will be given by the Engineer, which shall be received and obeyed by the Superintendent or foremen in charge of the particular work in reference to which the orders are given.

7. Lines and Grades. Contractor shall be responsible to set lines and grades for construction.

8. Inspection. The Engineer shall at all times have access to the Work during construction, and shall be furnished with every reasonable facility for ascertaining full knowledge respecting the progress, workmanship, and character of materials used and employed in the Work. Whenever the Contractor varies the period during which work is carried on each day, he shall give due notice to the Engineer so that proper inspection may be provided. Any work done in the absence of the Engineer will be subject to rejection.

The inspection of the Work shall not relieve the Contractor of any of the Contractor's obligations to fulfill the contract as prescribed. Defective work shall be made good, and unsuitable materials may be rejected, notwithstanding the fact that such defective work and unsuitable materials have been previously overlooked by the Engineer and accepted or estimated for payment.

9. Removal of Defective and Unauthorized Work. All work, which has been rejected, shall be remedied, or removed and replaced by the Contractor in an acceptable manner and no compensation will be allowed for such removal or replacement. Any work done beyond the lines and grades shown on the plans or established by the Engineer, or any extra work done without written authority will be considered as unauthorized and will not be paid for. Work so done may be ordered removed at the Contractor's expense. Upon failure on the part of the Contractor to comply forthwith with any order of the Engineer made under the provisions of this article, the Engineer shall have authority to cause defective work to be removed, and to deduct the costs from any monies due or to become due the Contractor

10. Final Inspection. Whenever the Work provided and contemplated by the contract shall have been satisfactorily completed and the final cleaning up performed, the Engineer will make the final inspection.

11. Record Drawings. The Contractor shall keep and maintain, on the job site, one record set of Drawings. On these, the Contractor shall mark all project conditions, locations, configurations, and any other changes or deviations which may vary from the details represented on the original Contract Documents, including buried or concealed construction and utility features which are revealed during the course of construction. Special attention shall be given to recording the horizontal and vertical location of all buried utilities that differ from the locations indicated in the Contract Documents. Said record drawings shall be supplemented by any detailed sketches as necessary or directed to indicate, fully, the work as actually constructed. These master record drawings of the contractor's representation of as built conditions, including all revisions made necessary by addenda, change orders, and the like shall be maintained up to date during the progress of the work.

In the case of those drawings which depict the detailed requirements for equipment to be assembled and wired in the factory, such as motor control centers and the like, the record drawing shall be updated by indicating those portions which are superseded by change order drawings or final shop drawings, and by including appropriate reference information describing the change orders by number and the shop drawings by manufacturer, drawing, and revision numbers.

Record drawings shall be accessible to the Engineer at all times during the construction period and shall be delivered to the Engineer upon completion of the Work.

Final payment will not be approved until the Contractor prepared record drawings have been delivered to the Engineer. Said up to date record drawings may be in the form of a set of prints with carefully plotted information as approved by the Engineer. Upon substantial completion of the Work and prior to final acceptance, the Contractor shall complete and deliver a complete set of record drawings to the Engineer for transmittal to the City, conforming to the construction records of the Contractor. This set of drawings shall consist of corrected plans showing the reported location of the Work. The information submitted by the Contractor and incorporated by the Engineer into the Record Drawings will be assumed to be reliable, and the Engineer will not be responsible for the accuracy of such information, nor for any errors or omissions that may appear on the Record Drawings as a result.

12. Cost Reduction Incentive. The Contractor may submit to the Engineer, in writing, proposals for modifying the plans, specifications or other requirements of the contract for the sole purpose of reducing the total cost of construction. The cost reduction proposal shall not impair, in any manner, the essential functions or characteristics of the project, including but not limited to service life, economy of operation, ease of maintenance, desired appearance, or design and safety standards. Cost reduction proposals shall contain the following information:

a. A description of both the existing contract requirements for performing the Work and the proposed changes.

b. An itemization of the contract requirements that must be changed if the proposal is adopted.

c. A detailed estimate of the cost of performing the Work under the existing contract and under the proposed change. The estimates of cost shall be determined in the same manner as if the Work were to be paid for on a force account basis as provided in Section IX-14, "Force Account Work" of these General Provisions.

d. A statement of the time within which the Engineer must make a decision thereon.

e. The contract items of work affected by the proposed changes, including any quantity variation attributable thereto.

The provisions of this section shall not be construed to require the Engineer to consider any cost reduction proposal which may be submitted hereunder; proposed

changes in basic design of a bridge or of a pavement type will not be considered as an acceptable cost reduction proposal; the City will not be liable to the Contractor for failure to accept or act upon any cost reduction proposal submitted pursuant to this section nor for any delays to the Work attributable to any such proposal. If a cost reduction proposal is similar to a change in the plans or specifications, under consideration by the City for the project, at the time said proposal is submitted or if such a proposal is based upon or similar to Standard Specifications, standard special provisions or Standard Plans adopted by the City after the advertisement for the contract, the Engineer will not accept such proposal and the City reserves the right to make such changes without compensation to the Contractor under the provisions of this section.

The Contractor shall continue to perform the Work in accordance with the requirements of the contract until an executed change order, incorporating the cost reduction proposal has been issued. If an executed change order has not been issued by the date upon which the Contractor's cost reduction proposal specifies that a decision thereon should be made, or such other date as the Contractor may subsequently have specified in writing, such cost reduction proposal shall be deemed rejected.

The Engineer shall be the sole judge of the acceptability of a cost reduction proposal and of the estimated net savings in construction costs from the adoption of all or any part of such proposal. In determining the estimated net savings, the right is reserved to disregard the contract bid prices if in the judgment of the Engineer, such prices do not represent a fair measure of the value of work to be performed or to be deleted.

The City reserves the right where it deems such action appropriate, to require the Contractor to pay in part or whole the City's costs of investigating a cost reduction proposal submitted by the Contractor as a condition of considering such proposal. Where such a condition is imposed, the Contractor shall indicate acceptance thereof in writing, and such acceptance shall constitute full authority for the City to deduct amounts payable to the City from any monies due or that may become due to the Contractor under the contract.

If the Contractor's cost reduction proposal is accepted in whole or in part, such acceptance will be by a contract change order, which shall specifically state that it is executed pursuant to this section. Such change order shall incorporate the changes in the plans and specifications which are necessary to permit the cost reduction proposal or such part of it as has been accepted to be put into effect, and shall include any conditions upon which the City's approval thereof is based if the approval of the City is conditional. The change order shall also set forth the estimated net savings in construction costs attributable to the cost reduction proposal effectuated by the change order, and shall further provide that the Contractor be paid 50 percent of said estimated net savings amount. The Contractor's cost of preparing the cost reduction incentive proposal and the City's cost of investigating a cost reduction incentive proposal, including any portion thereof paid by the Contractor, shall be excluded from consideration in determining the estimated net savings in construction costs.

Acceptance of the cost reduction proposal and performance of the work thereunder shall not extend the time of completion of the contract unless specifically provided for in the contract change order authorizing the use of the cost reduction

proposal. The amount specified to be paid to the Contractor in the change order which effectuates a cost reduction proposal shall constitute full compensation to the Contractor for the cost reduction proposal and the performance of the work thereof pursuant to the said change order.

The City expressly reserves the right to adopt a cost reduction proposal for general use on contracts administered by the City when it determines that said proposal is suitable for application to other contracts. When an accepted cost reduction proposal is adopted for general use, only the Contractor who first submitted such proposal will be eligible for compensation pursuant to this section, and in that case, only as to those contracts awarded to the Contractor prior to submission of the accepted cost reduction proposal and as to which such cost reduction proposal is also submitted and accepted. Cost reduction proposals identical or similar to previously submitted proposals will be eligible for consideration and compensation under the provisions of this section if the identical or similar previously submitted proposals were not adopted for general application to other contracts administered by the City. Subject to the provisions contained herein, the City or any other public agency shall have the right to use all or any part of any submitted cost reduction proposal without obligation or compensation of any kind to the Contractor.

This Section V-12, "Cost Reduction Incentive" of these General Provisions shall apply only to contracts awarded to the lowest bidder pursuant to competitive bidding.

SECTION VI

CONTROL OF MATERIALS

1. Source of Supply and Quality of Materials. At the option of the Engineer the source of supply of each of the material shall be approved by the Engineer before the delivery is started. Only materials conforming to the requirements of these specifications and approved by the Engineer shall be used in the Work. Materials used for the Work must be new and of the quality specified. When not particularly specified, materials must be the best of their class or kind. The Contractor must, if required, submit satisfactory evidence as to the kind and quality of materials. All materials proposed for use may be inspected or tested at any time during their preparation and use. After trial, if it is found that source of supply which have been approved so not furnish a uniform product or if the product from any source proves unacceptable at any time the Contractor shall furnish approved material from other approved sources. No material, which, after approval, has in any way become unfit for use shall be used in the Work.

2. Defective Materials. All materials not conforming to the requirements of these specifications shall be considered as defective and all such materials, whether in place or not, shall be rejected. They shall be removed immediately from the site of the Work, unless otherwise permitted by the Engineer. No rejected material, the defects of which have been subsequently corrected, shall be used until approval in writing has been given by the Engineer. Upon failure on the part of the Contractor to comply forthwith with any order of the Engineer made under the provisions of this article, the Engineer shall have authority to remove and replace defective material and to deduct the cost of removal and replacement from any monies due or to become due the Contractor.

3. Samples and Tests. Representative preliminary samples of the character and quality prescribed shall be submitted by the Contractor or producer of all materials to be used in the Work, for testing or examination as desired by the Engineer. All tests of materials furnished by the Contractor shall be made in accordance with commonly recognized standards of national organizations and such special methods and tests as are prescribed in these specifications.

The Contractor shall furnish such samples of materials as are requested by the Engineer, without charge. Samples will be secured and tested whenever necessary to determine the quality of material. Contractor shall notify City a sufficient time in advance of the manufacture or production of materials to be supplied by Contractor under this contract in order that City may arrange for mill or factory inspection and testing of same.

Any materials shipped by Contractor from factory prior to having satisfactorily passed such testing and inspection by City's representatives, or prior to the receipt of notice from such representative that such testing and inspection will not be required, shall not be incorporated on the job of said improvements.

Contractor shall also furnish City, in triplicate, certified copies of all required factory and mill test reports.

