



**DESIGN-BUILD
CONTRACT DOCUMENTS
FOR**

**NEW POLICE HEADQUARTERS AND
TRAINING FACILITY PROJECT**

CIP PROJECT NO. 0104

**City of San Pablo
Design-Build Contract Documents**

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**CITY OF SAN PABLO
DESIGN-BUILD
CONTRACT**

This design-build contract ("Contract") is entered into on this **22nd day of February 2023** ("Effective Date") by and between the City of San Pablo ("City"), a general law city in California, and C. Overaa & Co. ("DBE"), a General Contractor for design and construction of the New Police Headquarters and Training Facility Project ("Project").

RECITALS

- A. The Project involves design and construction of a new two-story building of approximately 42,000 square feet to serve as the police headquarters and training facility, which will include an indoor 20-lane gun range and classroom space, a secure yard and parking lot, and site development.
- B. Pursuant to section 22164 of the Public Contract Code, City issued a Request for Qualifications ("RFQ"), dated September 13, 2022, to short-list potential Design-Build Entities for the Project.
- C. Pursuant to section 22164 of the Public Contract Code, City issued a Request For Proposals ("RFP"), dated November 8, 2022, to short-listed Design-Build Entities, requesting proposals to provide the design-build services ("Design-Build Services") for the Project.
- D. DBE submitted its proposal ("Proposal") on **December 20, 2022** in response to the RFP. City's evaluation panel determined that DBE's Proposal offered the best value to the City.
- E. On **February 21, 2023**, the City Council awarded the Contract for the Project to DBE and authorized the City to enter into this Contract with DBE based on DBE's Proposal as modified by subsequent negotiations between the City and DBE and based on the City's election of the following Project alternate(s):

Alternate #2 – Clean Agent Fire Suppression (Additive Alternate)

Alternate #4 – Monument Sign Package (Additive Alternate)

Alternate #5 – LEED Certification (Additive Alternate)

- F. City has awarded the Contract for the Project to DBE in reliance on DBE's representations and qualifications in response to the RFQ and DBE's Proposal, and based on City's determination that DBE's Proposal offers the best value under the criteria set forth in the RFP.

TERMS AND CONDITIONS

The parties agree as follows:

- 1. **Contract Documents.** The Contract Documents are comprised of duly authorized and executed Change Orders; this Contract and any duly authorized and executed amendments thereto; the Notice to Proceed with Design Services; the Notice to Proceed with Construction Services; the Special Conditions; the General Conditions; the Bridging Documents; the required payment and performance bonds; the City-approved Construction Documents; the RFP and any addenda thereto; the Proposal and attachments thereto; and the applicable portions of the City's Standard Details, all of which are incorporated herein.

1.1 Defined Terms. Capitalized terms that are used in this Contract or elsewhere in the Contract Documents that are not otherwise defined have the same meanings provided for those terms in Article 1 of the General Conditions.

1.2 For Reference Only. The following documents are provided or made available to the DBE "For Reference Only," as defined in Section 3.5 of the General Conditions:

(A) Geotechnical Evaluation, prepared by Miller Pacific Engineering Group, dated July 2, 2022;

(B) Topographical Survey, prepared by Bellecci & Associates, dated January 2022;

(C) Phase I Site Assessment, prepared by LSA Associates, Inc., dated December 2004.

2. DBE's Responsibilities. DBE is responsible for providing the Design-Build Services necessary to complete the Project as required by the Contract Documents. DBE must exercise reasonable skill and judgment in the performance of the Design-Build Services. DBE must provide, furnish, and supply all services and things necessary and incidental for the timely design, performance and completion of the Project, including provision of all necessary labor, materials, supplies, tools, equipment, transportation, onsite facilities, and utilities, unless otherwise specified in the Contract Documents. DBE must use its best efforts to diligently prosecute and complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

3. Payment.

3.1 Contract Price. As full and complete compensation for DBE's timely performance and completion of the Project, which includes the following Project alternate(s):

Alternate #2 – Clean Agent Fire Suppression (Additive Alternate)

Alternate #4 – Monument Sign Package (Additive Alternate)

Alternate #5 – LEED Certification (Additive Alternate)

in strict accordance with the terms and conditions of the Contract Documents, City will pay DBE a lump sum price of **\$38,491,497**, which consists of the following components:

(A) Design Services. For complete and satisfactory performance of the Design Services, City will pay DBE **Two Million, Eight Hundred and Four Thousand, Eight Hundred and Seventy Dollars (\$2,804,870)**.

(B) Construction Services. For complete and satisfactory performance of the Construction Services, City will pay DBE **Thirty-Five Million, Six Hundred and Eighty-Six Thousand, Six Hundred and Twenty-Seven Dollars (\$35,686,627)**.

3.2 Scope and Limitations. The Contract Price includes all applicable federal, state, and local taxes and is fully inclusive of all direct and indirect costs, overhead, and profit. The Contract Price is not subject to adjustment due to

inflation or due to the increased cost of labor, material, or equipment after the Effective Date.

4. **Time for Completion.** DBE will fully design and complete the Project, meeting all requirements for Final Completion, within **797** calendar days from the commencement date given in the Notice to Proceed with Design Services ("Contract Time"). By signing below, DBE expressly waives any claim for delayed early completion.
5. **Liquidated Damages.** As further specified in Section 5.4 of the General Conditions, if DBE fails to complete the Project within the Contract Time, City will assess liquidated damages in the amount of Two Thousand Five Hundred Dollars (\$2,500) for each day of unexcused delay in achieving Final Completion, and such liquidated damages may be deducted from the City's payments due or to become due to DBE under this Contract.
6. **Labor Code Compliance.**
 - 6.1 **General.** The Construction Services, as defined in Article 1 of the General Conditions, are subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance, as further specified in Article 9 of the General Conditions.
 - 6.2 **Prevailing Wages.** The Construction Services are subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification, or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are on file with the City and available online at <http://www.dir.ca.gov/DLSR>.
 - 6.3 **DIR Registration.** DBE, members of its Design-Build Team providing Construction Services, its Subcontractors, and any other business entity or individual providing Construction Services for the Project must be registered with the California Department of Industrial Relations ("DIR") to perform public work pursuant to Labor Code section 1725.5. The Construction Services under this Contract are subject to compliance monitoring and enforcement by the DIR pursuant to Labor Code section 1771.4.
 - 6.4 **Skilled and Trained Workforce.** By executing this Contract, DBE is providing an enforceable commitment pursuant to Public Contract Code section 2602 and section 22614(c), that a "skilled and trained workforce," as that term is defined in Public Contract Code section 2601, will be used to complete all Design-Build Services on the Project that fall within an apprenticeable occupation in the building and construction trades, in accordance with Public Contract Code section 2600 et seq. DBE, members of the Design-Build Team providing Construction Services, and Subcontractors of every tier will comply with these requirements. DBE will provide City with a monthly report while the Project is being constructed evidencing that the DBE, its Design-Build Team (as applicable), and Subcontractors are complying with this requirement.
7. **Workers' Compensation Certification.** Under Labor Code section 1861, by signing this Contract, DBE certifies as follows: "I am aware of the provisions of Labor Code section 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."

8. **Conflicts of Interest.** DBE, members of the Design-Build Team, Subcontractors, and their respective employees and agents, may not have, maintain or acquire a conflict of interest in relation to this Contract in violation of any City ordinance or requirement or in violation of any California law, including Government Code section 1090 et seq., or the Political Reform Act, as set forth in Government Code section 81000 et seq. and its accompanying regulations. Any violation of this Section constitutes a material breach of the Contract.
9. **Independent Contractor.** DBE is an independent contractor under this Contract and will have control of the Design-Build Services and the means and methods by which they are performed. DBE, members of the Design-Build Team, and its Subconsultants and Subcontractors are not employees of City and are not entitled to participate in any health, retirement, or any other employee benefits from City.
10. **Notice.** Any notice, billing, or payment required by or pursuant to the Contract Documents must be made in writing, signed, dated, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, facsimile, or by email as a PDF (or comparable) file. Notice is deemed effective upon delivery, except that service by U.S. Mail is deemed effective on the second working day after deposit for delivery. Notice for each party must be given as follows:

CITY:

City of San Pablo
San Pablo City Hall
1000 Gateway Avenue
San Pablo, CA 94806
Attn: City Clerk

With copies to:

Allan Panganiban
Director of Public Works/City Engineer
San Pablo City Hall
1000 Gateway Avenue
San Pablo, CA 94806

DBE:

C. Overaa & Co.
200 Parr Blvd.
Richmond, CA 94801
Attn: Carl Overaa

With copies to:

Craig Jamison
C. Overaa & Co.
200 Parr Blvd.
Richmond, CA 94801

11. **General Provisions.**

- 11.1 **Assignment and Successors.** DBE may not assign its rights or obligations under this Contract, in part or in whole, without City's prior written consent. This Contract is binding on DBE's and City's lawful heirs, successors and permitted assigns.
- 11.2 **Third Party Beneficiaries.** There are no intended third party beneficiaries to this Contract.
- 11.3 **Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Superior Court of Contra Costa County, and no other place. DBE waives any right it may have pursuant to Code of Civil Procedure section 394, to file a motion to transfer any action arising from or relating to this Contract to a venue outside of Contra Costa County, California.
- 11.4 **Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.

- 11.5 Integration; Severability.** This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and DBE. If any provision of the Contract Documents, or portion of a provision, is determined to be illegal, invalid, or unenforceable, the remaining provisions of the Contract Documents will remain in full force and effect.
- 11.6 Iran Contracting Act.** DBE certifies, by signing below, that it is not identified on a list created under the Iran Contracting Act, Public Contract Code section 2200 et seq. (the "Act"), as a person engaging in investment activities in Iran, as defined in the Act, or is otherwise expressly exempt under the Act.
- 11.7 Authorization.** Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If DBE is a corporation, signatures from two officers of the corporation are required pursuant to California Corporation Code section 313.

[Signature page follows.]

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

CITY:

Approved as to form:

City of San Pablo

s/ _____
Matt Rodriguez
City Manager

s/ _____
Teresa L. Stricker
City Attorney

Date: _____

Date: _____

Attest:

s/ _____
Dorothy Gantt
City Clerk

Date: _____

DESIGN-BUILD ENTITY:

C. Overaa & Co.

s/ Carl Overaa

Carl Overaa/President

Date: 2/3/2023

106793

Contractor's California License Number(s)

Seal:

5/31/2023

Expiration Date

1000000871

DIR Registration Number

END OF CONTRACT

PAYMENT BOND

The City of San Pablo ("City") and C. Overaa & Co. ("DBE") have entered into a design-build contract ("Contract") for work on the New Police Headquarters and Training Facility Project ("Project"). The Contract is incorporated by reference into this Payment Bond ("Bond").

1. **General.** Under this Bond, DBE as principal and _____, its surety ("Surety"), are bound to City as obligee in an amount not less than **\$35,686,627** based on 100% of the Construction Services price as specified in Section 3.1 of the Contract, under California Civil Code section 9550 et seq., to ensure payment to authorized claimants. This Bond is binding on the respective successors, assigns, owners, heirs, or executors of Surety and DBE.
2. **Surety's Obligation.** If DBE or any of its Subcontractors fails to pay a person authorized in California Civil Code section 9100 to assert a claim against a payment bond, any amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, or any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of DBE and its Subcontractors under California Unemployment Insurance Code section 13020 with respect to the work and labor, then Surety will pay the obligation.
3. **Beneficiaries.** This Bond inures to the benefit of any of the persons named in California Civil Code section 9100, so as to give a right of action to those persons or their assigns in any suit brought upon this Bond. DBE must promptly provide a copy of this Bond upon request by any person with legal rights under this Bond.
4. **Duration.** If DBE promptly makes payment of all sums for all labor, materials, and equipment furnished for use in the performance of the Work required by the Contract, in conformance with the time requirements set forth in the Contract and as required by California law, Surety's obligations under this Bond will be null and void. Otherwise, Surety's obligations will remain in full force and effect.
5. **Waivers.** Surety waives any requirement to be notified of alterations to the Contract or extensions of time for performance of the Work under the Contract. Surety waives the provisions of Civil Code sections 2819 and 2845. City waives the requirement of a new bond for any supplemental contract under Civil Code section 9550. Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

Attn: _____
Address: _____
City/State/Zip: _____
Phone: _____
Fax: _____
Email: _____
6. **Law and Venue.** This Bond will be governed by California law, and venue for any dispute pursuant to this Bond will be in the Superior Court of Contra Costa County, and no other place. Surety will be responsible for City's attorneys' fees and costs in any action to enforce the provisions of this Bond.

7. **Effective Date; Execution.** This Bond is entered into and is effective on _____, 20_____. Three identical counterparts of this Bond, each of which is deemed an original for all purposes, are hereby executed and submitted.

SURETY: _____
Business Name

s/ _____

Name: _____

Title: _____

Date: _____

(Attach Acknowledgment with Surety's Notary Seal and Power of Attorney)

DBE: _____
Business Name

s/ _____

Name: _____

Title: _____

Date: _____

APPROVED BY CITY:

s/ _____

Name: _____

Title: _____

END OF PAYMENT BOND

PERFORMANCE BOND

The City of San Pablo ("City") and C. Overaa & Co. ("DBE") have entered into a design-build contract ("Contract") for work on the New Police Headquarters and Training Facility Project ("Project"). The Contract is incorporated by reference into this Performance Bond ("Bond").

1. **General.** Under this Bond, the DBE as principal and _____, its surety ("Surety"), are bound to City as obligee for an amount not less than **\$35,686,627**, based on 100% of the Construction Services price as specified in Section 3.1 of the Contract, to ensure DBE's faithful performance of its obligations under the Contract. This Bond is binding on the respective successors, assigns, owners, heirs, or executors of Surety and DBE.
2. **Surety's Obligations.** Surety's obligations are co-extensive with DBE's obligations under the Contract. If DBE fully performs its obligations under the Contract, including its warranty obligations under the Contract, Surety's obligations under this Bond will become null and void. Otherwise, Surety's obligations will remain in full force and effect.
3. **Waiver.** Surety waives any requirement to be notified of and further consents to any alterations to the Contract made under the applicable provisions of the Contract Documents, including changes to the scope of the Construction Services or extensions of time for performance of the Construction Services under the Contract. Surety waives the provisions of Civil Code sections 2819 and 2845.
4. **Application of Contract Balance.** Upon making a demand on this Bond for completion of the Construction Services prior to acceptance of the Project, City will make the Contract Balance available to Surety for completion of the Construction Services under the Contract. For purposes of this provision, the Contract Balance is defined as the total amount payable by City to DBE as the Construction Services price minus amounts already paid to DBE for the Construction Services, and minus any liquidated damages, credits, or backcharges to which City is entitled under the terms of the Contract.
5. **DBE Default.** Upon written notification from City of DBE's termination for default under Article 13 of the Contract General Conditions, time being of the essence, Surety must act within the time specified in Article 13 to remedy the default through one of the following courses of action:
 - 5.1 Arrange for completion of the Construction Services under the Contract by DBE, with City's consent, but only if DBE is in default solely due to its financial inability to complete the Construction Services;
 - 5.2 Arrange for completion of the Construction Services under the Contract by a qualified contractor acceptable to City, and secured by performance and payment bonds issued by an admitted surety as required by the Contract Documents, at Surety's expense, or
 - 5.3 Waive its right to complete the Construction Services under the Contract and reimburse City the amount of City's costs to have the remaining Construction Services completed.
6. **Surety Default.** If Surety defaults on its obligations under the Bond, City will be entitled to recover all costs it incurs due to Surety's default, including legal, design professional, or delay costs.

7. **Notice.** Any notice to Surety may be given in the manner specified in the Contract and sent to Surety as follows:

Attn: _____
Address: _____
City/State/Zip: _____
Phone: _____
Fax: _____
Email: _____

8. **Law and Venue.** This Bond will be governed by California law, and venue for any dispute pursuant to this Bond will be in the Superior Court for Contra Costa County, and no other place. Surety will be responsible for City's attorneys' fees and costs in any action to enforce the provisions of this Bond.

9. **Effective Date; Execution.** This Bond is entered into and effective on _____, 20____. Three identical counterparts of this Bond, each of which is deemed an original for all purposes, are hereby executed and submitted.

SURETY: _____
Business Name

s/ _____

Name: _____

Title: _____

Date: _____

(Attach Acknowledgment with Surety's Notary Seal and Power of Attorney)

DBE: _____
Business Name

s/ _____

Name: _____

Title: _____

Date: _____

END OF PERFORMANCE BOND

GENERAL CONDITIONS

Article 1 – Definitions

1.1 Definitions. The following definitions apply to all of the Contract Documents unless otherwise indicated, e.g., additional definitions that apply solely to the Specifications or other technical documents. Defined terms and titles of documents are capitalized in the Contract Documents, with the exception of the following (in any tense or form): “day,” “furnish,” “including,” “install,” “work day” or “working day.”

