

DESIGN-BUILD AGREEMENT

FOR

**CITY OF GARDEN GROVE
FIRE STATION NO. 6
AND
COMMUNITY BUILDING
PROJECT**

between

**The City of Garden Grove
as Owner**

and

**RABC-ECC A Joint Venture
as Design-Builder
DESIGN/BUILD AGREEMENT**

THIS DESIGN/BUILD AGREEMENT ("Contract" or "Agreement") is made and entered into this _____ ("Effective Date") by and between the CITY OF GARDEN GROVE, a municipal corporation ("City"), and **RABC-ECC A Joint Venture** ("Design-Builder") for design, management, and construction of Fire Station No. 6 and Community Building Project ("Project"). This Agreement is effective on the Effective Date.

RECITALS:

WHEREAS, State Law and Section 2.52.020 of the Garden Grove Municipal Code authorize the City to use design-build procurement for the design and construction of certain public works projects;

WHEREAS, Design-Builder shall perform, either directly or through subcontracts, the services set forth in this Agreement and the Contract Documents;

WHEREAS, Design-Builder warrants that it is ready, willing and able to design and build the Project subject to the terms and conditions of the Agreement; and

WHEREAS, Design-Builder has the necessary professional expertise and skill to perform such services.

NOW, THEREFORE, in consideration of the covenants hereinafter set forth, City and Design-Builder mutually agree as follows:

ARTICLE 1 – CONTRACT DOCUMENTS AND INTERPRETATION

1.1 Definitions.

The meaning of all terms used in the Agreement and not otherwise defined herein is contained in the General Conditions. City and Design-Builder are sometimes individually referred to as a "Party" and collectively as the "Parties." Except as indicated otherwise, all references to City include its elected officials, officers, directors, employees, agents, and volunteers. Except as indicated otherwise, all references to Design-Builder include its personnel, employees, agents, and Subcontractors.

1.2 Contract Documents.

The "Contract Documents" shall consist of the following documents, all of which are either attached hereto as Exhibits or are incorporated into this Agreement by this reference, with the same force and effect as if the same were set forth at length herein:

1. This Agreement including all Exhibits and attachments;
 - a. The General Conditions attached as Exhibit A;
 - b. The Performance Bond attached hereto as Exhibit B;

- c. The Labor and Material Payment Bond attached hereto as Exhibit C; and
 2. The Proposal;
 3. The Preliminary Design Documents;
 4. The 2015 Standard Specifications for Public Works Construction ("Green Book") by the Southern California Chapter, American Public Works Association and the Southern California District, Associated General Contractors of California Joint Cooperative Committee as modified and supplemented by the City, as modified and supplemented by the City.
 5. Construction Documents prepared by Design-Builder and approved by the City in writing;
 6. Request for Proposals for this Project dated **December 21, 2016** ("Request for Proposals" or "RFP") and its addenda ("RFP Addenda") which are all on file at Garden Grove Public Works Department; and
 7. Design Documents prepared by Design-Builder and approved by the City in writing.
 8. Best and Final Offer, including equipment proposal.
 9. Change Orders and such other documents incorporated into the Agreement.
- 1.3 Order of Precedence.

Each of the Contract Documents is an essential part of the Contract. The Contract Documents are intended to be complimentary and to describe and provide for a complete functional and finished system. In the event of conflicts or discrepancies among the Contract Documents, the order of precedence shall be as set forth below:

1. Change Orders;
2. Agreement and attached Exhibits, except for the General Conditions;
3. General Conditions;
4. RFP Addenda;
5. Request for Proposal;
6. City Standards;

7. Green Book;
 8. Construction Documents;
 9. Design Documents;
 10. Preliminary Design Documents;
 11. Best and Final Offer; and
 12. Proposal, except Best and Final Offer
- 1.4 Entire Agreement.

This Agreement together with all other Contract Documents constitutes the entire agreement between the Parties and all other representations or statements theretofore made, verbal or written, are merged herein. Both Parties have, with the assistance of their respective counsel, drafted the provisions contained in this Agreement. Therefore, no provision in this Agreement will be construed in favor of or against any Party by virtue of the identity of its preparer. This Agreement may be amended only by written Modification executed by duly authorized representatives of the Parties hereto or according to the procedure set forth in the General Conditions.