4. General Materials and Substitutions Requirements.

a. If the Contractor submitted complete information to the Engineer for products proposed as equals in accordance with the bid package, and the City approved such products proposed as equals in writing, the Contractor may either furnish such products approved as equals, or furnish the products listed by manufacturer name, brand or model number in the Technical Specifications or Project Plans. The City retains the right, in its sole discretion, to accept or reject any other proposed substitution. To be considered, proposals concerning products proposed as equals must include sufficient information to permit the City to determine whether the products proposed as equals will satisfy the same performance requirements as products listed by manufacturer's name, brand or model number. Such performance requirements may include, but are not limited to, size, strength, function, appearance, ease of maintenance and repair, and useful life requirements. If the City does not accept a proposed substitution, the Contractor must furnish the product specified in the Technical Specifications or Project Plans for the Contract Price, regardless of whether the product is specified by manufacturer's name, brand or model number, or otherwise.

b. During the performance of the Work, all materials must be neatly stacked, properly protected from the weather and other adverse impacts, and placed so as to avoid interference with efficient progress of the Work, with other activities of the City, or with the use of existing City facilities by the public. Materials may not be stored in a manner that presents a safety hazard or a nuisance. All materials must be delivered so as to ensure efficient and uninterrupted progress of the Work. Materials must be stored so as to cause no obstruction and so as to prevent overloading of any portion of the Work. The Contractor will be responsible for damage or loss of materials delivered to and/or stored at the work site due to weather or other causes. The Contractor must promptly remove from the work site all materials rejected by the City or its representatives as failing to conform to the requirements of the Contract Documents, whether such non-conforming materials have been incorporated in the Work or not. If the City or its representatives so direct, the Contractor must promptly replace and re-execute work performed by the Contractor and order the replacement and re-execution of work performed by subcontractors using non-conforming materials with materials that satisfy the requirements of the Contract Documents without expense to the City. The Contractor will bear the expense of making good all work destroyed or damaged by such removal. The Contractor will have all of the obligations and the City will have all of the rights and remedies that are specified in this section concerning any failure by the Contractor to replace or re-execute work using non-conforming materials, and/or to make good all work destroyed or damaged by such removal and/or execution.

c. If any portion of the Work done or material furnished under this Contract proves defective and not in accordance with the Project Plans or Technical Specifications, and if the Engineer determines that the imperfection of the same is not of sufficient magnitude or importance to make the Work dangerous or undesirable, or if the removal of such work, is impractical or will create conditions which are dangerous or undesirable, the Engineer may retain such work, instead of requiring the imperfect work to be removed and reconstructed, and make such deductions therefore in the payments due or to become due the Contractor as are just and reasonable.

5. Storage or Disposal of Material Outside the Public Right of Way. If the Contractor stores or disposes of material outside of the public right of way, and the City has not made arrangement for storage or disposal of the material, the Contractor shall first obtain written authorization from the property owner on whose property the storage or disposal is to be made and the Contractor shall file with the Engineer the authorization or a certified copy thereof together with a written release from the property owner absolving the City from any and all responsibility in connection with the storage or disposal of material on the property. Contractor must also obtain any necessary permits, licenses and environmental clearances to store or dispose of material on private property. Before any material is stored or disposed of on private property, the Contractor shall obtain written permission from the Engineer to store or dispose of the material at the location designated in the authorization. If the Contractor elects to store or dispose of material subject to this paragraph, the Contractor shall pay those charges that are provided for in the agreement between the owner and the Contractor.

Where the City has made arrangements with owners of land in the vicinity of a project for the storage or disposal of materials on a private owner's property, the arrangements are made solely for the purpose of providing all Bidders an equal opportunity to store or dispose of the materials on the property. Bidders or Contractors may, upon written request, inspect the documents evidencing the arrangements between property owners and the City. The Contractor may, if the Contractor so elects, exercise any rights that have been obtained. If the Contractor elects to store or dispose of materials on private property subject to this paragraph, the use of the private property shall be subject to the terms, conditions, and limitations of the arrangement made between the property owner and the City and the Contractor shall pay those charges that are provided for in the arrangement made by the City with the property owner, and deductions will be made from any moneys due or that may become due the Contractor under the Contract sufficient to cover the charges for the material stored or disposed of.

When material is stored or disposed of as provided in this section, and the storage or disposal location is visible from public view, the Contractor shall store or dispose of the material in a neat and uniform manner to the satisfaction of the Engineer. Material storage as used in this section also includes vehicle parking.

6. Construction and Demolition Waste Management Plan (WMP). The City is mandated by the State of California to divert 50% of all solid waste from landfills either by reusing or recycling. To help meet this goal, a City ordinance requires completion of a solid waste management plan (WMP) for covered building and public works projects. The WMP shall identify how at least 50% on non-inert project waste materials and 100% inert materials (50/100) will be diverted from the landfill through recycling, reuse and/or salvage. The Contractor shall submit and implement an approved WMP as indicated in the Special Provisions.

SECTION VII

LEGAL RELATIONS AND RESPONSIBILITY

1. Laws to be Observed. The Contractor shall stay fully informed of all existing and future State and National Laws, including all provisions of Section 1776 of the Labor Code, and Municipal Ordinances and Regulations which in any manner affect those engaged or employed in the Work, or the materials used in the Work, or which in any way affect the conduct of the Work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. He shall at all times observe and comply with all such existing and future laws, ordinances, regulations, orders and decrees. In addition, the Contractor shall meet all standards of the State and Federal Government for air, water and noise pollution. The Contractor shall inform the City of the location of the records enumerated under Section 1776(a) of the Labor Code, including the street address, city and county, and shall within five working days, provide a notice of a change of location and address. Contractor shall comply with all of the reporting requirements regarding submittal of certified payroll to the Department of Industrial Relations.

If there is any conflict between these specification and provisions and any laws or regulations, the matter shall be brought to the attention of the Engineer immediately. All necessary permits or approvals from any involved agency shall be obtained by the Contractor before any work is started.

2. Trench Safety and Differing Subsurface Conditions.

a. Excavation More Than Four Feet Deep. In accordance with California Public Contract Code Section 7104, if work involves excavation more than four feet deep, the Contractor must promptly notify the City in writing before any of the following are disturbed: any material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; any subsurface or latent physical conditions at the work site different from those indicated; or any unknown physical conditions at the work site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents. The City will promptly investigate any such conditions for which notice is given. If the City finds that the conditions do materially differ, or do involve hazardous waste, and cause a decrease or increase in the cost or time of performance of the Work, the City will issue a change order pursuant to Section IV-4, "City Directed Change Orders" of these General Provisions. If a dispute arises between the City and the Contractor concerning whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the cost or time of performance, the Contractor shall not be excused from any completion date provided in the Contract Documents, but shall proceed with all work to be performed under the Contract Documents. The Contractor shall retain any and all rights provided either by contract or by law pertaining to the resolution of disputes and protests between the contracting parties.

b. **Excavation of Five Feet or More.** In accordance with California Labor Code Section 6705, if this contract exceeds \$25,000 in cost and involves excavation five or more feet deep must submit for the City's acceptance, prior to excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. No trench safety plan shall be less effective than that required by the Construction Safety Orders and other mandates of the Division of Occupational Safety and Health. If the plan varies from the shoring system standards established by the Construction Safety Orders and other applicable mandates, it must be prepared by a licensed civil or structural engineer. Acceptance by the City of the detailed trench safety plans submitted is only an acknowledgement of the submission and does not constitute review or approval of the designs, design assumptions, criteria, completeness, applicability to areas of intended use, or implementation of the trench safety plans, which are solely the responsibility of the Contractor and the Contractor's Licensed Engineer.

3. **Hours of Labor.** The Contractor shall forfeit, as penalty to the City of South San Francisco, twenty five dollars (\$25) for each worker employed in the execution of the contract by the Contractor or by any subcontractor under the Contractor for each calendar day during which any worker is required or permitted to labor more than eight (8) hours in violation of the provisions of the Labor Code and in particular, Section 1810 to Section 1816 thereof, inclusive.

4. **Review of Per Diem Rates.** Reference is hereby made to the prevailing rate of per diem wages adopted by the City Council of the City of South San Francisco in accordance with Labor Code Section 1770 et seq., copies of which are on file in the office of the City Clerk and the Office of the Engineer, City Hall, South San Francisco, California, and available for inspection by interested parties. If a petition is filed in accordance with Labor Code Section 1773.4 calling for a review of the rates as so established, the closing rate for the submission of bids or the start of work, whichever is applicable shall be extended as in such section provided, and the determination made by the Director of Industrial Relations shall be deemed included in the contract for this Work.

5. **Prevailing Wage.** The wages to be paid for a day's work to all classes of laborers, workmen, or mechanics on the work contemplated by this contract, shall be not less than the prevailing rate for a day's work in the same trade or occupation in the locality within the state where the work hereby contemplates to be performed as determined by the Director of Industrial Relations pursuant to the Director's authority under Labor Code Section 1770 et seq. Each laborer, worker or mechanic employed by a Contractor or by any subcontractor shall receive the wages herein provided for. The Contractor shall pay forty dollars (\$40) per day penalty for each worker paid less than prevailing rate of per diem wages unless the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor. The penalty may not be less than eighty dollars (\$80) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the contractor or subcontractor has been assessed penalties within the previous three years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned. The penalty may not be less than

one hundred twenty dollars (\$120) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1. The difference between the prevailing rate of per diem wages and the wage paid to each worker shall be paid by the Contractor to each worker.

The City will not recognize any claim for additional compensation because of the payment by the Contractor for any wage rate in excess of prevailing wage rate set forth in the contract. The possibility of wage increases is one of the elements to be considered by the Contractor in determining the Contractor's bid, and will not, under any circumstances be considered as the basis of a claim against the City on the contract.

NOTE: An error on the part of an awarding body does not relieve the Contractor from responsibility for payment of the prevailing rate of per diem wages and penalties pursuant to Labor Code Sections 1770-1775.

a. Posting of Schedule of Prevailing Wage Rates and Deductions. If the schedule of prevailing wage rates is not attached hereto pursuant to Labor Code Section 1773.2, the Contractor shall post at appropriate conspicuous points at the site of the project a schedule showing all determined prevailing wage rates for the various classes of laborers and mechanics to be engaged in work on the project under this contract and all deductions, if any, required by law to be made from unpaid wages actually earned by the laborers and mechanics so engaged.

b. Payroll Records. The Contractor and subcontractor's attention is directed to the provisions of Section 1776 of the California Labor Code and to the requirements therein pertaining to the keeping, availability, and filing of accurate payroll records of all journeymen, apprentices, and other workers performing work under this Contract. The Contractor agrees to comply with the requirements of said section and the Department of Industrial Relations

Prior to each monthly progress payment, the Contractor shall deliver to the Engineer copies of certified payrolls of its and all subcontractors' forces performing work at the job site (or sites established primarily for the work) for labor compliance purposes and extra/force account considerations. Such records shall be kept current on an effective day or period basis and in a form acceptable to the Engineer. At a minimum, the form shall include the following information:

1. Employee identification by name
2. Employee's address and social security number
3. Employee's craft and classification (in accordance with Director of Industrial Relations' wage determinations)
4. Employee's actual per diem wages (in compliance with Part I, Notice to Contractors, and this Section GC-20, Laws and Regulations)
5. Employee's subsistence and travel allowance (as applicable)

6. Employee's straight time and overtime hours worked each day and week
7. Itemized deductions made from employee's wages
8. Apprentices and ratio of apprentices to journeymen
9. Contractor's or subcontractor's firm or company name, date or period for which applicable wage rates and allowances are effective, and the employer's signature.