Allowance means a specific amount that must be included in DBE’s Proposal for a specified purpose (if applicable).

Architect means LPA Associates, Inc., the design professional(s) responsible for preparation of the Bridging Documents. Architect is not the Architect of Record for the Project.

Architect of Record means the architect retained by DBE with authority to stamp the final Construction Documents provided by DBE.

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

Bridging Documents means the documents containing the City’s design and construction criteria for the Project as further detailed in Article 3, and as attached to or incorporated into the RFP, including any City-approved modifications thereto.

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

City means the City of San Pablo, acting through its City Council, officers, employees, City Engineer, and any other authorized representatives.

City Engineer means the City Engineer/Director of Public Works for the City of San Pablo, and his or her authorized delegates.

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

Construction Documents means the final City-approved Design Documents for constructing the Project.

Construction Phase means the period during which Work is performed to construct the Project, which begins upon City’s approval of the final Construction Documents.

Construction Services means all of the Work required to construct the Project as designed, including all services required to be provided by or customarily provided by or under the direction of a licensed general contractor during the Construction Phase, and excluding all of the Design Services.

Contract means the signed design-build contract between City and DBE and the Contract Documents incorporated therein.

Contract Documents means, collectively, all of the documents listed in Section 1 of the Contract.

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

Contract Time means the time specified for completion of the Project, as set forth in the Contract and as may be amended by Change Order.

Day means a calendar day unless otherwise specified.

Design-Build Entity (or DBE) means the corporation, limited liability company, partnership, joint-venture, or other legal entity that provides appropriately licensed contracting, architectural, and engineering services pursuant to the Contract and DBE's Proposal.

Design-Build Services means, collectively, all of the Design Services and all of the Construction Services which must be performed to completely design and construct the Project in accordance with the Contract Documents, including labor, materials, supplies, and equipment.

Design-Build Team (or DBE Team) means the DBE itself and the other individuals and entities identified in DBE's Proposal as members of its DB Team, including the general contractor and required Subcontractors.

Design Development Documents means intermediate design documents based on the Bridging Documents.

Design Documents means, collectively, the City-approved plans and specifications developed for construction of the Project based on the Bridging Documents, including the Design Development Documents and Construction Documents. The Design Documents may include or incorporate additional documents, reports, or studies needed for construction of the Project, subject to City approval.

Design Phase means the period during which the Design Services are provided, which begins upon City's issuance of the Notice to Proceed with Design Services and concludes upon City approval of the final Construction Documents.

Design Professional means any architect, including the Architect of Record, engineer, landscape architect, or land surveyor licensed and in good standing under the applicable provisions of the California Business and Professions Code, who is retained or employed by DBE to provide Design Services for the Project, based on his or her licensed authority.

Design Services means all services necessary to design the Project in conformance with the Bridging Documents, including development of the Design Documents and all services required to be provided by or customarily provided under the direction of a licensed architect or other Design Professional, including services provided by Design Professionals during the Design Phase and Construction Phase and Pre-Construction Services, but excluding the Construction Services.

DIR means the California Department of Industrial Relations.

Engineer means the City Engineer for the City of San Pablo and his or her authorized delegees.

Excusable Delay is defined in Section 5.3(B), Excusable Delay.

Extra Work means new or unforeseen work added to the Project following City approval of the final Construction Documents, as determined by the Engineer in his or her sole discretion.

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

Final Payment means City's payment to DBE of the unpaid Contract Price, including release of undisputed retention, less amounts withheld or deducted pursuant to the Contract Documents.

Furnish means to purchase and deliver for the Project.

Government Code Claim means a claim submitted pursuant to California Government Code § 900 et seq.

Hazardous Materials means any substance or material identified now or in the future as hazardous under any Laws, or any other substance or material that may be considered hazardous or otherwise subject to Laws governing handling, disposal, or cleanup.

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

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

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

Laws means all applicable local, state, and federal laws, regulations, rules, codes, ordinances, permits, orders, and the like enacted or imposed by or under the auspices of any governmental entity with jurisdiction over any of the Project or any portion of the Project, including health and safety requirements.

Non-Excusable Delay is defined in Section 5.3(D), Non-Excusable Delay.

Notice of Contract means a document notifying the DBE of City staff intent to recommend that the San Pablo City Council award the Contract to the DBE.

Plans means the plans, drawings, details, or graphical depictions of the Project requirements in the City-approved final Construction Documents, but does not include Shop Drawings.

Pre-Construction Services means those Design-Build Services which are preliminary to commencement of the Construction Services, including, but not limited to, investigation and preparatory work, constructability assessment, cost estimating, value engineering, provision of schedules, and all activities to ensure seamless transition of the Project through design to the start of construction, such as timely execution of any and all communications, notifications, and meetings necessary to convey information and respond to questions during this phase.

Project means the public works project referenced in the Contract, as modified by any Project alternates elected by the City, if any.

Project Manager means the individual designated by City to oversee and manage the Project on City's behalf and may include his or her authorized delegee(s) when the Project Manager is

unavailable. If no Project Manager has been designated for this Project, any reference to Project Manager is deemed to refer to the Engineer.

Proposal means the Proposal dated **December 20, 2022**, submitted by DBE in response to the City's RFP, including, if applicable, any post submittal modifications mutually negotiated by City and DBE.

Recoverable Costs is defined in Section 5.3(F), Recoverable Costs.

Request For Proposals (or RFP) means the Request for Proposals issued by City on November 8, 2022, soliciting proposals to provide the Design-Build Services for this Project, and includes any addenda thereto.

Section, when capitalized in these General Conditions, means a numbered section or subsection of the General Conditions, unless the context clearly indicates otherwise.

Shop Drawings means drawings, plan details or other graphical depictions prepared by or on behalf of DBE, and subject to City acceptance, which are intended to provide details for fabrication, installation, and the like, if required by the City-approved final Construction Documents.

Skilled and Trained Workforce has the same meaning as subdivision (d) of Public Contract Code section 2601.

Specifications, whether or not capitalized, means the technical specifications in the City-approved final Construction Documents for the Project, unless otherwise indicated by the context.

Subcontractor means all licensed contractors, of any tier, retained by DBE or any member of the DB Team to provide the Construction Services.

Subconsultant means any professional retained by DBE or a member of the DB Team to provide Design-Build Services other than Construction Services.

Technical Specifications has the same meaning as Specifications.

Work means all of the Design-Build Services necessary for or incidental to completing the Project based on the City-approved Construction Documents in conformance with the requirements of the Contract Documents.

Work Day or Working Day, whether or not capitalized, means a weekday which is not a holiday observed by City.

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

Article 2 – Roles and Responsibilities

2.1 Relationship with City. DBE accepts the relationship of trust and confidence established between it and City under this Contract. DBE agrees to provide the Design-Build Services necessary for the complete design and construction of the Project and to use its best efforts to complete the Project in the best and soundest way and in the most efficient and economical manner consistent with the City's objectives as expressed in the RFP and Bridging Documents, and in compliance with Laws.

(A) **Acting on Behalf of City Prohibited.** Neither DBE, members of the DB Team, nor any of their agents or employees may act on behalf of or in the name of City except as authorized in writing by City.

(B) **Conflicts of Interest.** DBE must perform its obligations with integrity and avoid conflicts of interest in violation of Laws, including conflicts of interest pertaining to any person or entity that provided services to the City relating to the solicitation of design-build services. (See Public Contract Code section 22162.)

(C) **City Representatives.** The Engineer, acting within the authority conferred by the City Council, has primary responsibility for Project administration. The Engineer's decisions are final and conclusive within the scope of his or her authority, including interpretation of the Contract Documents. The Project Manager assigned by the City will have primary responsibility for daily administration of the Project, assisted by the Construction Manager. The Construction Manager will be the DBE's primary point of contact for communication and submittals. Unless otherwise specified, all communications and submittals (in any form) should be directed to the Construction Manager and copied to the Project Manager. City reserves the right to reassign or replace the Project Manager or Construction Manager at any time or to delegate his or her duties to additional City representatives without prior notice to or consent of the DBE.

2.2 Scope of Services. DBE is responsible for procuring or providing all of the Design-Build Services necessary for the Project as specified in the Contract Documents, including all labor, materials, equipment and incidentals necessary to timely complete the Project in strict accordance with the Contract Documents and with minimal inconvenience or risk to the public. DBE must exercise reasonable skill and judgment in the procurement and provision of the Design-Build Services, consistent with the applicable industry practices, Laws, and the terms and conditions of the Contract Documents.

2.3 Design Services. DBE must provide all architectural, engineering, and related professional services necessary for the Project during both the Design Phase and the Construction Phase, including design of the Project based on the Contract Documents, which may include development or preparation of plans, sections, and elevations; criteria and sizing of components; equipment sizes, capacities, and layouts; typical details; materials selections; investigation of or measured drawings of existing conditions or improvements; verification of the accuracy of any City-provided drawings (including the Bridging Documents) or other information on existing conditions; surveys; site evaluations; cost estimates; Pre-Construction Services; and preparation of models, renderings, or mock-ups.

(A) **Design Professionals.** Architectural, landscape architectural, engineering, and land surveying services must be provided by licensed, independent Design Professionals employed by or retained by DBE or members of the DB Team, or as permitted by Laws. DBE may not engage the services of any Design Professional for this Project, including, but not limited to, firms or individuals serving as Architect of Record or providing other Design Services, without obtaining the City's prior written approval, which approval will not be unreasonably withheld. City's approval will not be deemed to create any contractual relationship between City and any such Design Professional, except that the City must be considered a third party beneficiary of such Design Professional's services for the Project. City's approval of the Construction Documents will not operate to shift liability for errors and omissions from DBE to City. DBE is solely responsible for and all costs incurred due to errors and omissions in the Construction Documents.

(1) **Bridging Documents.** All Design Services must be consistent with and guided by the Bridging Documents.

(2) *Ongoing Design Services.* The Design Professional(s) must provide ongoing Design Services as needed during the Construction Phase, including interpretation and clarification of all drawings and specifications prepared by the Design Professional(s), and preparation of documents for proper execution of the Work, including Change Orders.

(B) **Project Schedule.** Within ten days following full execution of the Contract, DBE must prepare, and submit for City's review and approval, a preliminary Project Schedule showing the timing and sequencing of all Design-Build Services required to design and construct the Project, in a form acceptable to the Engineer and consistent with the proposed schedule in the Proposal. The preliminary Project Schedule should include development and approval of Design Documents (including planning submission and approvals); DBE's procurement of permits and utility services; procurement of Subcontractors; submission and approval of construction cost estimate updates; construction; Final Completion; submission of as-builts; as well as any other milestones applicable to the Project, as may be further specified in the Notice to Proceed with Design Services.

(1) *Schedule Updates.* The Project Schedule must be updated for City's review and approval as further specified in the Contract Documents.

(2) *Assumptions for City Review Times.* The Project Schedule and all updates should reflect the following assumptions for City review:

(a) Assume a minimum review period of 10 weeks for Project entitlements.

(b) Assume a minimum review period of one week following submittal of 100% Design Development Documents and 90% Construction Documents pursuant to subsection (C).

(c) Assume the following City plan check review periods for all required City permits: six weeks for initial plan check review and four weeks for each resubmittal required.

(d) The assumptions set forth above are provided solely for scheduling purposes and do not bind the City to complete its review of any submittal within the assumed time, and the assumed times do not account for delays attributable to DBE's incomplete or non-compliant submittals.

(C) **Design Documents.** DBE must prepare and submit for City's review, including in-person page turn review with DBE's Design Professional(s), and City's approval, Design Documents based on and consistent with the Bridging Documents. Any deviation from or inconsistency from the Bridging Documents must be approved in writing in advance by City. The Design Documents must also comply with City's Public Works Standard Details, to the extent applicable to the Project as determined by the Engineer. The Design Documents must be developed and submitted for City's review and approval at completion of each design phase as specified below. City's approval of the Design Documents at any phase, including final approval of the Construction Documents, does not operate as a waiver of any deviations from the Bridging Documents that specifically were not approved by City. City retains the right at all times to condition approval on design modifications to ensure the Project is completed within budget and suited for its intended purposes.

(1) *Contents.* The Design Documents must set forth in detail the quality levels of and the requirements for construction of the Project, and must comply with all applicable Laws in effect at the time of their preparation.

(2) *Design Documents Development.* When submitting the Design Documents to City at each stage of development, DBE must identify in writing all material changes and deviations from the Bridging Documents or previously approved version of the Design Documents. Two printed sets and one reproducible set of Design Documents must be provided to City at each submittal. Each submittal and resubmittal must be accompanied by an updated version of the Project Schedule required pursuant to Section 2.3(B), above, clearly indicating and explaining any modifications from the prior schedule submission. DBE must submit Design Documents to City for City's review and approval as follows:

(a) *Entitlements Phase.* Upon City schematic level approval of DBE building and site design progress presentation, DBE must submit drawings, application and all required documentation to City Planning Department for review and approval.

(b) *Design Development Phase (100%).* DBE must submit Design Development Documents, including and incorporating all City modifications, as applicable, in accordance with the City-approved Project Schedule. The Design Development Documents should include, at a minimum, more detailed site improvement plans, plans, sections, elevations with full dimensions, details, and outline material specifications. Following City review, DBE must incorporate any modifications, additions or deletions required by City prior to the next submission. This review will include an in-person page turn review with DBE's Design Professional(s), and is independent of the DBE submission and application for entitlements.

(c) *Construction Document Phase (90%).* DBE must submit Construction Documents for approval by City in accordance with the City-approved Project Schedule. The Construction Documents should include all pertinent details and information for planning review, permitting, and construction of the Project. Following City review and comment, DBE must incorporate any modifications, additions or deletions required by City before resubmitting the Construction Documents for final approval. DBE may not proceed with any of the Construction Services until City has approved the Construction Documents as final, unless and to the extent that City provides written authorization for DBE to commence specific portions of the Work, e.g., preliminary site work, prior to final approval. This review will include an in-person page turn review with DBE's Design Professional(s), and is independent of the DBE submission and application for permit.

(3) *Substitutions.* See Section 7.7, Substitutions, on requests for substitutions.

(4) *Construction Cost Estimate Updates.* When submitting the Design Documents at each stage of development as provided above, DBE must submit an updated construction cost estimate. This estimate must be updated throughout the Project to enable City to monitor construction costs during the Construction Phase.

(D) ***Ownership of Documents.*** No portion of the Contract Documents may be used for any purpose other than construction of the Project, without prior written consent from City. DBE is deemed to have conveyed the copyright in any Design Documents (at any

stage of development), Shop Drawings, as-builts, or other documents (in paper or electronic form) developed by DBE for the Project, and City will retain all rights to such works, including the right to possession.

(1) ***Ownership of Tangible Documents.*** City must receive ownership of all documents, plans, drawings, specifications, electronic data and information prepared, provided or procured by DBE, as part of the Design Services.

(2) ***Use of Documents in Event of Termination.*** In the event of a termination of this Contract, City will have the right to use, to reproduce, and to make derivative works of the Design Documents (at any stage of development) to complete the Project, regardless of whether there has been a transfer of copyright to City.

(3) ***City's Use of Documents After Completion of Project.*** After completion of the Project, City may reuse, reproduce or make derivative works from the Construction Documents solely for the purposes of maintaining, renovating, remodeling or expanding the Project at the Project site.

(4) ***Right to Use.*** DBE will obtain from its Subcontractors and Subconsultants rights and rights of use that correspond to the rights given by DBE to City in this Contract and DBE must provide evidence that such rights have been secured.

(E) ***Subconsultants.*** DBE must provide duly qualified, licensed, and competent Subconsultants, administration, staff, and skilled workforce necessary to perform and timely complete the Design Services in accordance with the Contract Documents.

2.4 Construction Services. DBE must provide all Construction Services and Work necessary for the Project, including hiring and coordination of all Subcontractors, close-out services, and warranty work.

(A) ***General.*** DBE must provide all labor, materials, supplies, equipment, services, and incidentals necessary to perform and timely complete the Work in strict accordance with the Contract Documents, and in an economical and efficient manner in the best interests of City, and with minimal inconvenience to the public. DBE is solely responsible for all costs to perform the Work as specified in the Contract Documents, including any Work performed outside the Worksite.

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

(C) ***Construction Administration.*** DBE must provide sufficient and competent Subcontractors, administration, staff, and Skilled and Trained Workforce necessary to perform and timely complete the Construction Services in accordance with the Contract Documents. Before starting the Work, DBE must designate in writing and provide complete contact information, including telephone numbers and email address, for the

officer or employee in DBE's organization who is to serve as DBE's primary representative for the Project, and who has authority to act on DBE's behalf. DBE's representative will be subject to City's approval, which will not be unreasonably withheld. A Subcontractor or Subconsultant may not serve as DBE's primary representative.