ARTICLE 2 – TIME FOR PERFORMANCE

2.1 Contract Time.

Time is of the essence of this Agreement. By executing this Agreement, Design-Builder confirms that the Contract Time is a reasonable period for performing the Work. Design-Builder agrees to commence Services within five (5) calendar days after a written Notice to Proceed is issued by the City, to perform the Work in a diligent and workmanlike manner, to complete the Work in accordance with the time and Milestone Dates set forth in the Project Schedule, as hereinafter defined, to achieve Substantial Completion of the Work within **520 days** after City's issuance of the Notice to Proceed and to achieve Final Completion of the Work within the time fixed by the City in its Certificate of Substantial Completion (the "Contract Time"). The Contract Time may be extended only with the written permission of the City.

2.2 Liquidated Damages for Design-Builder Delays.

2.2.1 Design-Builder and City have agreed to liquidate damages with respect to Design-Builder's failure to achieve Substantial Completion of the Work within the Contract Time. The Parties intend for the Liquidated Damages set forth herein to constitute liquidated damages as such term is used in Government Code Section 53069.85. Design-Builder acknowledges and agrees that the Liquidated Damages are intended to compensate City solely for Design-Builder's failure to meet the deadline for

Substantial Completion and shall not excuse Design-Builder from liability from any other breach, including any failure of the Work to conform to the requirements of the Contract Documents.

2.2.2 In the event that Design-Builder fails to achieve Substantial Completion of the Work within the Contract Time, Design-Builder agrees to pay City the following amounts:

a) \$2,700 per day for each calendar Day that Substantial Completion is delayed for the first thirty (30) days of delay;

b) \$3,200 per day for each calendar Day that Substantial Completion is delayed thereafter provided, however, that in any event Design-Builder's liability to City for Liquidated Damages shall be limited to ten percent (10%) of the Contract Price.

2.2.3 Design-Builder acknowledges and agrees that the foregoing damages have been set based on an evaluation by City of damages that it will incur in the event of late completion. Design-Builder and City agree that the amount of such damages is impossible to ascertain as of the date of execution hereof, and that such Liquidated Damages are necessary to fix Design-Builder's costs and to avoid later disputes over which items are properly chargeable to Design-Builder. It is understood and agreed by Design-Builder that any Liquidated Damages payable pursuant to this Agreement are not a penalty and that such amounts are not manifestly unreasonable under the circumstances existing as of the date of execution of this Agreement.

2.2.4 It is further mutually agreed that City shall have the right to deduct Liquidated Damages against progress payments or retainage and that the City will issue a unilateral deductive change order and will reduce the Contract Price accordingly. In the event the remaining unpaid Contract Price is insufficient to cover the full amount of Liquidated Damages, Design-Builder shall pay the difference to City.

2.3 Delays and Extensions of Time.

2.3.1 Non-Compensable Delays. The Parties acknowledge that the following types of delays and events are not within the responsibility or control of City, and are reasonably contemplated by the Parties to occur during the course of performance of the Work which may impact the schedule for performance: (a) construction by separate contractors on or adjacent to the Site; and (b) Force Majeure events as described in the General Conditions ("Non-Compensable Delays"). Notwithstanding anything to the contrary in the Contract Documents, an extension of the Contract Time, to the extent permitted under Section 8.2 of the General Conditions, shall be the sole remedy of Design-Builder for the above referenced Non-Compensable Delays. In no event shall Design-Builder be entitled to

any compensation or recovery of any damages in connection with the Non-Compensable Delays identified in this section including, without limitation, consequential damages, lost opportunity costs, impact damages or other similar remuneration.

- 2.3.2 Compensable Delays. If the date for Substantial Completion of the Work is delayed by events which are the responsibility of or within the control of the City, are unforeseeable to design-Builder and would constitute an unreasonable charge against Design-Builder under the circumstances involved, the Design-Builder shall be entitled to an equitable adjustment of the Contract Time and/or the Contract Price, subject to the requirements of Article 8 of the General Conditions, including the notice and procedural requirements therein.