The certified payroll records shall be kept on forms provided by the Division of Labor Standards Enforcement, or shall contain the same information as the forms provided by the Division in addition to the above-listed information.

For all projects awarded on or after April 1, 2015, in addition to submitting the certified payrolls to the Engineer, the Contractor shall furnish the records specified in California Labor Code section 1776, including but not limited to the certified payrolls, directly to the Labor Commissioner. The Contractor shall furnish the records specified in California Labor Code section 1776 to the Labor Commissioner for all projects, whether such project is a new project awarded on or after, or an ongoing project awarded prior to, January 1, 2016.

Each payroll record shall contain or be verified by a written declaration that is made under penalty of perjury stating: (1) The information contained in the payroll is true and correct; and (2) The employer has complied with the requirements of California Labor Code Sections 1771, 1811, and 1815 for any work performed by its employees on the Project.

The Contractor shall inform the City of the location of the above payroll records, including the street address, city and county, and shall, within five (5) working days, provide a notice of change of location and address.

The contractor or subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting certified payroll records. In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the District, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. The Contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the District shall be marked or obliterated in accordance with California Labor Code section 1776.

Compliance with the above provisions of this Part II, and California Labor Code, Section 1776, shall be the responsibility of the Contractor or subcontractor. Pursuant to Labor Code Section 1771.4, Contractor is required to post all job site notices prescribed by law or regulation that include, but are not limited to, payment of prevailing wages.

6. Registration of Contractors. Before submitting bids, Contractors shall be licensed in accordance with the provisions of the State Contractors' License Law, Business and Professions Code 7000 et seq. as amended. Pursuant to California Labor Code section 1771.1, by execution below, the Bidder and its Subcontractors certify that they are registered and qualified to perform public work pursuant to section 1725.5 of the California Labor Code, subject to limited legal exceptions.

7. Permits and Licenses. The Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the Work. A City of South San Francisco Business License will be required before the contract is signed by the City.

8. Patents. The Contractor shall assume all costs arising from the use of patented materials, equipment, services, or processes used on or incorporated in the Work, and agrees to indemnify and save harmless the City of South San Francisco, the City Council, and the Engineer, and their duly authorized representatives, for all suits at law, or actions of every nature for, or on account of the use of any patented materials, equipment, services, or processes.

9. Contractor's Field Office.

a. The Contractor and the Contractor's subcontractors may maintain such office facilities within or near the project area as are necessary for the proper conduct of the Work. The locations for such office facilities shall be as approved by the Engineer. Before or during this contract, should the Contractor desire a new or different location, he shall apply to the Engineer for the change of locations and shall only make such change with the approval of the Engineer. All office facilities used by the Contractor and/or its privities must conform to all applicable codes, ordinances and regulations. The cost of such facilities will be paid from and included in the Contract Price.

b. The City and its authorized representatives will at all reasonable times while such office facilities are located at the work site (including, at a minimum, all times during which the Work is performed), have access to any such work site office facilities used by the Contractor and/or its privities. With respect to the right of access of the City and its authorized representatives, neither the Contractor nor its privities will have a reasonable expectation of privacy pursuant to the Fourth Amendment to the United States Constitution or other applicable law concerning such Work site office facilities used by the Contractor and/or its privities. Without exception, any and all Project related materials located at such work site facilities will be deemed at all times to be City property subject to inspection and copying by the City and its authorized representatives at all reasonable times while such facilities are located at the work site (including at a minimum, all times during which the Work is performed). Any interference by the Contractor or its privities with the City's rights of access and/or ownership pursuant to this section will constitute a material breach of

the Contract subject to any and all remedies available pursuant to the Contract Documents and at law and equity.

10. Utilities. The location in public streets of pipes, conduits and other underground facilities of the public utility companies and of the City may not be indicated on the plans. Bidders are instructed to apply to companies and City departments concerned for any information, which may be needed concerning utilities.

11. Contractor Cooperation & Coordination. The Contractor is advised that other construction and maintenance work may be performed by local utility companies, the City and/or their contractors in the project area concurrent with work performed under this contract. The Contractor shall be responsible for contacting the various utility companies to ascertain the times when such other work will occur and schedule the Contractor's work in coordination with others such that no delays shall occur in the Contractor's work schedule or in others who are working in the area. Failure on the Contractor's part to coordinate with others in overlapping work areas shall not be the basis for any claims against the City, additional compensation nor extension of time. In addition, the Contractor shall be solely responsible for any claims made against the City by others as a result of the Contractor's lack of coordination. This shall include businesses and homeowner's adjacent to the project area.

12. Public Convenience. The Contractor shall so conduct the Contractor's operations as to cause the least possible obstruction and inconvenience to public traffic. Where work is being done on existing public roads or streets, and no detours are available, all traffic shall be permitted to pass through the work with as little inconvenience and delay as possible.

Due to the need to accommodate and minimize inconvenience to the public, unless expressly specified or approved in writing by the Engineer, no road closures will be permitted. Public vehicular and pedestrian traffic must be allowed to travel through the work area with an absolute minimum of interruption or impedance unless otherwise provided for in writing by the Engineer. The Contractor must make provisions for the safe passage of pedestrians around the area of work at all times.

Residents affected by construction must be provided passage and access through the work area to the maximum extent possible. Where existing driveways occur on the street, the Contractor must make provisions for the trench crossings at these points, either by means of backfill or by temporary bridges acceptable to the Engineer, so that the length of shut-down of any driveway is kept to a minimum. In addition, all driveways must be accessible at the beginning and end of each work day, and no driveway or property access may be closed for more than four (4) hours during the work day. Access to driveways, houses, and buildings along the road or street must be as convenient as possible and well maintained, and all temporary crossings must be maintained in good condition. To minimize the need for and complexity of detours, not more than one crossing or street intersection or road may be closed at any one time without the written approval of the Engineer.

Except as otherwise provided by the Engineer, the stockpiling or storing of material in City streets or right of ways shall be prohibited. Where the Contractor has

received Engineer approval, all such materials must be piled or stored in a manner that will not obstruct sidewalks, driveways, or pedestrian crossings. Gutters and drainage channels must be kept clear and unobstructed at all times. All such materials shall be stored and handled in a manner that protects City streets, sidewalks, or other facilities from damage.

Throughout performance of the Work, the Contractor must construct and adequately maintain suitable and safe crossings over trenches and such detours as are necessary to care for the public and private traffic at all times including Saturdays, Sundays, and holidays.

Water shall be applied as directed the Engineer for the prevention of dust nuisance in connection with public convenience. No additional payment will be made for applying water for the prevention of dust.

The Contractor shall be responsible for keeping all emergency services, including the South San Francisco police and fire departments informed of obstructions to, or detours around any public or private roads caused by reasons of the Contractor's operations.

The Contractor must comply with the State of California, Department of Transportation Manual of warning signs, lights, and devices for use and performance of work within the job site.

No work shall begin before 7:00 a.m. nor continue after 5:00 p.m. Monday through Friday, nor shall any work be done on weekends or holidays observed by the City of South San Francisco unless approved in advance by the Engineer.

The fact that rain or other causes, either within or beyond the control of the Contractor, may force suspension or delay of the Work, shall in no way relieve the Contractor of Contractor's responsibility of maintaining traffic through the Project and providing local access as specified in this section. The Contractor must, at all times, keep on the job such materials, force, and equipment as may be necessary to keep roads, streets and driveways within the Project open to traffic and in good repair and shall expedite the passage of such traffic, using such force and equipment as may be necessary.

Full compensation for furnishing all labor, materials, tools and equipment and doing all the work involved in this item of work as above specified, shall be considered as included in the prices paid for the various contract items of work and no additional compensation will be made therefore.

13. Public Safety. The Contractor shall furnish, erect, and maintain such fences, barriers, lights, signs and watchmen as are necessary to give adequate warning to the public at all times that the Work is under construction and of any dangerous conditions to be encountered as a result thereof. At any and all points along the Work where the nature of construction operations in progress and the Contractor's equipment and machinery in use is of such character as to endanger passing traffic, the Contractor shall provide such lights and signs and station such guards as may appear necessary to prevent accidents and avoid damage or injury to passing traffic.

No material or equipment shall be stored where it will interfere with the free and safe passage of public traffic. At the end of each days work and at other times when construction operations are suspended for any reason, the Contractor shall remove all equipment and other obstructions from that portion of the roadway open for use by public traffic.

Full compensation for furnishing all labor, materials, tools and equipment and doing all the work involved in this item of work as above specified, shall be considered as included in the prices paid for the various contract items of work and no additional compensation will be made therefore. Should the Contractor fail to provide public safety as specified, or if, in the opinion of the Engineer, the warning devices furnished by the Contractor are not adequate, the City may place any warning lights or barricades or take any necessary action to protect or warn the public of any dangerous condition connected with the Contractor's operations and the Contractor will be liable to the City for, and the City may deduct from amounts due or that may become due the Contractor under the Contract, all costs incurred including, but not limited to, administrative costs.

Nothing in this section will be construed to impose tort liability on the City or Engineer.

14. Preservation of Property. Roadside trees and shrubbery that are not to be removed, and pole lines, fences, signs, survey markers and monuments, buildings and structures, conduits, pipe lines under or above ground, sewer and water lines, all street facilities, and any other improvements or facilities within or adjacent to the Work shall be protected from injury or damage. If such objects are injured or damaged by reason of the Contractor's operations, they shall be replaced or restored, at the Contractor's expense, to a condition as good as when the Contractor entered upon the Work, or as good as required by the specifications accompanying the contract, if any such objects are a part of the Work being performed under the contract.

The Contractor shall examine all bridges, culverts and other structures on or near the Work, over which he will move the Contractor's materials and equipment, and before using them, the Contractor shall properly strengthen such structures, where necessary. The Contractor will be held responsible for any and all injury or damage to such structures caused by reason of the Contractor's operations.

The fact that any such pipe or other underground facility is not shown upon the plans shall not relieve the Contractor of the Contractor's responsibility under this article. It shall be the Contractors' responsibility to ascertain the existence of any underground improvements or facilities, which may be subject to damage by reason of the Contractor's operations, and if it is necessary to lower such underground facility or encase it to protect it from damage, it shall be done at the Contractor's expense.

15. Responsibility for Damage. The City of South San Francisco, the City Council, or the Engineer shall not be answerable or accountable in any manner, for any loss or damage that may happen to the Work or any part thereof; or for any of the materials or other things used or employed in performing the Work; or for injury or damage to any person or persons, either workmen or the public; or for damage to

adjoining property from any cause whatsoever during the progress of the Work or at any time before final acceptance.