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

(E) **Standards.** DBE must, at all times, ensure that the Work is performed in an efficient, skillful manner, following best practices and in full compliance with the Contract Documents and Laws and applicable manufacturer's recommendations. DBE has a material and ongoing obligation to provide true and complete information, to the best of its knowledge, with respect to all records, documents, or communications pertaining to the Project, including oral or written reports, statements, certifications, Change Order requests, or Claims.

(F) **Meetings.** DBE, its project manager, superintendent, and any primary Subcontractors requested by City, must attend a pre-construction conference before beginning Work on the Project, if requested by City, as well as weekly Project progress meetings scheduled with City, as may be specified in the Notice to Proceed with Construction Services. If applicable, DBE may also be required to participate in coordination meetings with other parties relating to other work being performed on or near the Project site or in relation to the Project, including work or activities performed by City, other contractors, or other utility owners.

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

(H) **Correction of Defects.** DBE must promptly correct, at DBE's sole expense, any Work that is determined by City to be deficient or defective in any way, including workmanship, materials, parts or equipment. Workmanship, materials, parts or equipment that do not conform to the requirements under the Contract Documents, as determined by City, will be considered defective and subject to rejection. DBE must also promptly correct, at DBE's sole expense, any Work performed beyond the lines and grades established by City, and any Extra Work performed without City's prior written approval. If DBE fails to correct or to take reasonable steps toward correcting defective Work within five days following notice from City, or within the time specified in City's notice to correct, City may elect to have the defective Work corrected by its own forces or by a third party, in which case the cost of correction will be deducted from the Contract Price. If City elects to correct defective Work due to DBE's failure or refusal to do so, City or its agents will have the right to take possession of and use any equipment, supplies, or materials

available at the Project site or any Worksite on City property, in order to effectuate the correction, at no extra cost to City. DBE's warranty obligations under Section 11.2, Warranty, will not be waived nor limited by City's actions to correct defective Work under these circumstances. Alternatively, City may elect to retain defective Work, and deduct the difference in value, as determined by the Engineer, from payments otherwise due to DBE. This paragraph applies to any defective Work performed by DBE during the one-year warranty period under Section 11.2.

(I) **Daily Reports.** DBE must keep such full and detailed accounts as may be necessary for proper financial management under this Contract. City must be afforded access to all DBE's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to Change Order work performed on the basis of actual cost. DBE must preserve all such records for a period of five years after the final payment or longer where required by Laws.

(J) **DBE's Reports.** DBE must provide periodic written reports to City on the progress of the Work in such detail as is required by City and as agreed to by City and DBE.

(K) **DBE's Records.** DBE must maintain all of its records relating to the Project in any form, including paper documents, photos, videos, electronic records, approved samples, and the construction records required pursuant to paragraph (M), below. Project records subject to this provision include, but are not limited to, daily reports, Project cost records and records relating to preparation of DBE's Proposal.

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

(2) DBE must continue to maintain its Project-related records in an organized manner for a period of five years after City's acceptance of the Project or following Contract termination, whichever occurs first. Subject to prior notice to DBE, City is entitled to inspect or audit any of DBE's records relating to the Project during DBE's normal business hours. DBE's records may also be subject to examination and audit by the State Auditor, pursuant to Government Code section 8546.7. The record-keeping requirements set forth in this subsection 2.4(K) will survive expiration or termination of the Contract.

(L) **Copies of Project Documents.** DBE and its Subcontractors must keep copies, at the Project site, of all Work-related documents, including the Contract, permit(s), Construction Documents, Contract amendments, Change Orders, RFIs and RFI responses, Shop Drawings, as-built drawings, schedules, daily records, testing and inspection reports or results, and any related written interpretations. These documents must be available to City for reference at all times during construction of the Project.

(M) **Construction Records.** DBE will maintain up-to-date, thorough, legible, and dated daily job reports, which document all significant activity on the Project for each day that Work is performed on the Project. The daily report for each day must include the number of workers at the Project site; primary Work activities; major deliveries; problems

encountered, including injuries, if any; weather and site conditions; and delays, if any. DBE will take date and time-stamped photographs to document general progress of the Project, including site conditions prior to construction activities, before and after photographs at offset trench laterals, existing improvements and utilities, damage and restoration. DBE will maintain copies of all subcontracts, Project-related correspondence with Subcontractors, and records of meetings with Subcontractors. Upon request by the City, DBE will permit review of and/or provide copies of any of these construction records.

(N) **Local Preference.** DBE will use materials, equipment and supplies from local vendors when the price, fitness and quality are equal to those available elsewhere. DBE will hire workers from within the City when they have the skill and ability equal to workers available elsewhere.

(O) **Permits and Licenses.** DBE is responsible for timely obtaining, at DBE's sole expense, the permits or licenses required to perform the Work, including a City business license, unless otherwise specified in the Special Conditions.

2.5 DBE's Subcontractors.

(A) **General.** All Work which is not performed by DBE with its own forces must be performed by qualified Subcontractors. Except for Subcontractors listed in DBE's Proposal, DBE must award subcontracts with a value exceeding one half of one percent of the Contract Price for Construction Services in compliance with Public Contract Code section 22166(b), including public notice. All Subcontractors bidding on contracts for the Work must be afforded the protections contained in the Subletting and Subcontracting Fair Practices Act (Public Contract Code § 4100 et seq.). DBE must provide each Subcontractor with a complete set of the Construction Documents and any approved modifications thereto. City reserves the right to approve or reject any and all Subcontractors proposed to perform the Work, for reasons including the subcontractor's poor reputation, lack of relevant experience, financial instability, and lack of technical ability or adequate trained workforce. Each Subcontractor must obtain a City business license before performing any Work.

(B) **Contractual Obligations.** DBE must require each Subcontractor to comply with the provisions of the Contract Documents as they apply to the Subcontractor's portion(s) of the Work, including the generally applicable terms of the Contract Documents, and to likewise bind their subcontractors. DBE will provide that the rights that each Subcontractor may have against any manufacturer or supplier for breach of warranty or guarantee relating to items provided by the Subcontractor for the Project, will be assigned to City. Nothing in these Contract Documents creates a contractual relationship between a Subcontractor and City, but City is deemed to be a third-party beneficiary of the contract between DBE and each Subcontractor.

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

(D) **Substitution of Subcontractor.** If DBE requests substitution of a listed Subcontractor under Public Contract Code section 4107, DBE is solely responsible for all costs City incurs in responding to the request, including legal fees and costs to conduct a hearing, and any increased subcontract cost to perform the Work that was to be performed by the listed Subcontractor. If the City determines that a Subcontractor is unacceptable to City based on the Subcontractor's failure to satisfactorily perform its Work, or for any of the grounds for substitution listed in Public Contract Code section 4107(a), City may request removal of the Subcontractor from the Project. Upon receipt of

a written request from City to remove a Subcontractor pursuant to this paragraph, DBE will immediately remove the Subcontractor from the Project and, at no further cost to City, will either (1) self-perform the remaining Work to the extent that DBE is duly licensed and qualified to do so, or (2) substitute a Subcontractor that is acceptable to City, in compliance with Public Contract Code section 4107, as applicable.

2.6 Coordination of Work.

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

(B) **Coordination.** If DBE's Work will connect or interface with work performed by others, DBE is responsible for independently measuring and visually inspecting such work to ensure a correct connection and interface. DBE is responsible for any failure by DBE or its Subcontractors to confirm measurements before proceeding with connecting Work. Before proceeding with any portion of the Work affected by the construction or operations of others, DBE must give the Project Manager prompt written notification of any defects DBE discovers which will prevent the proper execution of the Work. Failure to give notice of any known or reasonably discoverable defects will be deemed acknowledgement by DBE that the work of others is not defective and will not prevent the proper execution of the Work. DBE must also promptly notify City if work performed by others, including work or activities performed by City's own forces, is operating to hinder, delay, or interfere with DBE's timely performance of the Work. City reserves the right to backcharge DBE for any additional costs incurred due to DBE's failure to comply with the requirements in this Section 2.6.

2.7 Submittals. Unless otherwise specified, DBE must submit to the Engineer for review and acceptance, all schedules, Shop Drawings, samples, product data, and similar submittals required by the Contract Documents, or upon request by the Engineer. Unless otherwise specified, all submittals, including Requests for Information, are subject to the general provisions of this Section, as well as specific submittal requirements that may be included elsewhere in the Contract Documents, including the Special Conditions. The Engineer may require submission of a submittal schedule at or before a pre-construction conference, as may be specified by City.

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

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

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

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

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

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

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

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

2.9 Access to Work. DBE must afford prompt and safe access to any Worksite by City and its employees, agents, or consultants authorized by City; and upon request by City, DBE must promptly arrange for City representatives to visit or inspect manufacturing sites or fabrication facilities for items to be incorporated into the Work.

2.10 Personnel. DBE and its Subcontractors must employ only competent and skillful personnel to perform the Services. DBE and its Subcontractor's supervisors, security or safety personnel, and employees who have unescorted access to the Project site must possess proficiency in English sufficient to read, understand, receive, and implement oral or written communications or instructions relating to their respective job functions, including safety and security requirements. Upon written notification from the Engineer, DBE and its Subcontractors must immediately discharge any personnel who are incompetent, disorderly, disruptive, threatening, abusive, or profane, or otherwise refuse or fail to comply with the requirements of the Contract Documents or Laws, including Laws pertaining to health and safety. Any such discharged personnel, may not be re-employed or permitted on the Project in any capacity without City's prior written consent.

Article 3 – Contract Documents

3.1 The Contract Documents. The Contract Documents are comprised of the following:

(A) Duly authorized and executed Change Orders;

- (B) The Contract and any duly authorized and executed amendments thereto;
- (C) Notice to Proceed with Construction Services;
- (D) Notice to Proceed with Design Services;
- (E) The Special Conditions;
- (F) The General Conditions;
- (G) The Bridging Documents;
- (H) The payment and performance bonds;
- (I) The City-approved Construction Documents;
- (J) The Request for Proposals and all addenda thereto;
- (K) The Proposal (including any mutually negotiated revisions thereto);
- (H) Applicable portions of the City's Standard Details (available online at <https://www.sanpabloca.gov/1262/Standard-Details>); and
- (L) Any referenced documents prepared by and on behalf of a third party, that were not prepared specifically for this Project, e.g., Caltrans Standard Specifications or Caltrans Special Provisions.

3.2 Order of Precedence. Information included in one Contract Document but not in another will not be considered a conflict or inconsistency. In case of any conflict or inconsistency among the Contract Documents, the order of precedence will follow the order in which the Contract Documents are listed in Section 3.1, above, which are listed from highest to lowest.

3.3 Bridging Documents. The Bridging Documents are comprised of the documents collectively identified as such in the RFP and include the design drawings, basis of design, and specifications, including addenda thereto issued prior to execution of the Contract. The drawings are the graphic and pictorial portions of the Bridging Documents, wherever located and whenever issued, generally showing the design, location and dimensions of the Project and may include without limitation, plans, elevations, sections, details, schedules and/or diagrams. The basis of design supplements the drawings with scope and performance criteria narratives to be incorporated as if included in drawings. The specifications are the portion of the Bridging Documents consisting of the written requirements for materials, equipment, construction systems, standards, criteria and workmanship for the Project and related services. The Bridging Documents are for general intent of the final Project design and are not considered to be a complete working package. DBE is responsible to hire and coordinate all associated Design Services, including architectural, structural, mechanical, electrical, plumbing, civil engineering, geotechnical, and landscape architecture for the structures and systems, whether shown or implied in the Bridging Documents or required for a complete Project built to current governing codes.

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

(A) **Limitations.** The “General Provisions” of the Caltrans Standard Specifications, i.e., sections 1 through 9, do not apply to these Contract Documents with the exception of any specific provisions, if any, which are expressly stated to apply to these Contract Documents.

(B) **Conflicts or Inconsistencies.** If there is a conflict or inconsistency between any provision in the Caltrans Standard Specifications or Special Provisions and a provision of these Contract Documents, as determined by the City, the provision in the Contract Documents will govern.

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

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

(2) Any reference to the “Special Provisions” is deemed to mean the Special Conditions, unless the Caltrans Special Provisions are expressly included in the Contract Documents listed in Section 1 of the Contract.

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

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

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

Article 4 – Bonds, Indemnity, and Insurance

4.1 Payment and Performance Bonds. No later than ten days following City’s final approval of the Construction Documents, DBE must provide a payment bond and a performance bond, each in the penal sum of not less than 100% of the estimated price for the Construction Services, using the bond forms included with the Contract Documents.

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

(B) **Cost Estimate Updates.** If at any time DBE’s updated construction cost estimate exceeds the estimated price for Construction Services in Section 3.1 of the Contract by 5%, DBE must replace the initial bonds with bonds based on 100% of the updated estimated price for Construction Services using the bond forms included with the Contract Documents.

4.2 Indemnity and Liability.

(A) ***DBE's Indemnity Obligation.*** To the fullest extent permitted by law, DBE must indemnify, defend, and hold harmless City, its Council, officers, officials, employees, agents, volunteers, and consultants (individually, an "Indemnitee," and collectively the "Indemnitees") from and against any and all liability, loss, damage, claims, causes of action, demands, charges, fines, costs and expenses (including, without limitation, attorney fees, expert witness fees, paralegal fees, and fees and costs of litigation or arbitration) (collectively, "Liability") of every nature (including death or injury of persons, or destruction of or damage to property) arising out of or in connection with the acts or omissions of DBE, its employees, Subcontractors, representatives, or agents, in performing the Work or in failing to comply with any obligation of DBE under the Contract, except such Liability caused by the active negligence, sole negligence, or willful misconduct of an Indemnitee. This indemnity requirement applies to any Liability arising from alleged defects in the content or manner of submission of DBE's Proposal for the Contract. DBE's failure or refusal to timely accept a tender of defense pursuant to this Contract will be deemed a material breach of the Contract. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for the DBE or its agents or employees under Workers' Compensation laws, disability benefits laws, or other employee benefit laws. This indemnification obligation is also not limited by any limitation on the amount or type of damages available under any applicable insurance coverage and DBE's indemnity obligations under this Contract will survive the expiration or any early termination of the Contract. This indemnity obligation does not apply to any Design Professionals who are covered by subsection (B) below.

(B) ***Design Professional Indemnity Obligation.*** To the fullest extent permitted by law, subject only to the limitations of Civil Code section 2782.8, the Design Professionals who are members of the DB Team or retained or employed by DBE to provide the Design Services must indemnify, defend, and hold harmless City, its Council, officers, officials, employees, agents, volunteers, and consultants (individually, an "Indemnitee," and collectively the "Indemnitees") from and against any and all liability, loss, damage, claims, causes of action, demands, charges, fines, costs and expenses (including, without limitation, attorney fees, expert witness fees, paralegal fees, and fees and costs of litigation or arbitration) (collectively, "Liability") of every nature arising out of or in connection with the negligence, recklessness, or willful misconduct of the Design Professionals, except such Liability caused by the active negligence, sole negligence, or willful misconduct of an Indemnitee. This Design Professional indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for the Design Professionals or their agents or employees under Workers' Compensation laws, disability benefits laws, or other employee benefit laws. This Design Professional indemnification is also not limited by any limitation on the amount or type of damages available under any applicable insurance coverage and will survive the expiration or any early termination of the Contract with respect to Liability arising during the term of the Contract.

(C) ***Third Party Claims.*** City will timely notify DBE upon receipt of any third-party claim relating to the Contract, as required by Public Contract Code section 9201.

(D) ***No Personal Liability.*** No member of the City Council or any individual officer, employee or authorized agent of City will be personally liable to DBE for any liability arising under this Contract.

4.3 Insurance. No later than ten days following issuance of the Notice of Contract, DBE must procure and provide proof of the insurance coverage required by this Section in the form of

certificates and endorsements acceptable to City. The required insurance must cover the activities of DBE and its Subcontractors relating to or arising from the performance of the Work, and must remain in full force and effect at all times during the period covered by the Contract through the date of City's acceptance of the Project. All required insurance must be issued by a company licensed to do business in the State of California, and each such insurer must have an A.M. Best's financial strength rating of "A" or better and a financial size rating of "VIII" or better. If DBE fails to provide any of the required coverage in full compliance with the requirements of the Contract Documents, City may, at its sole discretion, purchase such coverage at DBE's expense and deduct the cost from payments due to DBE, or terminate the Contract for default. The procurement of the required insurance will not be construed to limit DBE's liability under this Contract or to fulfill DBE's indemnification obligations under this Contract.