ARTICLE 3 – CONTRACT PRICE

The Design Build Entity promises and agrees, at its own cost and expense, to furnish to City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately complete the Project as described in the Contract Documents for a Contract Price not to exceed **[\$5,535,919]** ("Contract Price") subject to additions and deductions by Change Order. The Contract Price will fully compensate Design-Builder for the Work required by the Contract Documents. The Contract Price shall be paid in accordance with Article 4.

ARTICLE 4 – PAYMENT

4.1 Schedule of Values

Within ten (10) calendar days after City issues a Notice to Proceed, the Design-Builder shall submit to the City for review a detailed Schedule of Values, allocating the entire Contract Price, as contained in the Proposal or Best and Final Offer (as applicable), and miscellaneous costs of the Work with sufficient detail to serve as the basis for progress payments for performance of such Work. The prices contained in the Schedule of Values shall include all overhead and profit applicable to each line item of Work. The Schedule of Values, as agreed to by the City, shall be used as a basis for payments to Design-Builder based upon the percentage of Work completed as determined by the Engineer. The period covered by each Application for Payment for the Work shall be one (1) calendar month.

4.2 Procedures for Payment.

Each Application for Payment and payment shall be made in accordance with the procedures set forth in the General Conditions. An estimated billing/invoice schedule shall be provided and updated throughout the term of this Agreement to indicate cash flow requirements for the Project.

The City will make a proportionate progress payment up to, but not to exceed 50% of the value of all materials received on the Site, but not yet installed by the Design-Builder. In order to provide an allowance to make this proportionate progress payment, the City will require the Design-Builder to furnish certified invoices paid by the Design-Builder for all delivered materials. The City's Engineer will verify the quantities of materials received at the Site. The Design-Builder will not be allowed to remove from the Site any said materials and shall replace any said materials lost or damaged prior to installation or construction at its sole expense.

ARTICLE 5 – DESIGN-BUILDER'S DUTIES AND RESPONSIBILITIES

5.1 General Scope of Services.

5.1.1 The Design-Builder shall furnish all design and other Services, provide all equipment and materials and undertake all efforts necessary or appropriate to design, construct and perform the Work in accordance with the requirements of the Contract Documents, all Governmental Approvals, the City-approved Design and Construction Documents, all Applicable Laws, and all other applicable safety, environmental and other requirements taking into account the constraints affecting the Site. Design-Builder shall furnish the design and other Services, provide all Project materials and shall construct the Project as designed, in accordance all (a) with all professional engineering principles and construction practices generally accepted as standards of the industry in the State of California, (b) in a good and workmanlike manner, (c) free from defects and (d) in accordance with the terms and conditions set forth in the Contract Documents on a Turnkey Contract Basis. Except as otherwise specifically provided in this Contract, all materials, services and efforts necessary to achieve Substantial Completion of the Project and elements thereof on or before the Milestone Dates provided in the Contract Documents shall be Design-Builder's sole responsibility. The costs of all such materials, services and efforts are included in the Contract Price.

5.1.2 The scope of Work to be provided by Design-Builder is set forth in the Contract Documents as more particularly described in the Design and Performance Criteria which includes preliminary drawings and specifications.

5.1.3 The Design-Builder, whether a general contractor, construction manager or joint venture, shall hold a valid California Class "A" & "B" General Engineering Contractor license at the time of award of the Contract, and shall maintain the license at all times during performance of the Work.

5.1.4 The Design-Builder shall have a Registered Professional Civil Engineer licensed by the California State Board of Registration for Professional Engineers and Land Surveyors assigned to perform and or supervise all engineering work pursuant this Agreement.

5.1.5 All Subcontractors shall hold the appropriate California C-specialty, A-general engineering contractor license or engineering license, indicated on the Proposal at the time of award of the Contract and shall maintain the license at all times during performance of the Work.

5.1.6 Design-Builder and all Subcontractors, including unlisted Subcontractors, shall obtain a Business Tax Registration form from the City of Garden Grove Business License Division, prior to commencement of Work.