16. Contractor's Indemnities.

a. The Contractor will take all responsibility for the Work, and will bear all losses and damages directly or indirectly resulting to the Contractor, any subcontractors engaged in performance of the Work, the City, its officials, officers, employees, agents, volunteers and consultants, and to third parties on account of the performance or character of the Work, unforeseen difficulties, accidents, or occurrences of other causes predicated on active or passive negligence of the Contractor or of any subcontractor engaged in performance of the Work. To the fullest extent permitted by law the Contractor will indemnify, defend and hold harmless the City, its officials, officers, employees, agents, volunteers and consultants from and against any or all loss, liability, expense, claims, costs (including costs of defense), suits, and damages of every kind, nature and description (including, but not limited to, penalties resulting from exposure to hazards in violation of the California Labor Code) directly or indirectly arising from the performance of the Work ("Claims").

b. The Contractor will indemnify, defend and hold harmless the City, the City's officials, officers, employees, volunteers, agents and the Engineer and Architect for all liability on account of any patent rights, copyrights, trade names or other intellectual property rights that may apply to the Contractor's performance of the Work. The Contractor will pay all royalties or other charges as a result of intellectual property rights that may apply to methods, types of construction, processes, materials, or equipment used in the performance of the Work, and will furnish written assurance satisfactory to the City that any such charges have been paid.

c. The Contractor assumes all liability for any accident or accidents resulting to any person or property as a result of inadequate protective devices for the prevention of accidents in connection with the performance of the Work. The Contractor will indemnify, defend, and hold harmless the City and its officials, officers, employees, agents, volunteers and consultants from such liability.

d. Approval of the Contractor's certificates of insurance and/or endorsements does not relieve the Contractor of liability under this provision. The Contractor will defend, with legal counsel reasonably acceptable to the City, any action or actions filed in connection with any Claims and will pay all related costs and expenses, including attorney's fees incurred. The Contractor will promptly pay any judgment rendered against the City, its officials, officers, employees, agents, volunteers or consultants for any Claims. In the event the City, its officials, officers, employees, agents, volunteers or consultants is made a party to any action or proceeding filed or prosecuted against Contractor for any Claims, Contractor agrees to pay the City, its officials, officers, employees, agents, volunteers and consultants any and all costs and expenses incurred in such action or proceeding, including but not limited to, reasonable attorneys' fees.

e. The Contractor will indemnify, hold harmless and defend with legal counsel reasonably acceptable to the City the City and its officials, officers, employees, agents and volunteers from and against any and all Claims related to damage to surface or

underground facilities caused by the Contractor or any of the Contractor's privities or agents.

f. The Contractor will indemnify, hold harmless and defend with legal counsel reasonably acceptable to the City the City and its officials, officers, employees, agents and volunteers from and against any and all Claims, including any fines or other penalties, related to failure of the Contractor and/or privities or agents of the Contractor to comply with the requirements of the State of California's National Pollution Discharge Elimination System General Permit, or to implement the project specific Storm Water Pollution Protection Plan (SWPPP) in accordance with the Technical Specifications. The City may withhold from amounts due or that may become due the Contractor under this Contract amounts that equal or are estimated to equal the amount of Claims, including fines, resulting from failure of the Contractor and/or privities or agents of the Contractor to comply with the requirements of the General Permit, or to implement the SWPPP in accordance with the Technical Specifications.

g. In accordance with California Civil Code Section 2782(a), nothing in the Contract will be construed to indemnify the City for its sole negligence, willful misconduct, or for defects in design furnished by City. In accordance with California Civil Code Section 2782(b), nothing in the Contract will be construed to impose on the Contractor or to relieve the City from liability for the City's active negligence. By execution of the Contract Documents the Contractor acknowledges and agrees that the Contractor has read and understands the insurance and indemnity requirements of the Contract Documents, which are material elements of consideration.

17. Contractor's Responsibility for Work. Except as provided above, until the formal acceptance of the Work by the City, the Contractor shall have the charge and care thereof and shall bear the risk of injury or damage to any part thereof by the action of the elements or from any other cause, whether arising from the execution or from the non-execution of the Work. The Contractor shall rebuild, repair, restore, and make good all injuries or damages to any portion of the Work occasioned by any of the above caused before its completion and acceptance and shall bear the expense thereof, except for such injuries or damages as are directly and proximately caused by acts of the Federal Government or the public enemy.

In case of suspension of work from any cause whatever, the Contractor shall be responsible for the work as above specified and he shall also be responsible for all materials delivered to the Work including materials for which he has received partial payment.

18. Portion of the Work, Which May be Placed in Service. If desired by the City of South San Francisco, the Work, as completed, may be placed in service. The Contractor shall give proper access to the Work for this purpose but such use and operations shall not constitute an acceptance of the Work, and the Contractor shall remain liable for defects due to faulty construction, material and/or workmanship.

19. No Personal Liability. Neither the Engineer nor the City Council, nor any other officer or authorized assistant or agent shall be personally responsible for any liability arising under the contract.

20. No Abrogation of Codes, Standards, Laws and Ordinances. The Contractor and all subcontractors engaged in the performance of the Work must conform to the following specific rules and regulations as well as all other laws, ordinances, rules and regulations that apply to the Work. Nothing in the General Provisions or plans is to be construed to permit Work not conforming to these codes:

- National Electrical Safety Code, U. S. Department of Commerce
- National Board of Fire Underwriters' Regulations
- California Building Standards Code as adopted by the City
- Manual of Accident Prevention in Construction, latest edition, published by A.G.C. of America
- Industrial Accident Commission's Safety Orders, State of California
- Regulations of the State Fire Marshall (Title 19, California Code of Regulations) and Applicable Local Fire Safety Codes
- Labor Code of the State of California - Division 2, Part 7, Public Works and Public Agencies.

21. Guaranty. Unless specified otherwise, the Contractor guarantees all of the Work for one year from the date the City accepts the Work. Upon receiving written notice of a need for repairs which are directly attributable to defective materials or workmanship the Contractor must make good any defects arising or discovered in any part of the Work by diligently commencing the necessary repairs within seven (7) days from the date of notice from the City. If the Contractor fails to make good any defects in the Work in accordance with this provision, in addition to any other available remedy under the Contract or at law or equity, the City may make good or have made good such defects in the Work and deduct the cost from amounts that may be due or become due the Contractor, and/or call on the Contractor's maintenance bond for the cost of making good such defects and for the City's reasonable legal costs, if any, of recovering against the bond. The Contractor will remain responsible for repairing any Work found to be defective regardless of when such defect is discovered by the City.

Contractor shall file with City a corporate surety bond in the sum of ten percent (10%) of the final contract price (including all change orders for extra work securing this guaranty to City, and said bond shall be filed at the time final acceptance of this Work is requested. Should Contractor not file said bond as required herein, City may retain the remaining ten percent (10%) of the contract price as a cash bond for said one (1) year period. Should Contractor within a reasonable time after demand made fail to make any and all such repairs or replacements, City may undertake said repairs and replacements with its own forces or through contract, and Contractor shall reimburse City for any and all costs of said repairs or replacements, even if said cost exceed the principal sum of the corporate surety bond which is security for the performance of this guaranty. Contractor and the Contractor's surety may provide the foregoing guaranty in the original performance bond.

22. General Safety Requirements.

a. In accordance with generally accepted construction practices and applicable law, the Contractor will be solely and completely responsible for conditions of the work site, including safety of all persons and property during performance of the Work. This requirement will apply continuously and not be limited to normal working hours. For purposes of California Labor Code Section 6400 and related provisions of law, the Contractor and the Contractor's privities and any other entities engaged in the performance of the Work will be "employers" responsible for furnishing employment and a place of employment that is safe and healthful for the employees, if any, of such entities engaged in the performance of the Work. Neither the City nor its officials, officers, employees, agents, volunteers or consultants will be "employers" pursuant to California Labor Code Section 6400 and related provisions of law with respect to the Contractor, the Contractor's privities or other entities engaged in the performance of the Work. The Contractor agrees that neither the City, the Architect, nor the Engineer will be responsible for having hazards corrected and/or removed at the work site. The Contractor agrees that the City will not be responsible for taking steps to protect the Contractor's employees from such hazards, or for instructing the Contractor's employees to recognize such hazards or to avoid the associated dangers. The Contractor agrees with respect to the Work and the Work site, the Contractor will be responsible for not creating hazards and for having hazards corrected and/or removed, for taking appropriate, feasible steps to protect the Contractor's employees from such hazards and that the Contractor has instructed and/or will instruct its employees to recognize such hazards and how to avoid the associated dangers.

b. Review and inspection by the City, the Engineer, the Architect or Engineer, and/or other representatives of the City of the Contractor's performance of the Work will not constitute review of the adequacy of the Contractor's safety measures in, on, or near the Work site. Such reviews and inspections do not relieve the Contractor of any of the Contractor's obligations under the Contract Documents and applicable law to ensure that the work site is maintained and the Work is performed in a safe manner.

c. The Contractor will be solely responsible for the implementation and maintenance of safety programs to ensure that the work site is maintained and the Work is performed in a safe manner in accordance with the Contract Documents and applicable law.

d. The Contractor must furnish and place proper guards and systems for the prevention of accidents, including, but not limited to, those systems required pursuant to Title 8, Section 1670 and following of the California Code of Regulations concerning safety belts and nets. The Contractor must provide and maintain any other necessary systems or devices required to secure safety of life or property at the work site in accordance with accepted standards of the industry and applicable law. The Contractor must maintain during all night hours sufficient lights to prevent accident or damage to life or property.

23. Fair Employment Provision. The Contractor will not willfully discriminate against any employee or applicant for employment because of race, color, religion, ancestry or national origin. The Contractor will take affirmative action to insure that applicants are

employed, and that employees are treated during employment, without regard to their race, color, religion, ancestry or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the awarding authority setting forth the provisions of this fair employment practices section.

24. Employment of Apprentices. Attention is directed to the provisions in Sections 1777.5 (Chapter 1411, Statutes of 1968) and 1777.8 of the Labor Code concerning the employment of apprentices by the Contractor or any subcontractor under the Contractor.

Section 1777.5, as amended, required the Contractor or subcontractor employing tradesmen in any apprenticeable occupation to apply to the joint apprenticeship committee nearest the site of the public works project and which administers the apprenticeship program in that trade for a certificate of approval. The certificate will also fix the ratio of apprentices to journeymen that will be used in the performance of the contract. The ratio of apprentices to journeymen in such cases shall not be less than one to five (1:5) except:

a. When unemployment in the area of coverage by the joint apprenticeship committee has exceeded an average of fifteen percent (15%) in the ninety (90) days prior to the request for certificate, or

b. When the number of apprentices in training in the area exceeds a ratio of one to five (1:5), or

c. When the trade can show that it is replacing at least 1/30 of its membership through apprenticeship training on an annual basis statewide or locally, or

d. When the Contractor provided evidence that he employs registered apprentices on all of the Contractor's contracts on an annual average of not less than one apprentice to eight journeymen.