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

(1) ***Commercial General Liability ("CGL") Insurance:*** The CGL insurance policy must be issued on an occurrence basis, written on a comprehensive general liability form, and must include coverage for liability arising from DBE's or its Subcontractor's acts or omissions in the performance of the Work, including DBE's protected coverage, personal injury, contractual liability, products and completed operations, and broad form property damage, with limits of at least \$5,000,000 per occurrence and at least \$10,000,000 general aggregate. The CGL insurance coverage may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or umbrella policies, provided each such policy complies with the requirements set forth in this Section, including the required endorsements.

(2) ***Builder's Risk Insurance:*** The builder's risk insurance policy must be issued on an occurrence basis, for all-risk or "all perils" coverage on a 100% completed value basis on the insurable portion of the Project with a minimum amount of coverage of \$2,000,000 for the benefit of City.

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

(4) ***Automobile Liability Insurance.*** The automobile liability insurance policy must provide coverage of at least \$1,000,000 combined single-limit per accident for bodily injury, death or property damage, including hired and non-owned auto liability.

(5) ***Professional Liability.*** The professional liability insurance policy must insure against the Design Professionals' negligent errors and omissions in the provision of services under this Contract, in an amount not less than \$2,000,000 combined single limit and at least \$4,000,000 aggregate. The Professional Liability policy must include prior acts coverage sufficient to cover all services provided by the Design Professionals for this Project, and the coverage must continue in effect for four years following final payment to DBE.

(6) ***Pollution Liability Insurance and Asbestos Liability Insurance:*** The pollution liability insurance policy must be issued on an occurrence basis, providing coverage of at least \$1,000,000 per occurrence or claim and \$2,000,000 policy aggregate for all loss arising out of claims for bodily injury, death, property

damage, or environmental damage caused by pollution conditions or asbestos resulting from the Work.

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

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

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

(1) The City, including its Council, officials, officers, employees, agents, volunteers and consultants (collectively, "Additional Insured") must be named as an additional insured for all liability arising out of the operations by or on behalf of the named insured, and the policy must protect the Additional Insured against any and all liability for personal injury, death or property damage or destruction arising directly or indirectly in the performance of the Contract for both ongoing and completed operations. The additional insured endorsement must be provided using ISO form CG 20 10 11 85, both forms CG 20 10 10 01 and CG 20 37 10 01, or an equivalent form approved by the City.

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

(3) The insurance provided by DBE is primary and no insurance held or owned by any Additional Insured may be called upon to contribute to a loss.

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

(E) **DBE's Responsibilities.** This Section establishes the minimum requirements for DBE's insurance coverage in relation to this Project, but is not intended to limit DBE's ability to procure additional or greater coverage. DBE is responsible for its own risk assessment and needs and is encouraged to consult its insurance provider to determine what coverage it may wish to carry beyond the minimum requirements of this Section. DBE is solely responsible for the cost of its insurance coverage, including premium payments, deductibles, or self-insured retentions, and no Additional Insured will be responsible or liable for any of the cost of DBE's insurance coverage.

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

(G) **Subcontractors.** DBE must ensure that each Subcontractor is required to maintain the same insurance coverage required under this Section 4.4, with respect to its

performance of Work on the Project, including those requirements related to the Additional Insureds and waiver of subrogation, but excluding pollution liability or builder's risk insurance unless otherwise specified in the Special Conditions. A Subcontractor may be eligible for reduced insurance coverage or limits, but only to the extent approved in writing in advance by the City's Risk Manager. DBE must confirm that each Subcontractor has complied with these insurance requirements before the Subcontractor is permitted to begin Work on the Project. Upon request of City, DBE must provide certificates and endorsements submitted by each Subcontractor to prove compliance with this requirement. The insurance requirements for Subcontractors do not replace or limit DBE's insurance obligations.

Article 5 – Contract Time

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

(A) **General.** DBE must commence the Design-Build Services on the date indicated in the Notice to Proceed with Design Services, and must fully perform the Design-Build Services and complete the Project in strict compliance with all requirements of the Contract Documents, and within the Contract Time.

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

5.2 Schedule Requirements. DBE must prepare all schedules using standard, commercial scheduling software acceptable to the Engineer, and must provide the schedules in electronic and paper form as requested by the Engineer.

(A) **Baseline (As-Planned) Schedule.** Within 15 calendar days following City's approval of the final Construction Documents, or as otherwise specified in the Notice to Proceed with Construction Services, DBE must submit to City for review and acceptance a baseline (as-planned) schedule using critical path methodology showing in detail how DBE plans to perform and fully complete the Construction Services within the Contract Time, including labor, equipment, materials, and fabricated items. The baseline schedule for Construction Services must show the order of the major items of Work and the dates of start and completion of each item, including when the materials and equipment will be procured. The schedule must also include the work of all trades, reflecting anticipated labor or crew hours and equipment loading for the construction activities, and must be sufficiently comprehensive and detailed to enable progress to be monitored on a day-by-day basis. For each activity, the baseline schedule must be dated, provided in the format specified in the Contract Documents or as required by City, and must include, at a minimum, a description of the activity, the start and completion dates of the activity, and the duration of the activity.

(1) *Specialized Materials Ordering.* Within five calendar days following City's approval of the final Construction Documents, DBE must order any specialized material or equipment for the Work that is not readily available from material suppliers. DBE must also retain documentation of the purchase order date(s).

(B) **City's Review of Schedules.** City will review and may note exceptions to the baseline schedule, and to the progress schedules submitted as required below, to assure completion of the Work within the Contract Time. DBE is solely responsible for resolving any exceptions noted in a schedule and, within five days, must correct the schedule to address exceptions. City's review or acceptance of DBE's schedules will not operate to waive or limit DBE's duty to complete the Project within the Contract Time, nor to waive or limit City's right to assess liquidated damages for DBE's unexcused failure to do so.

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

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

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

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

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

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

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

(H) **Authorized Working Days and Times.** With respect to the Construction Services performed at the Project site, DBE is limited to working Monday through Friday, excluding holidays, during City's normal business hours, except as provided in the Special Conditions or as authorized in writing by City. City reserves the right to charge DBE for additional costs incurred by City due to Work performed on days or during hours not expressly authorized in the Contract Documents, including reimbursement of costs incurred for inspection, testing, and construction management services.

5.3 Delay and Extensions of Contract Time.

(A) **Notice of Delay.** If DBE becomes aware of any actual or potential delay affecting the critical path, DBE must promptly notify the Engineer in writing, regardless of the nature or cause of the delay, so that City has a reasonable opportunity to mitigate or avoid the delay.

(B) **Excusable Delay.** The Contract Time may be extended if DBE encounters "Excusable Delay," which is an unavoidable delay in completing the Work within the Contract Time due to causes completely beyond DBE's control, and which DBE could not have avoided or mitigated through reasonable care, planning, foresight, and diligence, provided that DBE is otherwise fully performing its obligations under the Contract Documents. Grounds for Excusable Delay may include fire, natural disasters including earthquake or unusually severe weather, acts of terror or vandalism, epidemic, unforeseeable adverse government actions, unforeseeable actions of third parties, encountering unforeseeable hazardous materials, unforeseeable site conditions, or suspension for convenience under Article 13. The Contract Time will not be extended based on circumstances which will not unavoidably delay completing the Work within the Contract Time based on critical path analysis.

(C) **Weather Delays.** A "Weather Delay Day" is a Working Day during which DBE and its forces, including Subcontractors, are unable to perform more than 40% of the critical path Work scheduled for that day due to adverse weather conditions which impair the ability to safely or effectively perform the scheduled critical path Work that day. Adverse weather conditions may include rain, saturated soil, and Project site clean-up required due to adverse weather. Determination of what constitutes critical path Work scheduled for that day will be based on the most current, City-approved schedule. DBE will be entitled to a non-compensable extension of the Contract Time for each Weather Delay Day in excess of the normal Weather Delay Days within a given month as determined by reliable records, including monthly rainfall averages, for the preceding ten years (or as otherwise specified in the Special Conditions or Specifications).

(1) DBE must fully comply with the applicable procedures in Articles 5 and 6 of the General Conditions regarding requests to modify the Contract Time.

(2) DBE will not be entitled to an extension of time for a Weather Delay Day to the extent DBE is responsible for concurrent delay on that day.

(3) DBE must take reasonable steps to mitigate the consequences of Weather Delay Days, including prudent workforce management and protecting the Work, Project Site, materials, and equipment.

(D) **Non-Excusable Delay.** Delay which DBE could have avoided or mitigated through reasonable care, planning, foresight and diligence is "Non-Excusable Delay." DBE is not entitled to an extension of Contract Time or any compensation for Non-Excusable Delay, or for Excusable Delay that is concurrent with Non-Excusable Delay. Non-Excusable Delay includes delay caused by:

- (1) weather conditions which are normal for the location of the Project, as determined by reliable records, including monthly rainfall averages, for the preceding ten years;
- (2) DBE's failure to order equipment and materials sufficiently in advance of the time needed for completion of the Work within the Contract Time;
- (3) DBE's failure to provide adequate notification to utility companies or agencies for connections or services necessary for completion of the Work within the Contract Time;
- (4) foreseeable conditions which DBE could have ascertained from reasonably diligent inspection of the Project site or review of the Contract Documents or other information provided or available to DBE;
- (5) DBE's failure, refusal, or financial inability to perform the Work within the Contract Time, including insufficient funds to pay its Subcontractors or suppliers;
- (6) performance or non-performance by DBE's Subcontractors or suppliers;
- (7) the time required to respond to excessive RFIs (see Section 2.7(G));
- (8) delayed submission of required submittals, or the time required for correction and resubmission of defective submittals;
- (9) time required for repair of, re-testing, or re-inspection of defective Work;
- (10) enforcement of Laws by City, or outside agencies with jurisdiction over the Work; or
- (11) City's exercise or enforcement of any of its rights or DBE's duties pursuant to the Contract Documents, including correction of defective Work, extra inspections or testing due to non-compliance with Contract requirements, safety compliance, environmental compliance, or rejection and return of defective or deficient submittals.

(E) **Compensable Delay.** Pursuant to Public Contract Code section 7102, in addition to entitlement to an extension of Contract Time, DBE is entitled to compensation for costs incurred due to delay caused solely by City, when that delay is unreasonable under the circumstances involved and not within the contemplation of the parties ("Compensable Delay"). DBE is not entitled to an extension of Contract Time or recovery of costs for Compensable Delay that is concurrent with Non-Excusable Delay. Delay due to causes that are beyond the control of either City or DBE, including Weather Delay Days, discovery of Historic or Archeological Items pursuant to Section 7.18, or the actions or inactions of third parties or other agencies, is not Compensable Delay, and will only entitle DBE to an extension of time commensurate with the time lost due to such delay.

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

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

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

(2) **Delay Days and Costs.** The request must specify the number of days of Excusable Delay claimed, or provide a realistic estimate if the duration of the delay is not yet known. If DBE believes it is entitled to Recoverable Costs for Compensable Delay, the request must specify the amount and basis for the Recoverable Costs that are claimed or provide a realistic estimate if the amount is not yet known. Any estimate of delay duration or cost must be updated in writing and submitted with all required supporting documentation as soon as the actual time and cost is known. The maximum extension of Contract Time will be the number of days, if any, by which an Excusable Delay or a Compensable Delay exceeds any concurrent Non-Excusable Delay. DBE is entitled to an extension of Contract Time, or compensation for Recoverable Costs, only if, and only to the extent that, such delay will unavoidably delay Final Completion.

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

(4) **Burden of Proof.** DBE has the burden of proving that: the delay was an Excusable Delay or Compensable Delay, as defined above; DBE has fully complied with its scheduling obligations in Section 5.2, Schedule Requirements; DBE has made reasonable efforts to mitigate the delay and its schedule and cost impacts; the delay will unavoidably result in delaying Final Completion; and any Recoverable Costs claimed by DBE were actually incurred and were reasonable under the circumstances.

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

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

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

5.4 Liquidated Damages. It is expressly understood that if Final Completion is not achieved within the Contract Time, City will suffer damages from the delay that are difficult to determine and accurately specify. Pursuant to Public Contract Code 7203, if DBE fails to achieve Final Completion within the Contract Time due to DBE's Non-Excusable Delay, City will charge DBE in the amount specified in the Contract for each calendar day that Final Completion is delayed beyond the Contract Time, as liquidated damages and not as a penalty. Any waiver of accrued liquidated damages, in whole or in part, is subject to approval of the City Council or its authorized delegee.

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

(B) **Milestones.** Liquidated damages may also be separately assessed for failure to meet milestones specified elsewhere in the Contract Documents.

(C) **Setoff.** City is entitled to deduct the amount of liquidated damages assessed against any payments otherwise due to DBE, including progress payments, Final Payment, or unreleased retention. If there are insufficient Contract funds remaining to cover the full amount of liquidated damages assessed, City is entitled to recover the balance from DBE or its performance bond surety.

(D) **Occupancy or Use.** Occupancy or use of the Project in whole or in part prior to Final Completion does not constitute City's acceptance of the Project and will not operate as a waiver of City's right to assess liquidated damages for DBE's Non-Excusable Delay in achieving Final Completion.

(E) **Other Remedies.** City's right to liquidated damages under this Section applies only to damages arising from DBE's Non-Excusable Delay or failure to complete the Work within the Contract Time. City retains its right to pursue all other remedies under the Contract for other types of damage, including damage to property or persons, costs or diminution in value from defective materials or workmanship, costs to repair or complete the Work, or other liability caused by DBE.

Article 6 – Contract Modification

6.1 Contract Modification. Subject to the limited exception set forth in subsection (D) below, any change in the Work or the Contract Documents, including the Contract Price or Contract Time, will not be a valid and binding change to the Contract unless it is formalized in a

Change Order, including a “no-cost” Change Order or a unilateral Change Order. Changes in the Work pursuant to this Article 6 will not operate to release, limit, or abridge DBE’s warranty obligations pursuant to Article 11 or any obligations of DBE’s bond sureties.

(A) **City-Directed Changes.** City may direct changes in the scope or sequence of Work or the requirements of the Contract Documents, without invalidating the Contract. Such changes may include Extra Work as set forth in subsection (C) below, or deletion or modification of portions of the Work. DBE must promptly comply with City-directed changes in the Work in accordance with the original Contract Documents, even if DBE and City have not yet reached agreement as to adjustments to the Contract Price or Contract Time for the change in the Work or for the Extra Work. DBE is not entitled to extra compensation for cost savings resulting from “value engineering” pursuant to Public Contract Code section 7101, except to the extent authorized in advance by City in writing, and subject to any applicable procedural requirements for submitting a proposal for value engineering cost savings.

(B) **Disputes.** In the event of a dispute over entitlement to or the amount of a change in Contract Time or a change in Contract Price related to a City-directed change in the Work, DBE must perform the Work as directed and may not delay its Work or cease Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute. Likewise, in the event that City and DBE dispute whether a portion or portions of the Work are already required by the Contract Documents or constitute Extra Work, or otherwise dispute the interpretation of any portion(s) of the Contract Documents, DBE must perform the Work as directed and may not delay its Work or cease Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute, as directed by City. If DBE refuses to perform the Work in dispute, City may, acting in its sole discretion, elect to delete the Work from the Contract and reduce the Contract Price accordingly, and self-perform the Work or direct that the Work be performed by others. Alternatively, City may elect to terminate the Contract for convenience or for cause. DBE’s sole recourse for an unresolved dispute related to changes in the Work or performance of any Extra Work is to comply with the dispute resolution provisions set forth in Article 12, below.

(C) **Extra Work.** City may direct DBE to perform Extra Work related to the Project. DBE must promptly perform any Extra Work as directed or authorized by City in accordance with the original Contract Documents, even if DBE and City have not yet reached agreement on adjustments to the Contract Price or Contract Time for such Extra Work. If DBE believes it is necessary to perform Extra Work due to changed conditions, DBE must promptly notify the Engineer in writing, specifically identifying the Extra Work and the reason(s) the DBE believes it is Extra Work. This notification requirement does not constitute a Change Order request pursuant to Section 6.2, below. DBE must maintain detailed daily records that itemize the cost of each element of Extra Work, and sufficiently distinguish the direct cost of the Extra Work from the cost of other Work performed. For each day that DBE performs Extra Work, or Work that DBE contends is Extra Work, DBE must submit no later than the following Working Day, a daily report of the Extra Work performed that day and the related costs, together with copies of certified payroll, invoices, and other documentation substantiating the costs (“Extra Work Report”). The Engineer will make any adjustments to DBE’s Extra Work Report(s) based on the Engineer’s records of the Work. When an Extra Work Report(s) is agreed on and signed by both City and DBE, the Extra Work Report(s) will become the basis for payment under a duly authorized and signed Change Order. Failure to submit the required documentation by close of business on the next Working Day is deemed a full and complete waiver for any change in the Contract Price or Contract Time for any Extra Work performed that day.