5.1.7 Design-Builder and all Subcontractors shall have a valid Department of Industrial Relations Registration Number at all times during performance of the Work.

5.2 Before Starting Work.

Design-Builder shall submit the following to City for review and acceptance within ten (10) calendar Days after City's issuance of the Notice to Proceed, and as a condition to payment:

- A. A detailed Project Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work including each Milestone Date specified in the Contract Documents;
- B. A schedule of required submittals described in Section 3.11 of the General Conditions and the times for submitting, reviewing and processing each submittal; and
- C. The Schedule of Values referenced in Section 4.1 herein acceptable to City in form and substance.

5.3 Initial Conference.

Within twenty (20) calendar days after the issuance of the Notice to Proceed, a conference attended by City, Design-Builder, and others as appropriate, will be held to establish a working understanding among the Parties as to the Work and to discuss the design concepts, updating schedules, progress meetings, procedures for handling submittals, processing Applications for Payment, maintaining required records, coordination with Subcontractors and other Project administration matters.

5.4 Evaluation of Preliminary Submittals.

5.4.1 At least ten (10) days before submission of the first Application for Payment, a conference attended by Design-Builder, City, and others as appropriate, will be held to review for acceptability the submittals required by the Contract Documents. Design-Builder shall have an additional ten (10) calendar days to make corrections and adjustments and to complete and resubmit the documents. No progress payment shall be made to Design-Builder until the required submittals are acceptable to City. The

detailed Project Schedule will be acceptable to City as providing an orderly progression of the Work to completion within any specified Milestone Dates and the Contract Time, but such acceptance will neither impose on City responsibility for the sequencing, scheduling or progress of the Work nor interfere with nor relieve Design-Builder from Design-Builder's full responsibility therefore. The format and structure of the Project Schedule will be as set forth in the Contract Documents and approved by City. City's acceptance shall not be deemed to confirm that the schedule is a reasonable plan for performing the Work. Design-Builder's schedule of submittals will be acceptable to City as providing a workable arrangement for reviewing and processing the required submittals.

5.5 Key Personnel.

5.5.1 The Design-Builder's single lead Project Manager and authorized designee for this Project is **Kenny Kublak**, who has the authority to make decisions for and bind the Design-Builder. This Project Manager or designee is required to be on Site full time and shall manage and coordinate all phases and aspects of the Project. The Project Manager shall submit monthly progress reports to the City and maintain the Project Schedule. The Project Manager originally assigned to this Project shall not be changed once the Project has commenced unless the Project Manager ceases to be in the Design-Builder's employment or the City determines his performance to be unsatisfactory. The Project Manager and any authorized designee shall be subject the review, approval, and removal provisions in Section 5.5.2 herein. The Site manager may be different from the Project Manager. The Site manager will be required to live in or near Garden Grove with 24-hour access during the period of time when construction is performed on the Site.

5.5.2 In addition to the Project Manager, Design-Builder shall employ the Site Manager and key personnel identified in the Proposal or replacement personnel approved by the City in writing. City may at any time elect to add job categories to the key personnel list. City has the right to review the qualifications and character of each individual appointed to a key position (including personnel employed by Subcontractors) and to accept or reject the use of such individual. Design-Builder shall submit to the City in writing any proposed change in key personnel and obtain City's prior written consent to any such change. The City's consent to a change in key personnel shall not be unreasonably withheld. If City determines in its sole discretion that performance of any key personnel is unsatisfactory, then City has the right to direct a change in such key personnel. A California registered Civil engineer is required to be present on the Site during any civil construction.

5.6 Design Phase Services.

5.6.1 Design Professional Licensing Requirements. City does not intend to contract for, pay for, or receive any design services which are in violation of any professional licensing laws, and by execution of this Contract, Design-Builder acknowledges that City has no such intent. It is the intent of the Parties that Design-Builder is fully responsible for furnishing the design of the Project, although the fully

licensed design firms designated as members of the Design Team will perform the design services required by the Contract Documents. Nothing in this article shall create a contractual relationship between such Persons and the City.