The Contractor is required to make contributions to funds established for the administration of apprenticeship programs if he employs registered apprentices or journeymen in any apprenticeable trade on such contracts and if other Contractors on the public works site are making such contributions.

The Contractor and any subcontractor under the Contractor shall comply with the requirements of Sections 1777.5 and 1777.6 in the employment of apprentices.

Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex-officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

SECTION VIII

PROSECUTION AND PROGRESS

1. Subcontracting. No subcontractor will be recognized as such, and all persons engaged in the Work or construction will be considered as employees of the Contractor and he will be held responsible for their work, which shall be subject to the provisions of the contract and specifications. The Contractor shall give the Contractor's personal attention to the fulfillment of the contract and shall keep the Work under the Contractor's control.

The Contractor shall be responsible for the Contractor's own and subcontractors' compliance with Section 1777.5 of the Labor Code regarding apprenticeable occupations as in said section provided. Any Contractor willfully failing to comply with this section shall be denied the right to bid on a public works contract for a period of six (6) months from the date the determination is made.

Where a portion of the Work, which has been subcontracted by the Contractor, has not been prosecuted in a manner satisfactory to the Engineer, the subcontractor shall be removed immediately on the requisition of the Engineer and shall not again be employed on the Work.

2. Assignment. The performance of the contract may not be assigned except upon the written consent of the City. Consent will not be given to any proposed assignment, which would relieve the original, Contractor or the Contractor's surety of their responsibilities under the contract nor will the City consent to any assignment of a part of the Work under the contract.

3. Time of Completion and Statement of Working Days. The Contractor shall complete all or any designated portion of the work called for under the contract in all parts and requirements within the time set forth in the Special Provisions.

Determination that a day is a non-working day by reason of inclement weather or conditions resulting immediately therefrom, shall be made by the Engineer.

The Engineer will furnish the Contractor a monthly statement showing the number of working days charged to the contract for the preceding month, the number of working days of time extensions being considered or approved, the number of working days originally specified for the completion of the contract and the number of working days remaining to complete the contract and the extended date for completion thereof, except when working days are not being charged in conformance with the provisions in Section VIII-6, "Temporary Suspension of Work" of these General Provisions.

The Contractor will be allowed 15 days from the issuance of the monthly statement of working days in which to file a written protest setting forth in what respects the Contractor differs from the Engineer; otherwise, the decision of the Engineer shall be deemed to have been accepted by the Contractor as correct.

4. Progress of the Work and Time of Completion. The Contractor shall begin work upon receipt of the Notice to Proceed. However, the Contractor shall begin work no earlier than the twenty-first (21st) day after the commencement of the advertisement of the call for bids.

5. Character of Workers. If any subcontractor or person employed by the Contractor shall fail or refuse to carry out the direction of the Engineer or shall appear to the Engineer to be incompetent or to act in a disorderly or improper manner, he shall be discharged immediately on the requisition of the Engineer, and such person shall not again be employed on the Work.

6. Temporary Suspension of Work. The Engineer shall have the authority to suspend the Work wholly or in part, for such period as he may seem necessary, due to unsuitable weather, or to such other conditions as are considered unfavorable prosecution of the Work, or for such time as he may seem necessary due to the failure on the part of the Contractor to carry out orders given, or to perform any provision of the contract. The Contractor shall immediately comply with the written order of the Engineer to suspend work wholly or in part. The Work shall be resumed when conditions are favorable and methods are corrected, as ordered or approved in writing by the Engineer.

7. No Contractor Damages for Avoidable Delays. All delays in the Work that might have been avoided by the exercise of care, prudence, foresight and diligence of the Contractor or any privities of the Contractor will be deemed avoidable delays. Delays in the Work that may be unavoidable but that do not necessarily affect other portions of the Work or prevent completion of all work within the Time for Completion, including, but not limited to, reasonable delays in Engineer approval of shop drawings, placement of construction survey stakes, measurements and inspection, and such interruption as may occur in prosecution of the Work due to reasonable interference of other contractors of the City, will be deemed avoidable delays. The Contractor will not be awarded a change in the Project schedule, the Time for Completion, and/or additional compensation in excess of the contract price for avoidable delays.

8. Impact of Unavoidable Delays. All delays in the Work that result from causes beyond the control of the Contractor and that the Contractor could not have avoided through exercise of care, prudence, foresight, and diligence will be deemed unavoidable delays. Orders issued by the City changing the amount of Work to be done, the quantity of materials to be furnished, or the manner in which the Work is to be prosecuted, and unforeseen delays in the prosecution of the Work due to causes beyond the Contractor's control, such as strikes, lockouts, labor disturbances, fires, epidemics, earthquakes, acts of God, neglect by utility owners or other contractors that are not privities of the Contractor will be deemed unavoidable delays to the extent they actually delay the Contractor's completion of the Work. The Contractor will be awarded a change in the Project schedule, the Time for Completion, and/or additional compensation in excess of the contract price for unavoidable delays to the extent such delays actually delay the Contractor's completion of the Work and/or result in the Contractor incurring additional costs in excess of the Contract Price.

Delay due to normal, adverse weather conditions will not be deemed unavoidable. The Contractor should understand that normal adverse weather conditions are to be

expected and plan the Work accordingly, such as by incorporating into the Project Schedule normal, adverse weather delays as reflected in historical data of the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce for the weather station most applicable to the Work site.

9. No Contractor Damages for Contractor Caused Delay. Contractor will not be entitled to additional compensation for extended field or home office overhead, field supervision, costs of capital, interest, escalation charges, acceleration costs or other impacts for any delays to the extent such delays are caused by the failure of the Contractor or any subcontractor or other entity engaged in performance of the Work to perform the Work in accordance with the Contract Documents.

10. No Contractor Damages for Delay Not Caused By the City, Delay Contemplated by the Parties, or other Reasonable Delay. Contractor will not be entitled to damages for delay to the Work caused by the following, which the City and Contractor agree will be deemed for purposes of California Public Contract Code Section 7102 either not caused by the City, and/or within the contemplation of the City and the Contractor, and/or reasonable under the circumstances:

Exercise of the City's right to sequence the Work in a manner that would avoid disruption to the City and other contractors based on: the failure of the Contractor or any subcontractor or other entity engaged in the performance of the Work to perform the Work in accordance with the Contract Documents, enforcement by the City or any other governmental agency of competent jurisdiction of any government act or regulation, or enforcement by the City of any provisions of the Contract.

Requests for clarification or information concerning the Contract Documents or proposed change orders or modifications to the Contract Documents, including extensive and/or numerous such requests for clarification or information or proposed change orders or modifications, provided such clarifications or information or proposed change orders or modifications are processed by the City or its representatives in a reasonable time in accordance with the Contract Documents.

11. Delays Caused by the City and/or Its Privities. Delay caused by the City and/or other contractors of the City will be deemed unavoidable delays. Either the City or the Contractor may propose a change in the Time for Completion and/or the Project Schedule for delays that are purported to be caused by the City and/or its privities and that are not reasonable under the circumstances involved and/or that are not within the contemplation of the City and the Contractor. Such proposed changes in the Time for Completion will constitute a change order proposal. The City and the Contractor may agree upon pricing for the cost impacts, if any, resulting from such delays. If such pricing and/or changes in the Time for Completion and/or the Project Schedule are in anticipation of impacts that may, but have not yet occurred, the City will be obligated to pay the Contractor for such anticipated impacts or to award a change in the Time for Completion and/or the Project Schedule in accordance with the Contract and any applicable, approved change orders only to the extent the Contractor actually incurs the anticipated impacts. Notwithstanding anything to the contrary, the City and the Contractor may agree to a daily rate or cap or lump sum that will apply to the cost impacts, if any, resulting from delay purportedly caused by the City and/or its privities

subject to this provision. However, if such daily rate or cap or lump sum is in anticipation of cost impacts that have not yet occurred, the City will be obligated to pay such daily rate or cap or lump sum only to the extent the Contractor actually incurs such cost impacts.

12. Delay Claims. Whenever the Contractor claims a delay for which the Time for Completion may be extended, the Contractor must request an extension of time within five (5) days of the start of the delay. The request must be in writing and describe in detail the cause for the delay, and, if possible, the foreseeable extent of the delay.

13. Contractor Coordination of the Work. The City reserves the right to do other work in connection with or in the vicinity of the Project by contract or otherwise, and Contractor must at all times conduct the Work so as to impose no hardship on the City, others engaged in the Work or other contractors working at the work site. The Contractor will adjust, correct and coordinate the Work with the work of others so that no delays result in the Work or other work at or near the work site.

If any part of the Work depends on proper execution or results upon the Work of the City or any other contractor, the Contractor will, before proceeding with such Work, promptly report to the City any apparent discrepancies or defects in such other work. Failure of the Contractor to promptly report any apparent discrepancy or defect will be deemed an acceptance of the City's or other contractor's work as fit and proper.

The Contractor will anticipate the relations of the various trades to the progress of the Work and will ensure that required anchorage or blocking is furnished and set at proper times. Anchorage and blocking necessary for each trade will be part of the Work except where stated otherwise.

The Contractor will provide proper facilities at all times for access of the City, the Engineer, Architect, and other authorized City representatives to conveniently examine and inspect the Work.

14. Liquidated Damages. The Contractor shall complete the work called for under the contract in all parts and requirements within the number of working days specified.

It is agreed by the parties of the contract that in case all the work called for under the contract is not completed before or upon the expiration of the time limit as set forth in the Agreement for Public Improvements, damage will be sustained by the City, and that it is and will be impracticable to determine the actual damage which the City will sustain in the event of and by reason of such delay; and it is therefore agreed that the Contractor will pay to the City the sum prescribed in the Special Provisions per working day for each and every working day's delay beyond the time prescribed to complete the Work; and the Contractor agrees to pay such liquidated damages as herein provided, and in case the same are not paid, agrees that the City may deduct the amount thereof from any money due or that may become due the Contractor under the contract.

It is further agreed that in case the work called for under the contract is not finished and completed in all parts and requirements within the time specified, the City

shall have the right to extend the time for completion or not, as may seem best to serve the interest of the City; and if the City decided to extend the time for completion of the contract, it shall further have the right to charge to the Contractor, the Contractor's heirs, assigns, or sureties, and to deduct from the final payment for the Work, all or any part as it may seem proper, of the actual cost of engineering, inspection, superintendence and other overhead expenses which are directly chargeable to the contract and which accrue during the period of such extension, except that the cost of final surveys and preparation of final estimate shall not be included in such charges.