(D) **Minor Changes and RFIs.** Minor field changes, including RFI replies from City, that do not affect the Contract Price or Contract Time and that are approved by the Engineer acting within his or her scope of authority, do not require a Change Order. By executing an RFI reply from City, DBE agrees that it will perform the Work as clarified therein, with no change to the Contract Price or Contract Time.

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

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

(A) **Time for Submission.** Any request for a change in the Contract Price or the Contract Time must be submitted in writing to the Engineer within ten calendar days of the date that DBE first encounters the circumstances, information or conditions giving rise to the Change Order request, even if the total amount of the requested change in the Contract Price or impact on the Contract Time is not yet known at that time. If City requests that DBE propose the terms of a Change Order, unless otherwise specified in City's request, DBE must provide the Engineer with a written proposal for the change in the Contract Price or Contract Time within five working days of receiving City's request, in a form satisfactory to the Engineer.

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

(C) **Required Documentation.** All claimed costs must be fully documented, and any related request for an extension of time or delay-related costs must be included at that time and in compliance with the requirements of Article 5 of the General Conditions. Upon request, DBE must permit City to inspect its original and unaltered bidding records, subcontract agreements, subcontract change orders, purchase orders, invoices, or receipts associated with the claimed costs.

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

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

"The undersigned DBE certifies under penalty of perjury that its statements and representations in this Change Order request are true and correct. DBE warrants that this Change Order request is comprehensive and complete as to the Work or changes referenced herein, and agrees that any known or foreseeable costs, expenses, or time extension requests not included herein are deemed waived. DBE understands that submission of claims which have no basis in fact or which DBE knows to be false may violate the False Claims Act, as set forth in Government Code Sections 12650 et seq., and Chapter 3.17 of the San Pablo Municipal Code."

6.3 Adjustments to Contract Price. The amount of any increase or decrease in the Contract Price will be determined based on one of the following methods listed below, in the order listed with unit pricing taking precedence over the other methods. Markup applies only to City-authorized time and material Work, and does not apply to any other payments to DBE. For Work items or components that are deleted in their entirety, DBE will only be entitled to compensation for those direct, actual, and documented costs (including restocking fees), reasonably incurred before DBE was notified of the City's intent to delete the Work, with no markup for overhead, profit, or other indirect costs.

(A) **Unit Pricing.** Amounts previously provided by DBE in the form of unit prices, either in the Proposal or in a post-award schedule of values pursuant to Section 8.2, Schedule of Values, will apply to determine the price for the affected Work, to the extent applicable unit prices have been provided for that type of Work. No additional markup for overhead, profit, or other indirect costs will be added to the calculation.

(B) **Lump Sum.** A mutually agreed upon, all-inclusive lump sum price for the affected Work with no additional markup for overhead, profit, or other indirect costs.

(C) **Time and Materials.** On a time and materials basis, if and only to the extent compensation on a time and materials basis is expressly authorized by City in advance of DBE's performance of the Work and subject to any not-to-exceed limit. Time and materials compensation for increased costs or Extra Work (but not decreased costs or deleted Work), will include allowed markup for overhead, profit, and other indirect costs, calculated as the total of the following sums, the cumulative total of which may not exceed the maximum markup rate of 15%:

- (1) All direct labor costs provided by DBE or its general contractor, excluding superintendence, project management, or administrative costs, plus 15% markup;
- (2) All direct material costs provided by DBE or its general contractor, including sales tax, plus 15% markup;
- (3) All direct plant and equipment rental costs provided by DBE or its general contractor, plus 15% markup;
- (4) All direct additional subcontract costs plus 5% markup for Work performed by Subcontractors; and
- (5) Increased bond or insurance premium costs computed at 1.5% of total of the previous four sums.

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

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

Article 7 – General Construction Provisions

7.1 Permits, Fees, Business License, and Taxes.

(A) **General.** DBE must obtain and pay for any and all permits, fees, or licenses required to perform the Work, unless otherwise indicated in the Contract Documents, including a building permit from the City. DBE must cooperate with and provide notifications to all government agencies with jurisdiction over the Project, as may be required, and must prepare and submit all documents necessary to obtain any required approval from government agencies with jurisdiction over the Project, as may be required. DBE must provide City with copies of all notices, permits and permit applications, payment of required fees, approval(s) from government agencies with jurisdiction over the Project, and any licenses required for the Work. DBE, members of the DB Team, and Subcontractor(s) must obtain a City business license before beginning Work on the Project.

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

7.2 Temporary Facilities. DBE must provide, at DBE's sole expense, any and all temporary facilities for the Project, including an onsite staging area for materials and equipment, a field office, sanitary facilities, utilities, storage, scaffolds, barricades, walkways, and any other temporary structure required to safely perform the Work along with any incidental utility services. The location of all temporary facilities must be approved by the City prior to installation. Temporary facilities must be safe and adequate for the intended use and installed and maintained in accordance with Laws and the Contract Documents. DBE must fence and screen the Project site and, if applicable, any separate Worksites, including the staging area, and its operation must minimize inconvenience to neighboring properties. Additional provisions pertaining to temporary facilities may be included in the Bridging Documents or Special Conditions.

(A) **Utilities.** DBE must install and maintain the power, water, sewer and all other utilities required for the Project site, at DBE's sole expense, including the piping, wiring, internet and wifi connections, and any related equipment necessary to maintain the temporary facilities.

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

7.3 Noninterference and Site Management. DBE must avoid interfering with City's use of its property at or adjacent to the Project site, including use of roadways, entrances, parking areas, walkways, and structures. DBE must also minimize disruption of access to private property in the Project vicinity. DBE must coordinate with affected property owners, tenants, and businesses, and maintain some vehicle and pedestrian access to their residences or properties at all times. Temporary access ramps, fencing or other measures must be provided as needed. Before blocking access to a private driveway or parking lot, DBE must provide effective notice to the affected parties at least 48 hours in advance of the pending closure and allow them to remove vehicles. Private driveways, residences and parking lots must have access to a roadway during non-Work hours.

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

(B) **Offsite Staging Area and Field Office.** If additional space beyond the Project site is needed, such as for the staging area or the field office, DBE may need to make arrangements with the nearby property owner(s) to secure the space. Before using or occupying any property owned by a third party, DBE must provide City with a copy of the necessary license agreement, easement, or other written authorization from the property owner, together with a written release from the property owner holding City harmless from any related liability, in a form acceptable to the City Attorney.

(C) **Traffic Management.** DBE must provide traffic management and traffic controls as specified in the Contract Documents, as required by Laws, and as otherwise required to ensure public and worker safety, and to avoid interference with public or private operations or the normal flow of vehicular, bicycle, or pedestrian traffic.

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

7.5 Project Site and Nearby Property Protections.

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

(1) Subject to City's approval, DBE will provide and install safeguards to protect the Work; any Worksite, including the Project site; City's real or personal property and the real or personal property of adjacent or nearby property owners, including plant and tree protections.

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

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

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

(5) DBE will not permit any structure or infrastructure to be loaded in a manner that will damage or endanger the integrity of the structure or infrastructure.

(B) **Securing Project Site.** After completion of Work each day, DBE must secure the Project site and, to the extent feasible, make the area reasonably accessible to the

public unless City approves otherwise. All excess materials and equipment not protected by approved traffic control devices must be relocated to the staging area or demobilized. Trench spoils must be hauled off the Project site daily and open excavations must be protected with steel plates. DBE and Subcontractor personnel may not occupy or use the Project site for any purpose during non-Work hours, except as may be provided in the Contract Documents or pursuant to prior written authorization from City.

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

(D) **Support; Adjacent Properties.** DBE must provide, install, and maintain all shoring, bracing, and underpinning necessary to provide support to City's property and adjacent properties and improvements thereon. DBE must provide notifications to adjacent property owners as may be required by Laws. See also, Section 7.15, Trenching of Five Feet or More.

(E) **Notification of Property Damage.** DBE must immediately notify the City of damage to any real or personal property resulting from Work on the Project. DBE must immediately provide a written report to City of any such property damage in excess of \$500 (based on estimated cost to repair or replace) within 24 hours of the occurrence. The written report must include: (1) the location and nature of the damage, and the owner of the property, if known; (2) the name and address of each employee of DBE or any Subcontractor involved in the damage; (3) a detailed description of the incident, including precise location, time, and names and contact information for known witnesses; and (4) a police or first responder report, if applicable. If DBE is required to file an accident report with another government agency, DBE will provide a copy of the report to City.

7.6 Materials and Equipment.

(A) **General.** Unless otherwise specified, all materials and equipment required for the Work must be new, free from defects, and of the best grade for the intended purpose, and furnished in sufficient quantities to ensure the proper and expeditious performance of the Work. DBE must employ measures to preserve the specified quality and fitness of the materials and equipment. Unless otherwise specified, all materials and equipment required for the Work are deemed to include all components required for complete installation and intended operation, and must be installed in accordance with the manufacturer's recommendations or instructions. DBE is responsible for all shipping, handling, and storage costs associated with the materials and equipment required for the Work and DBE is responsible for providing security and protecting the Work and all of the required materials, supplies, tools and equipment at DBE's sole cost until City has formally accepted the Project as set forth in Section 11.1, Final Completion. DBE will not assign, sell, mortgage, or hypothecate any materials or equipment for the Project, or remove any materials or equipment that have been installed or delivered.

(B) **City-Provided.** If the Work includes installation of materials or equipment to be provided by City, DBE is solely responsible for the proper examination, handling, storage, and installation in accordance with the Contract Documents. DBE must notify City of any defects discovered in City-provided materials or equipment, sufficiently in advance of scheduled use or installation to afford adequate time to procure replacement materials or

equipment as needed. DBE is solely responsible for any loss of or damage to such items which occurs while the items are in DBE's custody and control, the cost of which may be offset from the Contract Price and deducted from any payment(s) due to DBE.

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

7.7 Substitutions.

(A) **"Or Equal."** Any specification in the Bridging Documents or in the City-approved Construction Documents designating a material, product, or thing (collectively, "item") or service by specific brand or trade name, followed by the words "or equal," is intended only to indicate the quality and type of item or service desired, and DBE may request use of any equal item or service. Unless otherwise stated in the Bridging Documents or City-approved Construction Documents, any reference to a specific brand or trade name for an item that is used solely for the purpose of describing the type of item desired, will be deemed to be followed by the words "or equal." A substitution will only be approved if it is a true "equal" item in every aspect of design, function, and quality, as determined by City, including dimensions, weight, maintenance requirements, durability, fit with other elements, and schedule impacts.

(B) **Request for Substitution.** A request for substitution of an item specified in the Bridging Documents must be submitted in writing to City for approval with the Design Development Documents. A request for substitution of an item specified in the City-approved Construction Documents must be submitted in writing to City for approval sufficiently in advance of the time needed to avoid delay of the Work, factoring in adequate time for testing, re-testing, or resubmittal.

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

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

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

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

7.8 Testing and Inspection.

(A) **General.** All materials, equipment, and workmanship used in the Work are subject to inspection and testing by City at all times and locations during construction and/or fabrication and at any Worksite, including at shops and yards as well as at the

Project site. All manufacturers' application or installation instructions must be provided to the Inspector at least ten days prior to the first such application or installation. DBE must, at all times, make the Work available for testing or inspection. Neither City's inspection or testing of Work, nor its failure to do so, operate to waive or limit DBE's duty to complete the Work in accordance with the Contract Documents.

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

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

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

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

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

(4) DBE is responsible for properly shoring all compaction test sites deeper than five feet below grade, as required under Section 7.15 below.

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

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

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

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

7.9 Project Site Conditions and Maintenance. DBE must at all times, on a 24-hour basis and at its sole cost, maintain the Project site and staging and storage areas in clean, neat, and sanitary condition and in compliance with all Laws pertaining to safety, air quality, and dust control. Adequate toilets must be provided, and properly maintained and serviced for all workers on the Project site, located in a suitably secluded area, subject to City's prior approval. DBE must also, on a daily basis and at its sole cost, remove and properly dispose of the debris and waste materials from the Project site.

(A) **Air Emissions Control.** DBE must not discharge smoke or other air contaminants into the atmosphere in violation of any Laws.

(B) **Dust and Debris.** DBE must minimize and confine dust and debris resulting from the Work. DBE must abate dust nuisance by cleaning, sweeping, and immediately sprinkling with water excavated areas of dirt or other materials prone to cause dust, and within one hour after the Engineer notifies DBE that an airborne nuisance exists. The Engineer may direct that DBE provide an approved water-spraying truck for this purpose. If water is used for dust control, DBE will only use the minimum necessary. DBE must take all necessary steps to keep waste water out of streets, gutters, or storm drains. See Section 7.19, Environmental Control. If City determines that the dust control is not adequate, City may have the work done by others and deduct the cost from the Contract Price. DBE will immediately remove any excess excavated material from the Project site and any dirt deposited on public streets.

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

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

(2) Hauling trucks and other vehicles leaving the Project site must be cleaned of exterior mud or dirt before traveling on City streets. Materials and loose debris must be delivered and loaded to prevent dropping materials or debris. DBE must immediately remove spillage from hauling on any publicly traveled way. Streets affected by Work on the Project must be kept clean by street sweeping.

(D) **Disposal.** DBE must dispose of all Project debris and waste materials in a safe and legal manner. The solid waste franchise agreement between the City and Richmond Sanitary Service ("RSS") provides that company the exclusive right to collect and dispose of solid waste in the City. All construction waste that is not self-hauled by DBE must be collected by RSS. DBE may not burn or bury waste materials on the Project site. DBE will not allow any dirt, refuse, excavated material, surplus concrete or mortar, or any associated washings, to be disposed of onto streets, into manholes or into the storm drain system.

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

to the previously existing improvements, and the condition, finish and dimensions must match the previously existing improvements. DBE must restore to original condition all property or items that are not designated for alteration under the Contract Documents and leave each Worksite clean and ready for occupancy or use by City.

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

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

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

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

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

(A) **Duty to Update.** The as-built drawings must be updated as changes occur, on a daily basis if necessary. City may withhold the estimated cost for City to have the as-built drawings prepared from payments otherwise due to DBE, until the as-built drawings are brought up to date to the satisfaction of City. Actual locations to scale must be identified on the as-built drawings for all runs of mechanical and electrical work, including all site utilities installed underground, in walls, floors, or otherwise concealed. Deviations from the original Plans must be shown in detail. The exact location of all main runs, whether piping, conduit, ductwork, or drain lines must be shown by dimension and elevation. The location of all buried pipelines, appurtenances, or other improvements must be represented by coordinates and by the horizontal distance from visible above-ground improvements.

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

(C) **Format Requirements.** As-built drawings must be submitted in the following formats:

- (1) AutoCAD (latest version). Include survey points and infrastructure shots.
- (2) Acrobat PDF (full/actual size, >600dpi) scanned wet signed.
- (3) One (full size bond) complete set wet-signed hardcopy.

7.12 Existing Utilities.

(A) **General.** The Work may be performed in developed, urban areas with existing utilities, both above and below ground, including utilities identified in the Contract Documents or in other informational documents or records. DBE must take due care to locate identified or reasonably identifiable utilities before proceeding with trenching, excavation, or any other activity that could damage or disrupt existing utilities. This may include excavation with small equipment, potholing, or hand excavation, and, if practical, using white paint or other suitable markings to delineate the area to be excavated. Except as otherwise provided herein, DBE will be responsible for costs resulting from damage to identified or reasonably identifiable utilities due to DBE's negligence or failure to comply with the Contract Documents, including the requirements in this Article 7.

(B) **Unidentified Utilities.** Pursuant to Government Code section 4215, if, during the performance of the Work, DBE discovers utility facilities not identified by City in the Contract Documents, DBE must immediately provide written notice to City and the utility. City assumes responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the Project site if those utilities are not identified in the Contract Documents. DBE will be compensated in accordance with the provisions of the Contract Documents for the costs of locating, repairing damage not due to DBE's failure to exercise reasonable care, and removing or relocating utility facilities not indicated in the Contract Documents with reasonable accuracy, and for equipment on the Project necessarily idled during such work. DBE will not be assessed liquidated damages for delay in completion of the Work, to the extent the delay was caused by City's failure to provide for removal or relocation of the utility facilities.

7.13 Notice of Excavation. DBE must comply with all applicable requirements in Government Code sections 4216 through 4216.5, which are incorporated by reference herein. Government Code section 4216.2 requires that, except in an emergency, DBE must contact the appropriate regional notification center, or Underground Services Alert at 800-642-2444 (for Northern California) at least two working days, but not more than 14 calendar days, before starting any excavation if the excavation will be conducted in an area that is known, or reasonably should be known, to contain subsurface installations. DBE may not begin excavation until it has obtained and submitted to Engineer an inquiry identification number from Underground Services Alert.