5.6.2 Standard of Care. All design Services to be performed by Design-Builder, the Design Team Members, other Subcontractors, and their employees identified by the Design-Builder or other Persons approved by the City shall be performed in an expeditious and professional manner using architects, engineers and other professionals properly licensed and duly qualified in the jurisdiction in which the Project is located. The professional obligations of such persons shall be undertaken and performed in the interest of the Design-Builder. All design Services performed pursuant to this Agreement shall be (a) provided with the standard of judgment, care, knowledge and skill which prevails among design professionals, of knowledge and skill, engaged in practice within Southern California under the same or similar circumstances, involving the design and construction of an improvement such as this Project, and (b) in compliance with the Contract Documents and Applicable Laws. City's review and approval shall in no way relieve Design-Builder's full and complete responsibility on this Project.

5.6.3 Preliminary Design Phase. After City's issuance of the Notice to Proceed and within the times set forth in the Project Schedule accepted by City, Design-Builder shall:

5.6.3.1 Consult with City to understand City's requirements for the Project and review available data;

5.6.3.2 Advise City as to the necessity of City's providing or obtaining from others additional reports, data or services, and assist City in obtaining such reports, data, or services;

5.6.3.3 Identify and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by Design-Builder with whom consultation is to be undertaken in connection with the Project;

5.6.3.4 Prepare Preliminary Design Documents consisting of final Design and Performance Criteria, preliminary drawings, outline specifications, written descriptions of the Project and other documents to fix and describe the size, quality and character of the entire Project; the Preliminary Design Documents shall comply with the City Standards and Applicable Laws, and

5.6.3.5 Furnish the preliminary Design Documents to and review them with City for approval within the time indicated in the approved Project Schedule. Design-Builder shall not proceed with the Final Design Phase until it receives written authorization from City to do so.

5.6.4 Final Design Phase. Only after written acceptance by City of the Preliminary Design Documents, Design-Builder shall:

5.6.4.1 On the basis of the accepted Preliminary Design Documents and in accordance with the City Standards, Applicable Laws, prepare final Construction Documents showing the scope, extent, and character of the construction to be performed and furnished by Design-Builder, including technical drawings, schedules, diagrams, calculations, and specifications (which, unless otherwise approved by City, will be prepared, where appropriate, in general conformance with the fifty division of the Construction Specifications Institute MasterFormat) setting forth the requirements for construction of the Work which shall provide information customarily necessary for the use of those in building trades.

5.6.4.2 Provide technical criteria, written descriptions and design data required for obtaining approvals of such governmental authorities as have jurisdiction to review or approve the final design of the Project, and assist City in consultations with appropriate authorities.

5.6.4.3 Furnish the above documents, drawings, calculations and specifications to and review them with City for approval within the time indicated in the approved Project Schedule at increments of at least 30%, 75%, 90%, and 100% completion of the Construction Documents. After City's approval of the final Construction Documents, said documents shall be incorporated into the Contract Documents. Design-Builder shall not proceed with the construction phase unless and until it receives written approval of the Construction Documents or portions thereof.

5.7 Construction Phase Services.

5.7.1 General.

5.7.1.1 Construction Services shall be performed by Design-Builder and/or by qualified and licensed contractors, Subcontractors and Suppliers who are selected, paid and acting in the interest of the Design-Builder in accordance with the procedures outlined in the Contract Documents. Design-Builder shall provide, or cause to be provided, and shall pay for design Services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

5.7.1.2 The Design-Builder shall be responsible for and shall coordinate all construction means, methods, techniques, sequences, and procedures with City.

5.7.1.3 The Design-Builder shall keep the City informed of the progress and quality of the Work in the form of weekly written reports in a format required

by the City. Design-Builder shall allow, cooperate, and assist City and its authorized employees and agents to perform inspections and testing of the Work.

5.7.1.4 The Design-Builder shall keep the Site free from accumulation of waste materials or rubbish caused by the Design-Builder's operations and shall comply with CAL-OSHA rules and regulations. At the completion of construction of the Work, the Design-Builder shall remove from and about the Site any and all tools, construction equipment, machinery, materials, waste materials and rubbish. Design-Builder shall not remove any City or City's agent's tools, construction equipment, machinery, temporary facilities, or materials.