The Contractor shall not be assessed with liquidated damages nor the cost of Engineering and inspection during any delay in the completion of the Work caused by acts of God or of the public enemy, acts of the City, fire, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays of subcontractors due to such causes; provided, that the Contractor shall within ten (10) days from the beginning of any such delay notify the Engineer in writing of the causes of delay, who shall ascertain the facts and the extent of delay, and the Engineer's finding of facts thereon shall be final and conclusive.

If the Contractor is delayed by any act of the Engineer or of the City, not contemplated by the contract, the time of completion shall be extended proportionately and the Contractor shall be relieved during the period of such extension of any claim for liquidated damages, engineering or inspection charges or other penalties. The Contractor shall have no claim for any other compensation for any such delay.

15. Suspension of Contract. If at any time in the opinion of the Engineer, the Contractor has failed to supply an adequate working force, or material of proper quality, or has failed in any other respect to prosecute the Work with the diligence and force specified and intended in and by the terms of the contract, notice thereof in writing will be served upon the Contractor, and should he neglect or refuse to provide means for a satisfactory compliance with the contract, as directed by the Engineer, within the time specified in such notice, the City in any such case shall have the power to suspend the operation of the contract. Upon receiving notice of such suspension, the Contractor shall discontinue said work, or such parts of it as the Engineer may designate. Upon such suspension, the Contractor's control shall terminate and thereupon the City or its duly authorized representative may take possession of all or any part of the Contractor's materials, tools, equipment, and appliances upon the premises, and use the same for the purpose of completing said contract, and hire such force and buy or rent such additional machinery, tools, appliances, and equipment, and buy such additional materials and supplies at the Contractor's expense as may be necessary for the proper conduct of the Work and for the completion thereof, or may employ other parties to carry the contract to completion, employ the necessary workmen, substitute other machinery or materials, and purchase the materials contracted for, in such manner as the Engineer may seem proper; or the City may annul and cancel the contract and re-let the Work or any part thereof.

Any excess of cost arising therefrom over and above the contract price will be charged against the Contractor and the Contractor's sureties who will be liable therefore. In the event of such suspension, all money due the Contractor or retained under the terms of this contract shall be forfeited to the City; but such forfeiture will not release the Contractor or the Contractor's sureties from liability or failure to fulfill the contract. The

Contractor and the Contractor's sureties will be credited with the amount of money so forfeited toward any excess of cost over and above the contract price, arising from the suspension of the operations of the contract and the completion of the Work by the City as above provided, and the Contractor will be so credited with any surplus remaining after all just claims for such completion have been paid.

In the determination of the question whether there has been any such noncompliance with the contract as to warrant the suspension or annulment thereof, the decision of the Engineer shall be binding on all parties to the contract.

16. Communications.

a. All notices, demands, requests, instructions, approvals, proposals, and claims must be in writing.

b. Any notice to or demand upon the Contractor shall be sufficiently given if delivered at the office of the Contractor stated on the signature page of the Proposal (or at such other office as the Contractor may from time to time designate in writing to the City), or if deposited in the United States mail in a sealed envelope, or delivered with charges prepaid to any telegraph company for transmission, in each case addressed to such office.

c. All correspondence to the City, related to this contract, including request for payment, shall be addressed to the Engineer, City of South San Francisco, P.O. Box 711, South San Francisco, California 94083, and any notice to or demand upon the City shall be sufficiently given if so delivered or if deposited in the United States mail in a sealed envelope, or to other such representatives of the City to such other address as the Agency may subsequently specify in writing to the Contractor for such purpose.

Any such notice shall be deemed to have been given as of the time of actual delivery of (in the case of mailing) when the same should have been received per receipt, or in the case of telegrams, at the time of actual receipt, as the case may be.

17. Audit and Examination of Records. The City may examine and audit at no additional cost to the City all books, estimates, records, contracts, documents, bid documents, bid cost data, subcontract job cost reports and other Project related data of the Contractor, subcontractors engaged in performance of the Work, and suppliers providing supplies, equipment and other materials required for the Work, including computations and projections related to bidding, negotiating, pricing or performing the Work or Contract modifications and other materials concerning the Work, including, but not limited to, Contractor daily logs, in order to evaluate the accuracy, completeness, and currency of cost, pricing, scheduling and any other project related data. The Contractor will make available all such Project related data at all reasonable times for examination, audit, or reproduction at the Contractor's business office at or near the work site, and at any other location where such Project related data may be kept until three years after final payment under the Contract. Pursuant to California Government Code Section 8546.7, if the amount of public funds to be expended is in excess of \$10,000, this Contract will be subject to the examination and audit of the State Auditor, at the request of the City, or as

part of any audit of the City, for a period of three (3) years after final payment under the Contract.

18. Project Schedule. Within ten (10) working days after the Notice of Award, the Contractor must deliver to the Engineer a bar chart and critical path method (CPM) schedule detailing the Contractor's intended schedule of work for the entire Project. The schedules must be detailed to clearly show the relative sequence of the items of work, their inter-relationships, start and completion dates, float, the critical path, and any other item deemed necessary by the Engineer. The schedule must allow for the completion of the entire Work within the time for completion and also conform to the City's milestone deadlines.

a. City Review of Schedule. The City may review the Contractor's submitted schedule and may note any exceptions. The Contractor must correct any exceptions noted by the City within five (5) working days of being notified of the exceptions.

b. Update of Schedule. After submission of a schedule to which the City has taken no exceptions, the Contractor must submit an updated schedule on a monthly basis or as otherwise specified by the City until completion of the Work. The updated schedule must show the progress of work as of the date specified in the updated schedule and its relation to milestone dates.

c. Float. The schedule must show early and late completion dates for each task. The number of days between these dates will be designated as "Float". The Float will be designated to the Project and will be available to both the City and the Contractor as needed to complete the Work in accordance with the Contract.

d. Failure to Submit Schedule. If the Contractor fails to submit schedules within the time periods specified in this section, or submits a schedule to which the City has taken uncorrected exceptions, the City may withhold payments to the Contractor until such schedules are submitted and/or corrected in accordance with the Contract Documents.

e. Responsibility for Schedule. The Contractor will be solely and exclusively responsible for creating the schedule and properly updating it. The City may note exceptions to any schedule submitted by the Contractor. However, the Contractor will be solely responsible for determining the proper method for addressing such exceptions and the City's review of the schedule will not create scheduling obligations of the City.

SECTION IX

MEASUREMENT AND PAYMENT

1. Measurement of Quantities. All work to be paid for at a contract price per unit of measurement will be measured by the Engineer in accordance with Section 9-1.01, "Measurement of Quantities" of the Standard Specifications. When required by the Engineer, the operator of each vehicle weighed shall obtain a weight or load slip from the weigher and deliver said slip to the Engineer at the point of delivery of the material. All loads in vehicles hauled over streets and highways shall be legal loads and no payment will be made for the loads in excess of the legal load limits.

Quantities of material wasted or disposed of in a manner not called for under the contract, or rejected loads of material, including material rejected after it has been placed by reason of the failure of the Contractor to conform to the provisions of the contract, or material not unloaded from the transporting vehicle, or material placed outside of the lines indicated on the plans or established by the Engineer, or material remaining on hand after completion of the work; will not be paid for and such quantities will be deducted from the final total quantities. No compensation will be allowed for hauling and disposing of rejected material.

2. Progress Payments. The City once in each month shall cause an estimate in writing to be made by the Engineer of the total amount of work done and the acceptable materials furnished and delivered by the Contractor on the ground and not used, to the time of such estimate, and the value thereof. The City shall retain five percent (5%) of such estimated value of the work done and fifty percent (50%) of the value of the materials so estimated to have been furnished and delivered and unused as aforesaid as part security for the fulfillment of the contract by the Contractor and shall pay monthly to the Contractor, while carrying on the Work, the balance not retained, as aforesaid, after deducting therefrom all previous payments and all sums to be kept or retained under the provisions of the contract. No such estimate or payment shall be required to be made when, in the judgment of the Engineer, the work is not processing in accordance with the provisions of the contract, or when in the Engineer's judgment the total value of the work done since the last estimate amounts to less than three hundred dollars (\$300). No such estimate or payment shall be construed to be an acceptance of any defective work or improper materials.

For any monies earned by the Contractor and withheld by the City to ensure the performance of the contract, the Contractor may, at Contractor's request and expense, substitute securities equivalent to the amount withheld in the form and manner and subject to the conditions provided in Chapter 13 (commencing with Section 4590), Division 5, Title 1 of the Government Code of the State of California.

3. Scope of Payment. The Contractor shall accept the compensation, as herein provided, in full payment for furnishing all materials, labor, tools, and equipment necessary for the completion of the contract; also for loss or damage arising from the nature of the Work, or from the action of the elements, except as hereinbefore provided, or from any unforeseen difficulties which may be encountered during the prosecution of

the Work until the final acceptance by the City and for all risks of every description connected with the prosecution of the Work, also for all expenses incurred in the consequence of the suspension or discontinuance of the Work as herein specified; and for completing the work according to the plans and specifications. Neither the payment of any estimate nor of any retained percentage shall relieve the Contractor of any obligation to make good any defective work or material.

4. Stop Notice Retention. The City may at its option and at any time retain out of any amounts due the Contractor, sums sufficient to cover claims filed pursuant to Section 3179 et seq. of the Civil Code.

5. Progress Payment Deductions. The Contractor hereby agrees and acknowledges that progress payments are subject to deduction for failure to comply with certain Contract requirements which include but are not limited to traffic control, cleanliness/daily clean-up, "buttoning-up," open trenches, environmental compliance, maintaining services, etc. In the event such non-compliance occurs, the City may cure these deficiencies with its own crews or with other contractors/vendors. The full cost the City incurs to cure these deficiencies will be deducted from the next progress payment. "Full costs" include all labor, materials, and equipment plus applicable "mark-ups," including overhead, should the City perform the work with its own forces. Should the City elect to have the work performed by a contractor/vendor, the "full cost" will include the invoiced amount plus a 20 % mark-up to cover handling expenses for the City.

6. Acceptance of the Work. When the final inspection is completed and it has been determined that the Work is done in accordance with the plans and specifications, the Engineer will accept the Work and 95% of the payment based on the final quantities will be paid to the contractor, the balance will be paid 30 days after the Notice of Completion has been filed with the County and upon furnishing of the specified guaranty bond to the City.

7. Final Payment. Within thirty (30) days after the completion of the Work and its acceptance by the City, the Engineer will make a proposed final estimate in writing of the quantities of work done under the contract and the value of such work and will submit such estimate to the Contractor. Within thirty (30) days thereafter the Contractor shall submit to the Engineer the Contractor's written approval of said proposed final quantities or a written statement of all claims, which he has for additional compensation claimed to be due under the contract.