7.14 Trenching and Excavations of Four Feet or More. As required by Public Contract Code section 7104, if the Work includes digging trenches or other excavations that extend deeper than four feet below the surface, the provisions in this Section apply to the Work and the Project.

(A) **Duty to Notify.** DBE must promptly, and before the following conditions are disturbed, provide written notice to City if DBE finds any of the following conditions:

- (1) Material that DBE believes may be a hazardous waste, as defined in section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing Laws;
- (2) Subsurface or latent physical conditions at the Project site differing from those indicated by information about the Project site made available to DBE prior to the deadline for submitting proposals; or
- (3) Unknown physical conditions at the Project site of any unusual nature, materially different from those ordinarily encountered and generally recognized as inherent in work of the character required by the Contract Documents.

(B) **City Investigation.** City will promptly investigate the conditions and if City finds that the conditions materially differ from those indicated, apparent, or reasonably inferred from information about the Project site made available to DBE prior to the deadline for

submitting Proposals, or involve hazardous waste, and cause a decrease or increase in DBE's cost of, or the time required for, performance of any part of the Work, City will issue a Change Order.

(C) **Disputes.** In the event that a dispute arises between City and DBE regarding any of the conditions specified in subsection (B) above, or the terms of a Change Order issued by City, DBE will not be excused from completing the Work within the Contract Time, but must proceed with all Work to be performed under the Contract. DBE will retain any and all rights provided either by the Contract or by Laws which pertain to the resolution of disputes between DBE and City.

7.15 Trenching of Five Feet or More. As required by Labor Code section 6705, if the Contract Price exceeds \$25,000 and the Work includes the excavation of any trench or trenches of five feet or more in depth, a detailed plan must be submitted to City for acceptance in advance of the excavation. The detailed plan must show the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation. If the plan varies from the shoring system standards, it must be prepared by a California registered civil or structural engineer. Use of a shoring, sloping, or protective system less effective than that required by the Construction Safety Orders is prohibited.

7.16 New Utility Connections. Except as otherwise specified, City will pay connection charges and meter costs for new permanent utilities required by the Contract Documents, if any. DBE must notify City sufficiently in advance of the time needed to request service from each utility provider so that connections and services are initiated in accordance with the Project schedule.

7.17 Lines and Grades. DBE is required to use any benchmark provided by the Engineer. Unless otherwise specified in the Contract Documents, DBE must provide all lines and grades required to execute the Work. DBE must also provide, preserve, and replace if necessary, all construction stakes required for the Project. All stakes or marks must be set by a California licensed surveyor or a California registered civil engineer. DBE must notify the Engineer of any discrepancies found between DBE's staking and grading and information provided by the Contract Documents. Upon completion, all Work must conform to the lines, elevations, and grades shown in the Plans, including any changes directed by a Change Order.

7.18 Historic or Archeological Items.

(A) **DBE's Obligations.** DBE must ensure that all persons performing Work at the Project site are required to immediately notify the Project Manager upon discovery of any potential historic or archeological items, including historic or prehistoric ruins, a burial ground, archaeological or vertebrate paleontological site, including fossilized footprints or other archeological, paleontological or historical feature on the Project site (collectively, "Historic or Archeological Items").

(B) **Discovery; Cessation of Work.** Upon discovery of any potential Historic or Archeological Items, Work must be stopped within an 85-foot radius of the find and may not resume until authorized in writing by City. If required by City, DBE must assist in protecting or recovering the Historic or Archeological Items, with any such assistance to be compensated as Extra Work on a time and materials basis under Article 6, Contract Modification. At City's discretion, a suspension of Work required due to discovery of Historic or Archeological Items may be treated as Excusable Delay pursuant to Article 5, or as a suspension for convenience under Article 13.

7.19 Environmental Control. DBE must not pollute any drainage course or its tributary inlets with fuels, oils, bitumens, acids, insecticides, herbicides or other harmful materials. DBE must prevent the release of any hazardous material or hazardous waste into the soil or groundwater

and prevent the unlawful discharge of pollutants into City's storm drain system and watercourses as required below. DBE and its Subcontractors must at all times in the performance of the Work comply with all Laws concerning pollution of waterways.

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

(B) **DBE's Obligations.** If required for the Work, a copy of the Stormwater Permit is on file in City's principal administrative offices, and DBE must comply with it without adjustment of the Contract Price or the Contract Time. DBE must timely and completely submit required reports and monitoring information required by the conditions of the Stormwater Permit. DBE also must comply with all other Laws governing discharge of stormwater, including applicable municipal stormwater management programs.

(C) **CALGreen's Construction and Demolition Requirements.** DBE must comply with CALGreen's Construction and Demolition requirements (<http://www.calrecycle.ca.gov/LGCentral/Library/CandDModel/Instruction/FAQ.htm>).

(D) **PCBs in Building Materials.** If the Project involves buildings of masonry structure that were built or renovated between 1950 and 1979, DBE must perform a sampling for polychlorinated biphenyls ("PCBs") in accordance with Toxic Substances Control Act (40 CFR Part 761). DBE must also test any premises that may cause or contribute to illicit stormwater discharges (i.e. PCBs) and provide test reports to the City pursuant to San Pablo Municipal Code § 8.40.110(D). If PCBs are found to be onsite, the PCB containing material must be removed and disposed of in accordance with Toxic Substances Control Act (40 CFR part 761) and DBE must demonstrate to the EPA and the City that it has complied with these federal regulations.

7.20 Noise Control. DBE must comply with all applicable noise or sound control Laws, including the City's Noise Control Ordinance (San Pablo Municipal Code Chapter 9.12). The noise level from the DBE's operations between the hours of 10:00 p.m. and 7:00 a.m. (if such hours are allowed by City Engineer), must not exceed 86 DbA at a distance of 50 feet. This requirement does not relieve the DBE from responsibility for complying with other Laws regulating noise levels. Noise control requirements apply to all equipment used for the Work or related to the Work, including trucks, transit mixers or transient equipment that may or may not be owned by DBE. The use of loud sound signals will be avoided in favor of light warnings except those required by safety Laws for the protection of personnel.

7.21 Mined Materials. Pursuant to the Surface Mining and Reclamation Act of 1975, Public Resources Code section 2710 et seq., any purchase of mined materials, such as construction aggregate, sand, gravel, crushed stone, road base, fill materials, and any other mineral materials must originate from a surface mining operation included on the AB 3098 List, which may be requested from: <https://filerequest.conservation.ca.gov/RequestFile/79092>.

Article 8 – Payment

8.1 Payment for Design-Build Services. For all Design-Build Services performed in compliance with the Contract Documents, City will compensate DBE on a monthly basis pursuant to the Contract and this Article 8 in an amount not to exceed the Contract Price, as adjusted by approved Change Orders, if any, as further specified below.

8.2 Schedule of Values. Prior to commencing the Construction Phase, DBE must prepare and submit to the Project Manager a schedule of values apportioned to the various divisions and phases of the Work, including cost allocations for both the Design Services and the Construction Services to be provided during the Construction Phase. Each line item contained in the schedule of values must be assigned a value such that the total of all items required for the Construction Services does not exceed the Contract Price for Construction Services under Section 3.1(B) of the Contract. The items must be sufficiently detailed to enable accurate evaluation of the percentage of completion claimed in each application for payment, and the assigned value consistent with any itemized or unit pricing submitted with DBE's Proposal.

(A) **Measurements for Unit Price Work.** Materials and items of Work to be paid for on the basis of unit pricing will be measured according to the methods specified in the Contract Documents.

(B) **Deleted or Reduced Work.** DBE will not be compensated for Work that City has deleted or reduced in scope, except for any labor, material or equipment costs for such Work that DBE reasonably incurred before DBE learned that the Work could be deleted or reduced. DBE will only be compensated for those actual, direct and documented costs incurred, and will not be entitled to any mark up for overhead or lost profits.

8.3 Progress Payments. Following the last day of each month, or as otherwise required by the Special Conditions or Specifications, DBE will submit to the Project Manager a monthly application for payment for Work performed during the preceding month based on the estimated value of the Design Services or Construction Services performed during that preceding month.

(A) **Application for Payment.**

(1) Each application for payment for Design Services must summarize the Design Services provided during the preceding month and identify each Design Professional that provided those services.

(2) Each application for payment for Construction Services must be itemized to include labor, materials, and equipment incorporated into the Work, and materials and equipment delivered to the Project site, as well as authorized and approved Change Orders. Each application for payment for Construction Services must be supported by DBE's schedule of values and any other substantiating data required by the Contract Documents. If requested by the Project Manager, each application for payment for Construction Services must also be accompanied by an executed Conditional Waiver And Release Upon Progress Payment, using the form specified in Civil Code section 8132 for each Subcontractor that performed Work during the period covered by that application. The application for payment for Construction Services must also include the monthly report documenting compliance with the Skilled and Trained Workforce requirements pursuant to Public Contract Code section 2602, and as specified in Section 9.6, below.

(B) **Payment of Undisputed Amounts.**

(1) City will pay the undisputed amount due within 30 days after DBE has submitted a complete and accurate payment application, subject to Public Contract Code section 20104.50. City will deduct a percentage from each progress payment as retention, as set forth in Section 8.6, below, and may withhold additional amounts as set forth in Section 8.4, below.

(2) If required by the Project Manager, within 45 days after receipt of each payment from City for Construction Services, DBE must submit an executed Unconditional Waiver And Release Upon Progress Payment, using the form specified in Civil

Code section 8134, from each Subcontractor that has received a progress payment from DBE following DBE's receipt of payment from City.

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

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

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

(C) For DBE's failure to pay its Subcontractors and suppliers when payment is due, City may withhold an amount equal to the total of past due payments and may opt to pay that amount separately via joint check pursuant to Section 8.7(B), Joint Checks.

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

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

(F) For DBE's failure to submit any required schedule or schedule update in the manner and within the time specified in the Contract Documents, City may withhold an amount equal to five percent of the total amount requested until DBE complies with its schedule submittal obligations.

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

(H) For Work performed without Shop Drawings that have been accepted by the City, when accepted Shop Drawings are required before proceeding with the Work, City may deduct an amount based on the estimated cost to correct unsatisfactory Work or diminution in value.

(I) For fines, payments, or penalties assessed under the Labor Code, City may deduct from payments due to DBE as required by Laws and as directed by the Division of Labor Standards Enforcement.

(J) For any other costs or charges that may be withheld or deducted from payments to DBE, as provided in the Contract Documents, including liquidated damages, City may withhold or deduct such amounts from payment otherwise due to DBE.

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

8.6 Retention. City will retain five percent of the full amount due on each progress payment (i.e., the amount due before any withholding or deductions pursuant to Section 8.4, Adjustment of

Payment Application), or the percentage stated in the RFP, whichever is greater, as retention to ensure full and satisfactory performance of the Design-Build Services. DBE is not entitled to any reduction in the rate of withholding at any time, nor to release of any retention before 35 days following City's acceptance of the Project.

(A) ***Substitution of Securities.*** As provided by Public Contract Code section 22300, DBE may request in writing that it be allowed, at its sole expense, to substitute securities for the retention withheld by City. Any escrow agreement entered into pursuant to this provision must fully comply with Public Contract Code section 22300 and will be subject to approval as to form by City's legal counsel. If City exercises its right to draw upon such securities in the event of default pursuant to section (7) of the statutory Escrow Agreement for Security Deposits in Lieu of Retention, pursuant to subdivision (f) of Public Contract Code section 22300 ("Escrow Agreement"), and if DBE disputes that it is in default, its sole remedy is to comply with the dispute resolution procedures in Article 12 and the provisions therein. It is agreed that for purposes of this paragraph, an event of default includes City's rights pursuant to these Contract Documents to withhold or deduct sums from retention, including withholding or deduction for liquidated damages, incomplete or defective Work, stop payment notices, or backcharges. It is further agreed that if any individual authorized to give or receive written notice on behalf of a party pursuant to section (10) of the Escrow Agreement are unavailable to give or receive notice on behalf of that party due to separation from employment, retirement, death, or other circumstances, the successor or delegee of the named individual is deemed to be the individual authorized to give or receive notice pursuant to section (10) of the Escrow Agreement.

(B) ***Release of Undisputed Retention.*** All undisputed retention, less any amounts that may be assessed as liquidated damages, retained for stop notices, or otherwise withheld pursuant to Section 8.4, Adjustment of Payment Application, will be released as Final Payment to DBE no sooner than 35 days following recordation of the notice of completion, and no later than 60 days following acceptance of the Project by the City Council or authorized designee, pursuant to Section 11.1(C), Acceptance, or, if the Project has not been accepted, no later than 60 days after the Project is otherwise considered complete pursuant to Public Contract Code section 7107(c).

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

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

(B) ***Joint Checks.*** City reserves the right, acting in its sole discretion, to issue joint checks made payable to DBE and its Subconsultants, Subcontractors or suppliers, if City determines this is necessary to ensure fair and timely payment for a Subconsultant, Subcontractor or supplier who has provided services or goods for the Project. As a condition to release of payment by a joint check, the joint check payees may be required to execute a joint check agreement in a form provided or approved by the City Attorney's Office. The joint check payees will be jointly and severally responsible for the allocation and disbursement of funds paid by joint check. Payment by joint check will not be construed to create a contractual relationship between City and a Subconsultant, Subcontractor or supplier of any tier beyond the scope of the joint check agreement.

8.8 Final Payment. DBE's application for Final Payment must comply with the requirements for submitting an application for a progress payment as stated in Section 8.3, above. Application must also include completed and signed labor compliance forms for federal or CDBG funded projects, if required. Corrections to previous progress payments, including adjustments to estimated quantities for unit priced items, may be included in the Final Payment. If DBE fails to submit a timely application for Final Payment, City reserves the right to unilaterally process and issue Final Payment without an application from DBE in order to close out the Project. For purposes of determining the deadline for Claim submission pursuant to Article 12, the date of Final Payment is deemed to be the date that City acts to release undisputed retention as final payment to DBE, or otherwise provides written notice to DBE of Final Payment or that no undisputed funds remain available for Final Payment due to offsetting withholdings or deductions pursuant to Section 8.4, Adjustment of Payment Application. If the amount due from DBE to City exceeds the amount of Final Payment, City retains the right to recover the balance from DBE or its sureties.

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

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

Article 9 – Labor Provisions

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

9.2 Labor Code Requirements. The following requirements apply to any work classified as "public works" pursuant to Labor Code § 1720 et seq. (and any corresponding regulations):

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

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

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

(D) **Notices.** Pursuant to Labor Code section 1771.4, DBE is required to post all job site notices prescribed by Laws.

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

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

(B) **Federal Requirements.** If this Project is subject to federal prevailing wage requirements in addition to California prevailing wage requirements, DBE and its Subcontractors are required to pay the higher of the currently applicable state or federal prevailing wage rates.

9.4 Payroll Records. At all times during performance of the Construction Services, DBE must comply with the provisions of Labor Code sections 1771.4, 1776, and 1812 and all implementing regulations, which are fully incorporated by this reference, including requirements for monthly electronic submission of payroll records to the DIR.

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

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

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

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

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

9.5 Labor Compliance. Pursuant to Labor Code section 1771.4, Construction Services for the Project are subject to compliance monitoring and enforcement by the DIR.

9.6 Skilled and Trained Workforce. DBE and its Subcontractors of every tier must use a Skilled and Trained Workforce to perform all Work on the Project that falls within an apprenticeable occupation in the building and construction trades. DBE will submit a report each

month to the City demonstrating compliance with this requirement during the previous calendar month. The monthly report on compliance with Skilled and Trained Workforce requirements during the previous calendar month must be submitted with DBE's monthly application for progress payments

Article 10 – Safety Provisions

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

(A) **Reporting Requirements.** DBE must immediately notify the City of any death, serious injury or illness resulting from Work on the Project. DBE must immediately provide a written report to City of each recordable accident or injury occurring at any Worksite within 24 hours of the occurrence. The written report must include: (1) the name and address of the injured or deceased person; (2) the name and address of each employee of DBE or of any Subcontractor involved in the incident; (3) a detailed description of the incident, including precise location, time, and names and contact information for known witnesses; and (4) a police or first responder report, if applicable. If DBE is required to file an accident report with a government agency, DBE will provide a copy of the report to City.

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

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

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

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

10.3 Material Safety. DBE is solely responsible for complying with section 5194 of Title 8 of the California Code of Regulations, including by providing information to DBE's employees about any hazardous chemicals to which they may be exposed in the course of the Work. A hazard communication program and other forms of warning and training about such exposure must be used. DBE must also maintain Safety Data Sheets ("SDS") at the Project site, as required by

Laws, for materials or substances used or consumed in the performance of the Work. The SDS will be accessible and available to DBE's employees, Subcontractors, and City.