5.7.1.5 Certification of Construction. As a condition to final payment to Design-Builder, each Design Team Member shall provide written certification that the Work has been constructed in accordance with the Contract Documents and with the design provided by such Person.

5.7.1.6 If the Design-Builder plans to use City water, he shall make arrangements for water purchases by contacting the City's Public Works Department at (714) 741-5192 and complete an application for temporary water service. If the Design-Builder plans to use City power, he shall make arrangements for a temporary electrical service by contacting the City's electrical Utility, phone number 714-741-5192.

5.7.1.7 The Design-Builder shall pay for all utility costs necessary for the performance of the Work, including, water and electricity.

5.7.2 Supervision and Coordination of Construction.

5.7.2.1 Unless otherwise provided in the Contract Documents to be the responsibility of City or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents and Applicable Laws.

5.7.2.2 Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

5.7.2.3 Design-Builder shall supervise and direct the construction competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to provide the construction in accordance with the Contract Documents and Applicable Laws. Design-Builder shall be solely responsible to see that the completed construction complies accurately with the Contract Documents and shall keep City advised as to the quality and progress of the Work.

5.7.2.4 Design-Builder shall coordinate its Work with adjoining property owners and tenants to provide access to the Site and adjoining property, and

shall implement measures to prevent disruption to operations and occupancy of such property owners and tenants.

5.7.3 Labor, Materials and Equipment.

5.7.3.1 Design-Builder shall provide competent, suitably qualified personnel to survey and lay out the construction and perform construction as required by the Contract Documents and Applicable Laws. Design-Builder shall at all times maintain good discipline and order at the Site. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all construction at the Site shall be performed during regular working hours, and Design-Builder will not permit overtime work or the performance of construction on Saturday, Sunday or any legal holiday without City's prior written consent.

5.7.3.2 Design-Builder is prohibited from working on Saturdays, Sundays, holidays, or after normal business hours, except as limited by written approval from the Engineer before doing so, and must demonstrate the Work requested to be performed is on the critical path. When Work is performed on Saturdays, Sundays, holidays or after normal business hours at the request of Design-Builder, any extra costs incurred will be born solely by the Design-Builder. Further, any additional costs incurred by the City arising from Work performed on Saturdays, Sundays, holidays or after normal business hours at the request of Design-Builder, including, but not limited to, costs of inspections and tests, shall be reimbursed to City by Design-Builder.

5.7.3.3 Unless otherwise specified in the Contract Documents, Design-Builder shall furnish or cause to be furnished and assume full responsibility for materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work. Design-Builder, in the presence of City's personnel, will direct the checkout of utilities and operations of systems and equipment.

5.7.3.4 All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Contract Documents shall expressly run to the benefit of City. If required by City, Design-Builder shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

5.7.3.5 The testing of equipment and materials, or of any portion of the Work, shall be in accordance with the Specifications and as directed by the Engineer. The Design-Builder shall furnish, without additional costs to the City, all

equipment, materials, labor and other incidentals requested to assist the City and their contracted test and inspection firm with testing in accordance with Section 4 of the Green Book. The Design-Builder shall also provide access to any area of the Work for testing purposes and shall furnish, without cost, any assistance necessary to perform the testing. Soil density and concrete cylinder testing shall be performed by a private laboratory, selected and paid for by the City. Extra testing required, due to test failures, will be at the Design-Builder's expense, either as a billing by the City or as a deduction from the Contract Payment. The Design-Builder shall notify the City's field representative of the readiness of any phase of construction to be tested and shall not proceed with any subsequent phase of Work until the results of the test are known and approved by the City in writing.

5.8 Field Testing.

During the start-up or operational phase, Design-Builder shall:

- A. Conduct and train City staff in connection with the start-up, testing, refining and adjusting of any equipment or system.
- B. Provide training to City staff to operate and maintain the Project.
- C. Develop start up systems and procedures for operation and maintenance of and record keeping for the Project.
- D. Create a system operation & maintenance diagnostic manual and with drawings.

5.9 General Duties and Responsibilities.

The Design –Builder shall do all of the following:

5.9.1 Assist City in obtaining all permits and other Governmental Approvals required by the Contract Documents in connection with the Project. Any permit charges caused by more than three (3) plan check submittals or caused by errors and omissions in design shall be borne by Design-Builder without reimbursement by City.