On the Contractor's approval or if he files no claims within said period of thirty (30) days, the Engineer will issue a final written estimate as submitted to the Contractor and the City shall pay the entire sum so found to be due after deducting therefrom all previous payments and all amounts to be kept and all amounts to be due after deducting therefrom all previous payments and all amounts to be kept and all amounts to be retained under the provisions of the contract.

If the Contractor within said period of thirty (30) days files claims, the Engineer will issue as a semi-final estimate the proposed estimate submitted to the Contractor and the City will within thirty (30) days pay the sum found due thereon after deducting all prior payments and all amounts to be kept and retained under the provisions of the contract.

The Engineer shall then consider and investigate the Contractor's claims and shall make such revision in the said estimate as he may find to be due, and shall then make and issue the Engineer's final written estimate. The City will pay the amount so found due, after deducting all previous payments and amounts to be retained under the contract.

All prior partial estimate and payments shall be subject to correction in the final estimate and payment. The final estimate shall be conclusive and binding against both parties to the contract on all questions relating to the performance of the contract and the amount of work done thereunder and compensation therefore, except in the case of gross error.

Payment on the semi-final estimate will be due within thirty (30) days from the date the same is issued by the Engineer. Payment on the final estimate is due within thirty (30) days from the date the same is issued.

8. Travel and Subsistence Payment. Travel and subsistence payments shall be made to each worker needed to execute the Work, as such travel and subsistence payments are defined in the applicable collective bargaining agreement filed in accordance with Section 1773.8.

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

The written notice of potential claim shall set forth the reasons for which the Contractor believes additional compensation will or may be due, the nature of the costs involved, and, insofar as possible, the amount of the potential claim. The notice as above required must have been given to the Engineer prior to the time that the Contractor shall have performed the Work giving rise to the potential claim for additional compensation, if based on an act or failure to act by the Engineer, or in all other cases within 15 days after the happening of the event, thing, occurrence, or other cause, giving rise to the potential claim. City may request additional information from Contractor regarding the Contractor's claim, which shall be provided, to City within 10 days of the request.

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

10. Claims.

a. General. A "Claim" means a written demand or written assertion by Contractor to adjust, alter, modify, or otherwise change the Contract price or the Contract time, or both.

All claims filed hereunder shall strictly comply with all requirements of the Contract Documents.

In order to qualify as a Claim, the written demand must state that it is a claim submitted according to the terms of the Contract Documents. A letter, voucher, invoice, payment application, or other routine or authorized form of request for payment is not a Claim under the Contract Documents. If such a request is disputed as to liability or amount, then the disputed portion of the submission may be converted to a Claim under the Contract Documents by submitting a separate claim in compliance with claim submission requirements.

A Claim must be stated with specificity, including identification of the event or occurrence giving rise to the Claim, the date of the event, and the asserted affect on the Contract price and the Contract time, if any. The Claim shall include adequate supporting data. Adequate supporting data for a Claim for an adjustment of the Contract time shall include scheduling data demonstrating the impact of the event on the controlling operation and completion of the Project. Adequate supporting data for a Claim for an adjustment in the Contract price shall include a detailed cost breakdown of items included within the Claim and documentation supporting each item of cost.

Notwithstanding and pending the resolution of any Claim, the Contractor shall diligently prosecute the disputed work to final completion of the Work. Contractor shall impose the Claim notice and documentation requirements in this Contract on Contractor's subcontractors of all tiers, and require them to submit to the Contractor all Claims against Contractor and/or the City within the times and containing the documentation required by these provisions. The Claim notice and documentation procedures described in these provisions applies to all claims and disputes arising under the Contract Documents, whether or not specifically referred to in any specific portion of the Contract.

If additional information or details are required by the Engineer to determine the basis and amount of any Claims, the Contractor shall furnish additional information or details so that the additional information or details are received by the Engineer no later than the fifteenth calendar day after receipt of the written request form the Engineer. If the fifteenth day falls on a Saturday, Sunday, or legal holiday, then receipt of the information or details by the Engineer shall not be later than close of business of the next business day. Contractor understands and agrees that failure to submit the information and details to the Engineer within the time specified shall result in Contractor waiving that Claim.

The Contractor and all subcontractors shall keep full and complete records of the costs and additional time incurred for any work for which a Claim for additional compensation is made. The Engineer or any designated claim investigator or auditor shall have access to those records and any other records as may be required b the Engineer or designated claim investigator to determine the facts or contentions involved in the claim(s). Contractor agrees that failure to permit access to those records waives Contractor's Claims.

The City of South San Francisco, or its authorized representatives, shall have access, upon reasonable notice, during normal business hours, to Contractor's and subcontractors' books, documents and accounting records, including, but not limited to, bid worksheets, bids, subcontractor bids and proposals, estimates, cost accounting data, accounting records, payroll records, time sheets, canceled checks, profit and loss statements, balance sheets, project correspondence including but not limited to all correspondence between Contractor and its sureties and subcontractors/vendors, project files, scheduling information, and other records of the Contractor and all subcontractors directly or indirectly pertinent to the work, original as well as change and claimed extra work, to verify and evaluate the accuracy of cost and pricing data submitted with any change order, prospective or completed, or any claim for which additional compensation has been requested or claim has been tendered. Such access shall include the right to examine and audit such records, and make excerpts, transcriptions and photocopies of the City's cost.

The parties agree that in the event Contractor or any subcontractor fails to comply with this section, it would be difficult for the City to determine its actual damages; therefore, Contractor agrees to pay the City, as liquidated damages, the sum of One Thousand Dollars (\$1000.00), which Contractor agrees is reasonable under the circumstances, for each and every working day which Contractor or subcontractor fails or refuses to provide the City access to the materials specified in this section.

b. Disputes.

(1) Contract Interpretation Disputes. Should it appear to the Contractor that the work to be performed or any of the matters relative to the Contract Documents are not satisfactorily detailed or explained therein, or should any questions arise as to the meaning or intent of the Contract Documents, the Contractor shall give written notice to the City. The Contractor shall bear all costs incurred in giving such notice.

All issues regarding the interpretation of the plans or specifications shall be referred to the City for interpretation. The City shall have the right but not the obligation to affirm or disaffirm any interpretation of the plans or specifications, which affirmation or disaffirmance shall be final. If the Contractor should disagree with the City's decision, the Contractor's sole and exclusive remedy is to file a Claim in accordance with these provisions.

(2) Work Disputes. Should any disputes arise under the Contract Documents respecting the true value of any work performed, the implementation of the Work required by the Contract Documents, any Work omitted, any extra work which the Contractor may be required to perform or time extensions, respecting the size of any payment to the Contractor during the performance of the Contract Documents, or of compliance with Contract Document procedures, the dispute shall be decided by the City and its decisions shall be final and conclusive. If the Contractor disagrees with the City's decision, the Contractor's sole and exclusive remedy is to file a claim in accordance with these provisions.

(3) Delays. As used herein, the following terms shall have the following meanings:

“Excusable Delay” means any delay of the completion of the Project beyond the expiration of the Contract time caused by conditions beyond the control and without the fault or negligence of the Contractor such as strikes, embargoes, fire, unavoidable casualties, unusual delays in transportation, national emergency, and stormy and inclement weather conditions in which the Work cannot continue. The financial inability of the Contractor or any subcontractor and default of any subcontractor, without limitation, shall not be deemed conditions beyond the Contractor’s control. An Excusable Delay may entitle the Contractor to an adjustment in the Contract time.

“Compensable Delay” means any delay of the completion of the Work beyond the expiration date of the Contract time caused by the gross negligence or willful acts of the City, and which delay is unreasonable under the circumstances involved, and not within the contemplation of the parties. A Compensable Delay may entitle the Contractor to an extension of the Contract time and/or Contract price. Except as provided herein, the Contractor shall have no claim for damage or compensation for any delay, interruption, hindrance, or disruption.

“Unexcusable Delay” means any delay of the completion of the Project beyond the expiration of the Contract time resulting from causes other than those listed above. An Unexcusable Delay shall not entitle the Contractor to an extension of the Contract time or an adjustment of the Contract price.

The Contractor may make a claim for an extension of the Contract time, for an Excusable Delay or a Compensable Delay, subject to the following:

(i) If an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the Contract time shall be the number of days from the commencement of the first delay to the cessation of the delay which ends last.

(ii) If an Unexcusable Delay occurs concurrently with either an Excusable Delay or a Compensable Delay, the maximum extension of the Contract time shall be the number of days, if any, by which the Excusable Delay or the Compensable Delay exceeds the Unexcusable Delay.

(iii) If an Unexcusable Delay occurs concurrently with both an Excusable Delay and a Compensable Delay, the maximum extension in the Contract time shall be the number of days, if any, by which the number of days determined pursuant to Subparagraph (ii) exceeds the number of days of the Unexcusable delay.

(iv) For a Compensable Delay, the Contractor shall only be entitled to an adjustment in the Contract price in an amount equal to the actual additional labor costs, material costs, and unavoidable equipment costs incurred by the Contractor as a result of the Compensable Delay, plus the actual additional wages or salaries and fringe benefits and payroll taxes of supervisory and administrative

personnel necessary and directly employed at the Project site for the supervision of the Work during the period of Compensable Delay. Except as provided herein, the Contractor shall have no claim for damage or compensation for any delay, interruption, hindrance, or disruption. There shall be no Compensable Delay unless the event or occurrence giving rise to the Compensable Delay extends the actual completion of the Project past the Contract time.

The parties agree that the City's exercise of its right to order changes in the Work, regardless of the extent and number of changes, or to suspend the work, is within the contemplation of the parties and shall not be the basis for any Claim or Compensable Delay.

c. Claim Procedures. Should any clarification, determination, action or inaction by the City, or any event, in the opinion of the Contractor, exceed the requirements of or not comply with the Contract Documents, or otherwise result in the Contractor seeking additional compensation in time or money for any reason, (collectively "Disputed Work"), then the Contractor and the City shall make good faith attempts to resolve informally any and all such issues and/or disputes. The Contractor must file a written Notice of Potential Claim with the City before commencing the Disputed Work, or within seven (7) calendar days after Contractor's first knowledge of the Disputed Work, whichever is earlier, stating clearly and in detail its objection and reasons for contending the Work or interpretation is outside the requirements of the Contract Documents. If a written Notice of Potential Claim is not filed within this period, or if the Contractor proceeds with the Disputed Work without first having filed the notice required by these provisions, the Contractor shall waive any rights to further claim on the specific issue.

The City will review the Contractor's timely notice of potential claim and provide a decision. The City may require supplemental information from the Contractor to clarify that contained in the Notice of Potential Claim. If, after receiving the City's decision, the Contractor disagrees with the decision, the Contractor shall so notify the City, in writing, within seven (7) calendar days after receiving the decision, that a formal Claim will be filed. The Contractor shall submit the Claim in the form specified herein and all arguments, justification, costs or estimates, schedule analyses, and detailed documentation supporting the Contractor's position within thirty (30) calendar days after receiving the City's decision on the notice of potential claim. The Contractor's failure to furnish notification within seven (7) calendar days and all justifying documentation within thirty (30) calendar days will result in the Contractor waiving all rights to the subject Claim.