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

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

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

10.5 Emergencies. In an emergency affecting the safety or protection of persons, Work, or property at or adjacent to any Worksite, DBE must take reasonable and prompt actions to prevent damage, injury, or loss, without prior authorization from the City if, under the circumstances, there is inadequate time to seek prior authorization from the City.

10.6 COVID-19 Pandemic. DBE must comply with current health orders issued by Contra Costa County Health Services at: <https://www.coronavirus.cchealth.org/health-orders>. DBE and Subcontractors shall comply with these requirements and contact City staff immediately if there is any issue with compliance. In addition, DBE, members of the Design-Build Team, and its Subconsultants and Subcontractors providing Design-Build services at any Worksite on City property must provide proof of COVID-19 vaccination, as well as comply with the City's current COVID-19 policies while on City property, which policies may be amended from time to time by the City acting in its sole discretion.

Article 11 – Completion and Warranty Provisions

11.1 Final Completion.

(A) **Final Inspection and Punch List.** When the Work required by this Contract is fully performed, DBE must provide written notification to City requesting final inspection. The Engineer will schedule the date and time for final inspection, which must include DBE's primary representative for this Project and its superintendent for the Construction Services. Based on that inspection, the City will prepare a punch list of any items that are incomplete, missing, defective, incorrectly installed, or otherwise not compliant with the Contract Documents. The punch list to DBE will specify the time by which all of the punch list items must be completed or corrected. The punch list may include City's estimated cost to complete each punch list item if DBE fails to do so within the specified time. The omission of any non-compliant item from a punch list will not relieve DBE from fulfilling all requirements of the Contract Documents. DBE's failure to complete any punch list item within the time specified in the punch list will not waive or abridge its warranty obligations for any such items that must be completed by the City or by a third party retained by the City due to DBE's failure to timely complete any such outstanding item.

(B) **Requirements for Final Completion.** Final Completion will be achieved upon completion or correction of all punch list items, as verified by City's further inspection, and

upon satisfaction of all other Contract requirements, including any commissioning required under the Contract Documents, and submission of all final submittals, including instructions and manuals as required under Section 7.10, and complete, final as-built drawings as required under Section 7.11, all to City's satisfaction.

(C) **Acceptance.** The Project will be considered accepted upon City Council action during a public meeting to accept the Project, unless the Engineer is authorized to accept the Project, in which case the Project will be considered accepted upon the date of the Engineer's issuance of a written notice of acceptance. In order to avoid delay of Project close out, the City may elect, acting in its sole discretion, to accept the Project as complete subject to exceptions for punch list items that are not completed within the time specified in the punch list.

(D) **Final Payment and Release of Retention.** Final Payment and release of retention, less any sums withheld pursuant to the provisions of the Contract Documents, will not be made sooner than 35 days after recordation of the notice of completion. If DBE fails to complete all of the punch list items within the specified time, City may withhold up to 150% of City's estimated cost to complete each of the remaining items from Final Payment and may use the withheld retention to pay for the costs to self-perform the outstanding items or to retain a third party to complete any such outstanding punch list item.

11.2 Warranty.

(A) **General.** DBE warrants that all materials and equipment will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. DBE further warrants that the Work will be free from material defects not intrinsic in the design or materials required in the Contract Documents. DBE warrants that materials or items incorporated into the Work comply with the requirements and standards in the Contract Documents, including compliance with Laws, and that any Hazardous Materials encountered or used were handled as required by Laws. At City's request, DBE must furnish satisfactory evidence of the quality and type of materials and equipment furnished. DBE's warranty does not extend to damage caused by normal wear and tear, or improper use or maintenance.

(B) **Warranty Period.** DBE's warranty must guarantee its Work for a period of one year from the date of Project acceptance (the "Warranty Period"), except when a longer guarantee is provided by a supplier or manufacturer or is required by the Specifications or Special Conditions. DBE must obtain from its Subcontractors, suppliers and manufacturers any special or extended warranties required by the Contract Documents.

(C) **Warranty Documents.** As a condition precedent to Final Completion, DBE must supply City with all warranty and guarantee documents relevant to equipment and materials incorporated into the Work and guaranteed by their suppliers or manufacturers. DBE will require all such warranties to be executed in writing for the benefit of City and, if directed by City, will enforce all warranties for the benefit of City.

(D) **Subcontractors.** The warranty obligations in the Contract Documents apply to Work performed by DBE and its Subcontractors, and DBE expressly agrees to be co-guarantor of such Work.

(E) **DBE's Obligations.** Upon written notice from City to DBE of any defect in the Work discovered during the Warranty Period, DBE or its responsible Subcontractor must promptly correct the defective Work at its own cost. DBE's obligation to correct defects discovered during the Warranty Period will continue past the expiration of the Warranty Period as to any defects in Work for which DBE was notified prior to expiration of the

Warranty Period. Work performed during the Warranty Period ("Warranty Work") will be subject to the warranty provisions in this Section 11.2 for a one-year period that begins upon completion of such Warranty Work to City's satisfaction.

(F) **City's Remedies.** If DBE and/or its responsible Subcontractor fails to correct defective Work within ten days following notice by City, or sooner if required by the circumstances, City may correct the defects to conform with the Contract Documents at DBE's sole expense. DBE must reimburse City for its costs in accordance with subsection (H), below.

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

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

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

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

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

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

Article 12 – Dispute Resolution

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

(A) **Definition.** "Claim" means a separate demand by DBE, submitted in writing by registered or certified mail with return receipt requested, for a change in the Contract Time, including a time extension or relief from liquidated damages, or a change in the Contract Price, when the demand has previously been submitted to City in accordance with the requirements of the Contract Documents, and which has been rejected or disputed by City, in whole or in part. A Claim may also include that portion of a unilateral Change Order that is disputed by DBE.

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

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

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

(E) **Informal Resolution.** DBE will make a good faith effort to informally resolve a dispute before initiating a Claim, preferably by face-to-face meeting between authorized representatives of DBE and City.

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

(A) **Substantiation.** The Claim must be submitted to City in writing clearly identified as a "Claim" submitted pursuant to this Article 12 and must include all of the documents necessary to substantiate the Claim including the Change Order request that was rejected in whole or in part, and a copy of City's written rejection that is in dispute. The Claim must clearly identify and describe the dispute, including relevant references to applicable portions of the Contract Documents, and a chronology of relevant events. Any Claim for additional payment must include a complete, itemized breakdown of all known or estimated labor, materials, taxes, insurance, and subcontract, or other costs. Substantiating documentation such as payroll records, receipts, invoices, or the like, must be submitted in support of each component of claimed cost. Any Claim for an extension of time or delay costs must be substantiated with a schedule analysis and narrative depicting and explaining claimed time impacts.

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

(1) Provide a cover letter, specifically identifying the submission as a "Claim" submitted under this Article 12 and specifying the requested remedy (e.g., amount of proposed change to Contract Price and/or change to Contract Time).

(2) Provide a summary of each Claim, including underlying facts and the basis for entitlement, and identify each specific demand at issue, including the specific Change Order request (by number and submittal date), and the date of City's rejection of that demand, in whole or in part.

(3) Provide a detailed explanation of each issue in dispute. For multiple issues included within a single Claim or for multiple Claims submitted concurrently, separately number and identify each individual issue or Claim, and include the following for each separate issue or Claim:

(a) A succinct statement of the matter in dispute, including DBE's position and the basis for that position;

(b) Identify and attach all documents that substantiate the Claim, including relevant provisions of the Contract Documents, RFIs, calculations, and schedule analysis (see subsection (A), Substantiation, above);

(c) A chronology of relevant events; and

(d) Analysis and basis for claimed changes to Contract Price, Contract Time, or any other remedy requested.

(4) Provide a summary of issues and corresponding claimed damages. If, by the time of the Claim submission deadline (below), the precise amount of the requested change in the Contract Price or Contract Time is not yet known, DBE must provide a good faith estimate, including the basis for that estimate, and must identify the date by which it is anticipated that the Claim will be updated to provide final amounts.

(5) Include the following certification, executed by DBE's authorized representative:

"The undersigned DBE certifies under penalty of perjury that its statements and representations in this Claim submittal are true and correct. DBE warrants that this Claim submittal is comprehensive and complete as to the matters in dispute, and agrees that any costs, expenses, or delay not included herein are deemed waived."

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

(1) A Claim disputing rejection of a request for a change in the Contract Time or Contract Price must be submitted within 15 days following the date that City notified DBE in writing that a request for a change in the Contract Time or Contract Price, duly submitted in compliance with Article 5 and Article 6, has been rejected in whole or in part. A Claim disputing the terms of a unilateral Change Order must be submitted within 15 days following the date of issuance of the unilateral Change Order. These Claim deadlines apply even if DBE cannot yet quantify the total amount of any requested change in the Contract Time or Contract Price. If the DBE cannot quantify those amounts, it must submit an estimate of the amounts claimed pending final determination of the requested remedy by DBE.

(2) With the exception of any dispute regarding the amount of Final Payment, any Claim must be filed on or before the date of Final Payment or will be deemed waived.

(3) A Claim disputing the amount of Final Payment must be submitted within 15 days of the effective date of Final Payment, under Section 8.8, Final Payment.

(4) Strict compliance with these Claim submission deadlines is necessary to ensure that any dispute may be mitigated as soon as possible, and to facilitate cost-efficient administration of the Project. Any Claim that is not submitted within the specified deadlines will be deemed waived by DBE.

12.3 City's Response. City will respond within 45 days of receipt of the Claim with a written statement identifying which portion(s) of the Claim are disputed, unless the 45-day period is extended by mutual agreement of City and DBE or as otherwise allowed under Public Contract Code section 9204. However, if City determines that the Claim is not adequately substantiated pursuant to Section 12.2(A), Substantiation, City may first request in writing, within 30 days of receipt of the Claim, any additional documentation supporting the Claim or relating to defenses to the Claim that City may have against the Claim.

(A) **Additional Information.** If additional information is thereafter required, it may be requested and provided upon mutual agreement of City and DBE. If DBE's Claim is based on estimated amounts, DBE has a continuing duty to update its Claim as soon as possible with information on actual amounts in order to facilitate prompt and fair resolution of the Claim.

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

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

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

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

(C) **Written Statement After Meet and Confer.** Within 10 working days after the meet and confer has concluded, City will issue a written statement identifying which portion(s) of the Claim remain in dispute, if any.

(D) **Submission to Mediation.** If the Claim or any portion remains in dispute following the meet and confer conference, within 10 working days after City issues the written statement identifying any portion(s) of the Claim remaining in dispute, the DBE may identify in writing disputed portion(s) of the Claim, which will be submitted for mediation, as set forth below.

12.5 Mediation and Government Code Claims.

(A) **Mediation.** Within ten working days after City issues the written statement identifying any portion(s) of the Claim remaining in dispute following the meet and confer, City and DBE will mutually agree to a mediator, as provided under Public Contract Code section 9204. Mediation will be scheduled to ensure the mutual availability of the selected mediator and all of the individuals that each party requires to represent its interests. If there

are multiple Claims in dispute, the parties may agree to schedule the mediation to address all outstanding Claims at the same time. The parties will share the costs of the mediator and mediation fees equally, but each party is otherwise solely and separately responsible for its own costs to prepare for and participate in the mediation, including costs for its legal counsel or any other consultants.

(B) **Government Code Claims.**

(1) Timely presentation of a Government Code Claim is a condition precedent to filing any legal action based on or arising from the Contract. Compliance with the Claim submission requirements in this Article 12 is a condition precedent to filing a Government Code Claim.

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

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

12.7 Arbitration. It is expressly agreed, under Code of Civil Procedure section 1296, that in any arbitration to resolve a dispute relating to this Contract, the arbitrator's award must be supported by law and substantial evidence.

12.8 Burden of Proof and Limitations. DBE bears the burden of proving entitlement to and the amount of any claimed damages. DBE is not entitled to damages calculated on a total cost basis, but must prove actual damages. DBE is not entitled to speculative, special, or consequential damages, including home office overhead or any form of overhead not directly incurred at the Project site or any other Worksite; lost profits; loss of productivity; lost opportunity to work on other projects; diminished bonding capacity; increased cost of financing for the Project; extended capital costs; non-availability of labor, material or equipment due to delays; or any other indirect loss arising from the Contract. The Eichleay Formula or similar formula will not be used for any recovery under the Contract. The City will not be directly liable to any Subcontractor or supplier.

12.9 Legal Proceedings. In any legal proceeding that involves enforcement of any requirements of the Contract Documents, the finder of fact will receive detailed instructions on the meaning and operation of the Contract Documents, including conditions, limitations of liability, remedies, claim procedures, and other provisions bearing on the defenses and theories of liability. Detailed findings of fact will be requested to verify enforcement of the Contract Documents. All of the City's remedies under the Contract Documents will be construed as cumulative, and not exclusive, and the City reserves all rights to all remedies available under law or equity as to any dispute arising from or relating to the Contract Documents or performance of the Work.

12.10 Other Disputes. The procedures in this Article 12 will apply to any and all disputes or legal actions, in addition to Claims, arising from or related to this Contract, including disputes regarding suspension or early termination of the Contract, unless and only to the extent that compliance with a procedural requirement is expressly and specifically waived by City. Nothing in this Article is intended to delay suspension or termination under Article 13.

Article 13 – Suspension and Termination

13.1 Suspension for Cause. In addition to all other remedies available to City, if DBE fails to perform or correct Work in accordance with the Contract Documents, including non-compliance with applicable environmental or health and safety Laws, City may immediately order the Work, or any portion of it, suspended until the circumstances giving rise to the suspension have been eliminated to City's satisfaction.

(A) **Notice of Suspension.** Upon receipt of City's written notice to suspend the Work, in whole or in part, except as otherwise specified in the notice of suspension, DBE and its Subcontractors must promptly stop Work as specified in the notice of suspension; comply with directions for cleaning and securing the Worksite; and protect the completed and in-progress Work and materials. DBE is solely responsible for any damages or loss resulting from its failure to adequately secure and protect the Project.

(B) **Resumption of Work.** Upon receipt of the City's written notice to resume the suspended Work, in whole or in part, except as otherwise specified in the notice to resume, DBE and its Subcontractors must promptly re-mobilize and resume the Work as specified; and within ten days from the date of the notice to resume, DBE must submit a recovery schedule, prepared in accordance with the Contract Documents, showing how DBE will complete the Work within the Contract Time.

(C) **Failure to Comply.** DBE will not be entitled to an increase in Contract Time or Contract Price for a suspension occasioned by DBE's failure to comply with the Contract Documents.

(D) **No Duty to Suspend.** City's right to suspend the Work will not give rise to a duty to suspend the Work, and City's failure to suspend the Work will not constitute a defense to DBE's failure to comply with the requirements of the Contract Documents.

13.2 Suspension for Convenience. City reserves the right to suspend, delay, or interrupt the performance of the Work in whole or in part, for a period of time determined to be appropriate for City's convenience. Upon notice by City pursuant to this provision, DBE must immediately suspend, delay, or interrupt the Work and secure the Project site as directed by City except for taking measures to protect completed or in-progress Work as directed in the suspension notice, and subject to the provisions of Section 13.1(A) and (B), above. If DBE submits a timely request for a Change Order in compliance with Articles 5 and 6, the Contract Price and the Contract Time will be equitably adjusted by Change Order pursuant to the terms of Articles 5 and 6 to reflect the cost and delay impact occasioned by such suspension for convenience, except to the extent that any such impacts were caused by DBE's failure to comply with the Contract Documents or the terms of the suspension notice or notice to resume. However, the Contract Time will only be extended if the suspension causes or will cause unavoidable delay in Final Completion. If DBE disputes the terms of a Change Order issued for such equitable adjustment due to suspension for convenience, its sole recourse is to comply with the Claim procedures in Article 12.

13.3 Termination for Default. City may declare that DBE is in default of the Contract for a material breach of or inability to fully, promptly, or satisfactorily perform its obligations under the Contract.

(A) **Default.** Events giving rise to a declaration of default include DBE's refusal or failure to supply sufficient skilled workers, proper materials, or equipment to perform the Work within the Contract Time; DBE's refusal or failure to make prompt payment to its employees, Subcontractors, or suppliers or to correct defective Work or damage; DBE's failure to comply with Laws, or orders of any public agency with jurisdiction over the Project; evidence of DBE's bankruptcy, insolvency, or lack of financial capacity to complete the

Work as required within the Contract Time; a suspension, revocation, or expiration and nonrenewal of DBE's license or DIR registration; dissolution, liquidation, reorganization, or other major change in DBE's organization, ownership, structure, or existence as a business entity; unauthorized assignment of DBE's rights or duties under the Contract; or any material breach of the Contract requirements.