5.9.2 Undertake all actions required by and all actions necessary to maintain in full force and effect all Governmental Approvals in effect during performance of the Work, including performance of all environmental mitigation measures and transportation related conditions of approval required by the Contract Documents.

5.9.3 Provide such assistance as is reasonably requested by City in dealing with any governmental agency. Such assistance may include providing information and reports regarding the Project as well as executing declarations and attending meetings and hearings. In no event shall Design-Builder be required to provide legal services.

5.9.4 The Design-Builder shall comply with all Applicable Laws/City Standards and shall give applicable notices pertaining thereto. The Design-Builder shall

obtain all Governmental Approvals, including preparing and filing all documents required to obtain the necessary Governmental Approvals. Design-Builder shall secure and pay for all permits, Governmental Approvals, governmental fees, licenses and inspections necessary for the proper execution of the Work and completion of the Project.

5.9.5 Provide and maintain field offices for persons designated by City.

5.9.6 Design-Builder shall be responsible for construction means, methods, techniques, sequences, and procedures for Project implementation. Design-Builder shall supervise and be responsible to City for acts and omissions of its employees, agents, officers, Subcontractors, and other persons performing portions of the Work, as though all persons were directly or indirectly employed by Design-Builder.

5.9.7 Mitigate delays to the Project in all circumstances, to the extent reasonably possible.

5.9.8 Maintain the Site and the immediate surroundings in a clean and orderly condition, free of weeds, trash and graffiti.

ARTICLE 6 – CITY’S DUTIES AND RESPONSIBILITIES

6.1 City’s Designation of Authorized Representative.

The City’s Public Works Director or Engineer shall represent the City in all matters concerning this Agreement. The Engineer may designate in writing, from time to time, one or more representatives authorized to act on the City’s behalf with respect to the Project.

6.2 City’s Right to Make Changes and Award Separate Contracts.

City has the right to review, check, and inspect any part of the Project at any time. The City reserves the right to order changes in the Work, to perform Work or operations related to the Project with the City’s own forces, and to award separate contracts in connection with the Project.

6.3 City’s Right to Stop the Work.

If the Design-Builder fails to correct defective Work as required herein, or fails to carry out the Work in accordance with the Contract Documents, the City may, in its sole discretion, elect to order the Design-Builder to stop the Work, or any portion thereof, until the City reasonably determines that the cause for such order has been eliminated. The City’s right to stop the Work is in addition to the City’s right to terminate this Agreement.

6.4 Suspension by City for Convenience.

The City may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the City may determine. If such suspension, delay or interruption causes the Design-Builder to incur increased cost for the performance of the Work, an adjustment to the Contract Price shall be made for such costs as are directly attributable to such suspension, delay or interruption. If such suspension, delay or interruption causes a delay to the critical path of the Work, an adjustment to the Contract Time shall be made.

6.5 City's Right to Carry Out the Work.

If the Design-Builder defaults and neglects to carry out the Work in accordance with the Contract Documents, or fails to perform any of its obligations under the Contract Documents, the City may, after five (5) calendar days' written notice to the Design-Builder, and without prejudice to any other remedy the City may have, make good such deficiencies. In such case, City shall deduct from payments then or thereafter due the Design-Builder the cost of correcting such deficiencies. If the payments then or thereafter due the Design-Builder are not sufficient to cover such amount, the Design-Builder shall pay the difference to the City within thirty (30) days of written demand from the City.

ARTICLE 7 – MISCELLANEOUS PROVISIONS

7.1 Independent Design-Builder.

Design-Builder is, and shall be, acting at all times in the performance of this Agreement as an independent Design-Builder. Design-Builder shall secure at its expense, and be responsible for any and all payment of all taxes, social security, state disability insurance compensation, unemployment compensation and other payroll deductions for Design-Builder and its officers, agents and employees, and all business licenses, if any, in connection with the services to be performed hereunder.

7.2 City Employees and Officials.

Design-Builder shall employ no City official nor any regular City employee in the Work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement in violation of applicable provisions of law.