If Disputed Work persists longer than thirty (30) calendar days after receiving the City's decision on the Notice of Potential Claim, then the Contractor shall, every thirty (30) calendar days until the Disputed Work ceases, submit to the City a document titled "Claim Update" which shall update and quantify all elements of the Claim as completely as possible. The Contractor's failure to submit a Claim Update or to quantify all costs and impacts every thirty (30) days shall result in a waiver of that portion of the Claim for that thirty (30) calendar day period. Claims or Claim Updates stating that damages will be determined at a later date shall not comply with the requirements of these provisions and shall result in the Contractor waiving such Claim(s) and/or Claim Updates.

All claims must be submitted to Engineer before the issuance of the final estimate. Contractor hereby expressly waives all Claims not submitted, in complete and proper form, on or before the date of issuance of the final estimate.

Upon receipt of the Contractor's formal Claim including all arguments, justification, costs or estimates, schedule analyses, and documentation supporting the Contractor's position as previously stipulated, the City or its designate will review the Claim and render a final determination according to the processing and review procedures listed in Section IX-12, "Claims Processing and Review" of these General Provisions.

No costs arising out of or in connection with the performance of Claims of any nature, other than those specifically listed herein may be recovered by the Contractor. Except where provided by law, or elsewhere in these Contract Documents (if applicable), the City shall not be liable for special or consequential damages, and Claims shall not include special or consequential damages.

d. Claim Format. The Contractor shall submit the Claim justification in the following format:

- (1) Cover letter and certification of the accuracy of the contents of the Claim;
- (2) Summary of Claim including underlying facts, entitlement, quantum calculations, and Contract Document provision supporting relief;
- (3) List of documents relating to the Claim, including plans, specifications, clarifications/requests for information, schedules and others;
- (4) Chronology of events and correspondence;
- (5) Analysis of Claim merit;
- (6) Analysis of Claim costs;
- (7) Attached supporting documents referenced in item (3) above.

e. Exclusive Remedy. The Contractor's performance of its duties and obligations specified in these provisions and submission of a Claim as provided in these provisions is the Contractor's sole and exclusive remedy for the payment of money, extension of time, adjustment or interpretation of Contract Documents' terms, or other contractual or tort relief arising from the Contract Documents. This exclusive remedy and the limitation of liability (expressed herein and elsewhere throughout the Contract Documents) apply notwithstanding the completion, termination, suspension, cancellation, breach or rescission of the Work or the Contract Documents, negligence or strict liability by the City, its representatives, consultants or agents, or the transfer of the Work or the Project to the City for any reason whatsoever. The Contractor waives all claims of waiver, estoppel, release, bar, or any other type of excuse for non-compliance with the Claim submission requirements. Compliance with the notice and Claim submission

procedures described in these provisions is a condition precedent to the right to commence litigation, file a Government Code Claim, or commence any other legal action. No Claim or issues not raised in a timely protest and timely Claim submitted under these provisions may be asserted in any Government Code Claim, subsequent litigation, or legal action. The City shall not have deemed to waive any provision under this section, if at the City's sole discretion, a Claim is accepted in a manner not in accord with this section.

f. Mediation. All Claims not subject to the Claim resolution procedures set forth in these provisions shall, as a condition precedent to litigation thereon, first be mediated. Mediation shall be non-binding and utilize the services of a mediator mutually acceptable to the parties, and, if the parties cannot agree, a mediator selected by the American Arbitrator Association from its panel of approved mediators trained in construction industry mediation. All statutes of limitation shall be tolled from the date of the demand for mediation until a date two weeks following the mediation's conclusion. All unresolved claims shall be submitted to the same mediator. The cost of mediation shall be equally shared.

11. False Claims Affidavit. California Penal Code Section 72 provides that any person, who presents for payment with intent to defraud any City, any false or fraudulent claim, bill, account, voucher, or writing, is punishable by fines not exceeding ten thousand dollars (\$10,000) and/or imprisonment in the state prison.

Government Code Sections 12650 et seq. (California False Claims Act), pertains to civil penalties that may be recovered from persons (including corporations, etc.) for presenting a false claim for payment or approval, presents a false record or statement to get a false claim paid or approved, or other acts, to any official or employee of any political subdivision of the State of California. Any person or corporation violating the provisions of Government Code Section 12650 et seq., shall be liable for three times the amount of the damages of the political subdivision, plus a civil penalty, plus costs. Contractor agrees that any costs or expenses incurred by the City in reviewing or auditing any claims that are not supported by the Contractor's cost accounting or other records, or the Contract, shall be deemed to be damages incurred by the City within the meaning of the California False Claims Act.

All Claims by Contractor shall include the following certification, properly completed and executed by Contractor or an officer of Contractor:

I, _____, BEING THE _____ (MUST BE AN OFFICER) OF _____ (CONTRACTOR), DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA, AND DO PERSONALLY CERTIFY AND ATTEST THAT I HAVE THOROUGHLY REVIEWED THE ATTACHED CLAIM FOR ADDITIONAL COMPENSATION AND/OR EXTENSION OF TIME, AND KNOW ITS CONTENTS, AND SAID CLAIM IS TRUTHFUL AND ACCURATE; THAT THE AMOUNT REQUESTED ACCURATELY REFLECTS THE CONTRACT ADJUSTMENT FOR WHICH THE OWNER IS LIABLE; AND, FURTHER, THAT I AM FAMILIAR WITH CALIFORNIA PENAL CODE SECTION 72 AND CALIFORNIA GOVERNMENT CODE SECTION 12650, ET SEQ., PERTAINING TO FALSE CLAIMS, AND FURTHER KNOW AND

UNDERSTAND THAT SUBMISSION OR CERTIFICATION OF A FALSE CLAIM MAY LEAD TO FINES, IMPRISONMENT AND/OR OTHER SEVERE LEGAL CONSEQUENCES.

SIGNATURE LINES WILL BE ADDED HERE

12. Claims Processing and Review. The review and treatment of Contractor Claims up to three hundred seventy-five thousand dollars (\$375,000) are governed by California Public Contract Code Sections 20104 et seq., the relevant positions of which are summarized below. In addition to these statutory provisions, the City and Contractor hereby agree by contract to a procedure for the review of claims over three hundred seventy-five thousand dollars (\$375,000). Claims, then, shall be processed and reviewed as follows:

a. For claims of less than fifty thousand dollars (\$50,000), the City will respond in writing within forty-five (45) days of its receipt of the claim, or may request, in writing, within thirty (30) days of its receipt of the claim, submission of additional documentation supporting the claim or relating to defenses or claims the City may have against the Contractor.

(1) If such additional documentation is requested by the City, it shall be provided by the Contractor within twenty (20) days of its receipt of the request from the City or as otherwise mutually agreed upon by the City and the Contractor.

(2) Following the Contractor's submission of all requested additional documentation, the City will respond to the claim within fifteen (15) days or within the period of time taken by the Contractor in producing the additional documents, whichever is longer.

b. For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred and seventy-five thousand dollars (\$375,000), the City will respond in writing within sixty (60) days of its receipt of the claim, or may request, in writing, within thirty (30) days of receipt of the Claim, submission of additional documentation supporting the Claim or relating to defenses or Claims the City may have against the Contractor.

(1) If such additional documentation is requested by the City, it shall be provided by the Contractor within thirty (30) days of its receipt of its receipt of the request or as otherwise mutually agreed upon by the City and the Contractor.

(2) Following the Contractor's submission of all requested additional documentation, the City will respond to the claim within thirty (30) days, or within the period of time taken by the Contractor in producing the additional documentation, whichever is longer.

c. For claims over three hundred and seventy-five thousand dollars (\$375,000), the City will respond in writing within one hundred and twenty (120) days of its receipt of the claim, or may request in writing, within forty-five (45) days of receipt of

the Claim, submission of additional documentation supporting the claim or relating to defenses or claims the City may have against the Contractor.

(1) If such additional documentation is requested by the City, it shall be provided by the Contractor within thirty (30) days of its receipt of the request or as otherwise mutually agreed upon by the City and the Contractor.

(2) Following the Contractor's submission of all requested additional documentation, the City will respond to the Claim within thirty (30) days, or within the period of time taken by the Contractor in producing the additional documentation, whichever is longer.

13. Extra Work. New and unforeseen items of work will be classed as extra work when they cannot be covered by any of the various items for which there is a bid price or by combinations of such items.

The Contractor shall do such extra work and furnish such materials and equipment therefore, as may be required in writing by the Engineer, but he shall not do extra work except upon written order from the Engineer, and in the absence of such written order he shall not be entitled to payment for such extra work. All bills for extra work done shall be filed in writing with the Engineer. For such extra work the Contractor shall receive compensation at the prices previously agreed upon in writing, or upon a failure to agree upon prices, he shall be paid on force account, as provided in Section IX-14, "Force Account Work" of these General Provisions.

All extra work shall be adjusted daily upon report sheets furnished to the Engineer by the Contractor and signed by both parties which daily reports shall thereafter be considered the true record of extra work done.

14. Force Account Work. Where payment is to be made on a force account basis, the Contractor shall receive the actual cost of all material, labor and rented equipment furnished by the Contractor as shown by paid vouchers, plus fifteen percent (15%); provided, however, that the City reserves the right to furnish such materials required as it seems expedient, and the Contractor shall have no claim for profit on the cost of such materials.

For use of equipment owned by the Contractor he shall be paid the current prices prevailing in the locality, which shall have been previously determined and agreed upon in writing by the Contractor, plus fifteen percent (15%).

When work is performed by force account, in addition to the actual cost of labor, the City will reimburse the Contractor for compensation insurance payments; contributions made to the State as required by the provisions of the Unemployment Reserve Act, Chapter 352, Statutes of 1935, as amended; and for taxes paid to the Federal Government as required by the Social Securities Act approved August 14, 1935, as amended. The payment of fifteen percent (15%) in addition to the actual cost of all material, labor, and rented equipment, as herein provided, shall include full allowance to the Contractor for overhead and profit on the force account work and full compensation to the Contractor for premiums paid on any other insurance of any nature which the

Contractor may be required to carry or which he may elect to carry; and for additional premiums paid on faithful performance and payment bonds required by reason of the increases in the amount of work to be performed over and above that called for in the original contract.

All force account work shall be adjusted daily upon report sheets, furnished to the Engineer by the Contractor and signed by both parties, which daily reports shall thereafter be considered the true record of force account work done.

If force account work is done on the contract the Contractor shall furnish to the Engineer three (3) copies of a certificate from the insurance company showing the compensation insurance rates to be charged on the various classes of work to assist in verification of the Contractor's charges for extra work and force account.

[END OF GENERAL PROVISIONS]

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