(B) **Notice of Default and Opportunity to Cure.** Upon City's declaration that DBE is in default due to a material breach of the Contract Documents, if City determines that the default is curable, City will afford DBE the opportunity to cure the default within ten days of City's notice of default, or within a period of time reasonably necessary for such cure, including a shorter period of time if applicable.

(C) **Termination.** If DBE fails to cure the default or fails to expediently take steps reasonably calculated to cure the default within the time period specified in the notice of default, City may issue written notice to DBE and its performance bond surety of City's termination of the Contract for default.

(D) **Waiver.** Time being of the essence in the performance of the Work, if DBE's surety fails to arrange for completion of the Work in accordance with the Performance Bond, within seven calendar days from the date of the notice of termination pursuant to paragraph (C), City may immediately make arrangements for the completion of the Work through use of its own forces, by hiring a replacement contractor, or by any other means that City determines advisable under the circumstances. DBE and its surety will be jointly and severally liable for any additional cost incurred by City to complete the Work following termination, where "additional cost" means all cost in excess of the cost City would have incurred if DBE had timely completed Work without the default and termination. In addition, City will have the right to immediate possession and use of any materials, supplies, and equipment procured for the Project and located at the Project site or any Worksite on City property for the purposes of completing the remaining Work.

(E) **Compensation.** Within 30 days of receipt of updated as-builts, all warranties, manuals, instructions, or other required documents for Work installed to date, and delivery to City of all equipment and materials for the Project for which DBE has already been compensated, DBE will be compensated for the Work satisfactorily performed in compliance with the Contract Documents up to the effective date of the termination pursuant to the terms of Article 8, Payment, subject to City's rights to withhold or deduct sums from payment otherwise due pursuant to Section 8.4, and excluding any costs DBE incurs as a result of the termination, including any cancellation or restocking charges or fees due to third parties. If DBE disputes the amount of compensation determined by City, its sole recourse is to comply with the Claim Procedures in Article 12, by submitting a Claim no later than 30 days following notice from City of the total compensation to be paid by City.

(F) **Wrongful Termination.** If DBE disputes the termination, its sole recourse is to comply with the Claim procedures in Article 12. If a court of competent jurisdiction or an arbitrator later determines that the termination for default was wrongful, the termination will be deemed to be a termination for convenience, and DBE's damages will be strictly limited to the compensation provided for termination for convenience under Section 13.4, below. DBE waives any claim for any other damages for wrongful termination including special or consequential damages, lost opportunity costs, or lost profits, and any award of damages is subject to Section 12.8, Burden of Proof and Limitations.

13.4 Termination for Convenience. City reserves the right, acting in its sole discretion, to terminate all or part of the Contract for convenience upon written notice to DBE.

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

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

(2) *Demobilization.* Demobilization costs specified in the schedule of values, or if demobilization costs were not provided in a schedule of values pursuant to Section 8.2, then based on actual, reasonable, and fully documented demobilization costs; and

(3) *Termination Markup.* Five percent of the total value of the Work performed as of the date of notice of termination, including reasonable, actual, and documented costs to comply with the direction in the notice of termination for convenience, and demobilization costs, which is deemed to cover all overhead and profit to date.

(B) **Disputes.** If DBE disputes the amount of compensation determined by City pursuant to paragraph (A), above, its sole recourse is to comply with the Claim procedures in Article 12, by submitting a Claim no later than 30 days following notice from City of total compensation to be paid by City.

13.5 Actions Upon Termination for Default or Convenience. The following provisions apply to any termination under this Article, whether for default or convenience, and whether in whole or in part.

(A) **General.** Upon termination, City may immediately enter upon and take possession of the Project and the Work and all tools, equipment, appliances, materials, and supplies procured or fabricated for the Project. DBE will transfer title to and deliver all completed Work and all Work in progress to City.

(B) **Submittals.** Unless otherwise specified in the notice of termination, DBE must immediately submit to City all designs, drawings, as-built drawings, Project records, contracts with vendors and Subcontractors, manufacturer warranties, manuals, and other such submittals or Work-related documents required under the terms of the Contract Documents, including incomplete documents or drafts.

(C) **Close Out Requirements.** Except as otherwise specified in the notice of termination, DBE must comply with all of the following:

(1) Immediately stop the Work, except for any Work that must be completed pursuant to the notice of termination and comply with City's instructions for cessation of labor and securing the Project and any other Worksite(s).

(2) Comply with City's instructions to protect the completed Work and materials, using best efforts to minimize further costs.

(3) DBE must not place further orders or enter into new subcontracts for materials, equipment, services or facilities, except as may be necessary to complete any portion of the Work that is not terminated.

(4) As directed in the notice, DBE must assign to City or cancel existing subcontracts that relate to performance of the terminated Work, subject to any prior

rights, if any, of the surety for DBE's performance bond, and settle all outstanding liabilities and claims, subject to City's approval.

(5) As directed in the notice, DBE must use its best efforts to sell any materials, supplies, or equipment intended solely for the terminated Work in a manner and at market rate prices acceptable to City.

(D) **Payment Upon Termination.** Upon completion of all termination obligations, as specified herein and in the notice of termination, DBE will submit its request for Final Payment, including any amounts due following termination pursuant to this Article 13. Payment will be made in accordance with the provisions of Article 8, based on the portion of the Work satisfactorily completed, including the close out requirements, and consistent with the previously submitted schedule of values and unit pricing, including demobilization costs. Adjustments to Final Payment may include deductions for the cost of materials, supplies, or equipment retained by DBE; payments received for sale of any such materials, supplies, or equipment, less re-stocking fees charged; and as otherwise specified in Section 8.4, Adjustment of Payment Application.

(E) **Continuing Obligations.** Regardless of any Contract termination, DBE's obligations for portions of the Work already performed will continue and the provisions of the Contract Documents will remain in effect as to any claim, indemnity obligation, warranties, guarantees, submittals of as-built drawings, instructions, or manuals, record maintenance, or other such rights and obligations arising prior to the termination date.

Article 14 – Miscellaneous Provisions

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

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

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

14.4 Titles, Headings, and Groupings. The titles and headings used and the groupings of provisions in the Contract Documents are for convenience only and may not be used in the construction or interpretation of the Contract Documents or relied upon for any other purpose.

14.5 Statutory and Regulatory References. With respect to any amendments to any statutes or regulations referenced in these Contract Documents, the reference is deemed to be the version in effect on the date that the Proposal was submitted.

14.6 Survival. The provisions that survive termination or expiration of this Contract include Contract Section 10, Notice, and subsections 11.1, 11.2, 11.3, 11.4, 11.5, and 11.6, of Section 11, General Provisions; and the following provisions in these General Conditions: Section 2.4(K), DBE's Records, Section 2.5(C), Termination, Section 2.3(D), Ownership of Documents, Section 4.3, Indemnity and Liability, Article 12, Dispute Resolution, and Section 11.2, Warranty.

END OF GENERAL CONDITIONS

SPECIAL CONDITIONS

1. **Submittals.** The submittals checked below must be submitted to the Engineer at or before the pre-construction conference to be reviewed for general conformance with the Contract Documents. If exceptions are taken, re-submittal may be required before the Work may begin. The Engineer's review does not relieve the DBE or its Subcontractors of responsibility for verifying dimensions, coordination, performance, or accuracy.
 - ☐ Baseline (as-planned) schedule. (See General Conditions section 5.2.)
 - ☐ Name and contact information for DBE's authorized onsite representative, including cell phone, email address and home phone number.
 - ☐ Emergency contact list with names and phone numbers, including cell phone numbers, for at least three representatives who can be reached after hours.
 - ☐ The names and titles of each individual authorized to sign Change Orders and any other legally binding documents on behalf of DBE.
 - ☐ The name and address of each Subcontractor including a description and cost information for the portion of the Work by each Subcontractor and the Subcontractor's DIR registration number.
 - ☐ An equipment list which includes a description, identification number, make, model number, and other relevant information for each piece of equipment to be used on the Project.
 - ☐ Proposed truck and hauling routes.
 - ☐ Water Pollution Control Program.
 - ☐ Submittal schedule, listing description, supplier, source, and target dates for submission of all required submittals. The dates must be coordinated with the baseline schedule and related items should be submitted at the same time.
 - ☐ Traffic control plan
2. **Outreach to Local Businesses.** At least seven (7) days prior to: (i) DBE's submission of a Proposal and (ii) DBE's award of any subcontract to a Subcontractor not included in DBE's Proposal, DBE will contact the San Pablo Economic Development Corporation ("EDC" at info@sanpabloedc.org or 510-215-3200) and provide notice and details regarding subcontracting opportunities. The EDC will notify local businesses of subcontracting opportunities, and provide technical assistance to local businesses during the subcontracting bidding process.
3. **Employment of Local Residents.** Pursuant to the San Pablo Economic Opportunity Policy, the DBE and any Subcontractors shall contact the San Pablo Economic Development Corporation ("EDC" at info@sanpabloedc.org or 510-215-3200) at least ten business days prior to hiring or staffing for fulfillment of the Contract, describing number, duties and qualifications needed for available positions, and shall fairly consider for employment any workers referred by the EDC within three business days. "Local Resident" means an individual having an adjusted household income of less than the Area Median Income for Contra Costa County, and domiciled in the City of San Pablo as of the relevant hiring date, with "domiciled" as defined by Section 349(b) of the California

Election Code. Discrimination against Local Residents on the basis of their local status is prohibited.

4. **Pre-Construction Conference.** City will designate a date and time for a pre-construction conference with DBE following City's approval of the Construction Documents. Project administration procedures and coordination between City and DBE will be discussed, and DBE must present City with the following information or documents at the meeting for City's review and acceptance before the Work commences:

- 4.1 Staging plans that identify the sequence of the Work, including any phases and alternative sequences or phases, with the goal of minimizing the impacts on residents, businesses and other operations in the Project vicinity;

- 4.2 Draft baseline schedule for the Work as required under Section 5.2 of the General Conditions, to be finalized within ten days after City's approval of the final Construction Documents;

- 4.3 Schedule with list of Project submittals that require City review, and list of the proposed material suppliers;

- 4.4 Plan for coordination with affected utility owner(s) and compliance with any related permit requirements;

- 4.5 Videotape and photographs recording the conditions throughout the pre-construction Project site, showing the existing improvements and current condition of the curbs, gutters, sidewalks, signs, landscaping, streetlights, structures near the Project such as building faces, canopies, shades and fences, and any other features within the Project area limits;

- 4.6 DBE's cash flow projections; and

- 4.7 Any other documents specified in the Special Conditions or by City.

5. **Authorized Work Days and Hours.**

- 5.1 **Authorized Work Days.** Except as expressly authorized in writing by City, DBE is limited to performing Work on the Project on the following days of the week, excluding holidays observed by City: **Monday through Friday.**

- 5.2 **Authorized Work Hours.** Except as expressly authorized in writing by City, DBE is limited to performing Work on the Project during the following hours: **8:00 a.m. to 5:00 p.m.**

6. **Minimum Standards and Inspection.** These documents reference minimum standards. If Federal, State or other governing codes or standards are more stringent, the more stringent requirements will apply. Notwithstanding that work or materials have been previously inspected by the Engineer or that payment thereof has been included in a progress payment, DBE is not relieved from constructing the project in conformance with applicable codes or standards.

The Inspector authorized by the Engineer will inspect the work and enforce the contract documents. Inspector will not be available on site during all construction activities, and DBE must schedule necessary inspections a minimum of 2 business days in advance.

In the event that Inspector notices an eminently unsafe condition, or in an emergency, Inspector has the authority to stop work. DBE is not entitled to delay claims for stoppage of unsafe Work or Work not performed in conformance with the Contract Documents.

The Inspector will, at all times, have safe access to the Work during its construction, and will be furnished with every reasonable facility for ascertaining that the materials and the workmanship are in accordance with the requirements and intentions of the Specifications, the Special Conditions, and the plans. All Work done and all materials furnished is subject to the Engineer's inspection.

The City may also arrange for an Independent Testing Lab to perform quality assurance work and/or Special Inspections, where required by the plans. The Testing Lab or Special Inspector's role during construction is limited to making recommendations to the City, and the Testing Lab or Special Inspector does have authority to approve or reject Work, or interpret the Contract Documents.

Separate and independent from the inspection above, the project may require building, electrical or other inspections by City Building Officials for code compliance, as indicated elsewhere in these documents. Such inspectors have the authority provided to them by local ordinances, regulations and/or practices.

Inspections may also be required by water, sewer, telephone and other utility companies. Such inspectors have the authority to inform the DBE of any failure of the Work or materials to conform to their standards. In the event the DBE does not take action to correct any such failures, the City Inspector has the authority to stop the Work in question, and will confirm such action in writing. DBE is not entitled to delay damages for stoppage of Work not performed in conformance with utility company requirements.

It is the DBE's responsibility to request any and all inspections required for completion of the project.

7. **Dust Control.** The DBE must comply with air pollution control rules, regulations, ordinances, and statutes that apply to work performed under the Contract). The DBE will prevent and alleviate dust by applying water, dust palliative or both, and by covering active and inactive stockpiles. All dust control must be in conformance with State Standards Specifications Section 14-9.03, Dust Control.
8. **Controller Charts.** The DBE must submit charts showing the areas covered by each irrigation controller. Area of each valve coverage will be color coded, and the valve sequence will be enlarged to be readable when the drawing is reduced in size. These drawings will be reduced to 8-1/2x11 inches in size and sealed between two 20-mil plastic sheets. Two copies of each controller chart must be submitted.
9. **Permits and Licenses.** For public right-of-way construction work, the DBE must procure all permits and licenses, and give all notices necessary and incidental to the lawful performance of the work.

City of San Pablo permits which may be required, but are not necessarily limited to, include a building permit, overload or transportation permit, encroachment permit, grading permit, C.3 permit, NPDES permit, certificate of occupancy. City permit fees will be paid by the City on this project. The DBE is responsible to schedule inspections for each permit, if applicable.

When permits from other agencies (e.g. Caltrans, Contra Costa County, Dept. of Fish & Game) or Utility companies (e.g. PG&E, EBMUD, WCWD) are required for the Work and/or included in the appendix in these Special Provisions, DBE is responsible to comply with all

permit conditions and inspection requirements. Upon completion of the work, DBE will obtain written documentation from the respective agency or utility company that permit is finalized/closed out and accepted, and submit it to the City.

Temporary use permit(s) - it is the responsibility of the DBE to obtain temporary use permits for the use of any private property as a staging area, equipment and/or material storage yard, etc. Use permit conditions will vary and the DBE should contact the City of San Pablo Planning Department for specific requirements prior to submitting a bid. No work may commence without these permits or licenses. DBE must comply with all conditions of the permits.

10. **Construction Staking.** Construction staking will be provided by the DBE and all costs related thereto must be included in the unit costs for each item requiring staking. The City Engineer is the sole judge of the sufficiency of any construction stakes and the need thereof. All construction staking must be provided under the direction of a professional land surveyor licensed in the State of California, who will submit evidence of such license to Engineer.

11. **Construction Manager Role and Authority.** mack5, Oakland, CA is the Construction Manager for this Project. The Construction Manager will assist City in the management of the construction of the Project. The Construction Manager may perform services in the areas of supervision and coordination of the Work of DBE and/or other contractors, scheduling the Work, monitoring the progress of the Work, providing City with evaluations and recommendations concerning the quality of the Work, recommending the approval of progress payments to DBE, or other services for the Project in accordance with the Construction Manager's contract with City.

- 11.1 **Communications.** DBE must submit all notices and communications relating to the Work directly to the Construction Manager in writing, as follows:

David Ross, AIA
mack5
e-mail: dross@mack5.com

- 11.2 **On-Site Management and Communication Procedures.** The Construction Manager will provide and maintain a management team on the Project site to provide contract administration as an agent of City, and will establish and implement coordination and communication procedures among City, DBE and others.

- 11.3 **Contract Administration Procedures.** The Construction Manager will establish and implement procedures for reviewing and processing requests for clarifications and interpretations of the Contract Documents, Shop Drawings, samples, other submittals, schedule adjustments, Change Order proposals, written proposals for substitutions, payment applications, and maintenance of logs.

- 11.4 **Pre-Construction Conference.** DBE will attend the pre-construction conference, during which the Construction Manager will review the Contract administration procedures and Project requirements.

- 11.5 **DBE's Construction Schedule.** The Construction Manager will review DBE's construction schedules and will verify that each schedule is prepared in accordance with the requirements of the Contract Documents.

12. **Close Out Requirements.** DBE's close out requirements include the following, if applicable:

- 12.1** DBE must replace, with thermoplastic, any existing striping within and adjacent to the Project site that is damaged during the Work. Partially damaged striping must be replaced in its entirety.
- 12.2** DBE must replace any survey monuments that are damaged or removed during the Work, with a Record of Survey filed by a licensed land surveyor as required by California law.

BRIDGING DOCUMENTS