7.3 Notices.

Any notice or special instructions required to be given in writing under this Agreement shall be given either by personal delivery to Design-Builder's agent (as designated in Section 5.5.1 hereinabove) or to the Engineer as the situation shall warrant, or by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States Postal Service, addressed as follows:

TO CITY:

*City of Garden Grove.
Public Works Department
Attention: Carlos Norvani
11222 Acacia Parkway
Garden Grove, CA 92842
(714) 741-5321
(714) 741-5578 Fax*

TO DESIGN-BUILDER:

*RABC-ECC A Joint Venture
405 Maple Street, Suite 101
Ramona, CA 92865
Attention: Kenny Kubiak
(760) 788-0800*

7.4 Contractor's License Notice:

Contractors are required by law to be licensed and regulated by the Contractors' State License Board, which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

7.5 Permits.

In completing the permit, Design-Builder shall use the address of the Site as its business address and may use any address for its mailing address. Copies of the permit(s) shall also be delivered to the Engineer. The City of Garden Grove will procure and pay for all permits and fees. The permit(s) must be obtained as soon as reasonably possible after Design-Builder receives a Notice to Proceed.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS THEREOF, these parties have executed this Agreement on the day and year shown below.

Date: _____

"CITY"
CITY OF GARDEN GROVE

By: _____

Scott C. Stiles
City Manager

ATTEST:

City Clerk

Date: _____

"DESIGN-BUILDER"

RABC - ECC & JOINT VENTURE

Robert A. Burch

By: ROBERT A. BURCH

Title: JOINT VENTURE PARTNER

Date: 3-13-2017

APPROVED AS TO FORM:

Garden Grove City Attorney

Date _____

If CONTRACTOR is a corporation, a Corporate Resolution and/or Corporate Seal is required.

**JOINT VENTURE AGREEMENT
BETWEEN
RA BURCH CONSTRUCCION CO. INC.
AND
EC CONSTRUCTORS, INC.**

This Joint Venture Agreement is entered into by and between RA Burch Construction Company Inc., a California corporation, having an office at 405 Maple Street, Ramona CA 92065 ("RABC"), and EC Constructors, Inc., a California corporation,, having an office at 9834 River Street CA 92040 ("ECC") and is effective as of August 19, 2013,. RABC and ECC are sometimes referred to collectively as the "Parties" or individually as a "Party."

RECITALS

A. The Parties have agreed to jointly respond to mutually selected Requests for Proposals, Invitations to Bid, and/or Requests for Qualifications for various public entities (collectively referred to as "Contracts") as may be pursued under the terms of this Joint Venture Agreement, subject to written amendments to this Agreement which are mutually agreed to and signed by the Parties.

B. The Joint Venture formed relative to this agreement is known as RABC-ECC A Joint Venture utilizing California Contractor's License Number 986034.

C. The Parties desire that their interest in the following be defined by this Joint Venture Agreement: (i) the services to be rendered and the work to be done in connection with their joint responses and/or their joint proposals; (ii) the services to be rendered and the work to be done in connection with the Contracts in the event the Parties are awarded a Contract; (iii) any profits derived from the performance of any Contracts; and (iv) any liability for losses arising out of any Contracts.

D. By entering into this Joint Venture Agreement, the Parties constitute themselves as Joint Venturers for the purpose of submitting joint pre-qualifications responses and joint proposals for Contracts and, if selected, for the purpose of performing and completing any Contracts, but not for any other purposes. The Parties are not making any permanent partnership agreement or permanent joint venture agreement to bid for or undertake any contracts other than as described in Recital A. Nothing in this Joint Venture Agreement shall be construed to constitute the Parties as partners, to constitute either Party to be the general agent of the other Party or as a limitation of the powers or rights of either Party to carry on its separate business for its sole benefit except, however, the Parties shall cooperate with each other according to the terms and spirit of this Joint Venture Agreement in the preparation of joint proposals and the performance of Contracts if awarded to the Joint Venture.

AGREEMENT

To carry out the Joint Venture, the Parties agree as follows:

1. **Recitals.** The Recitals are incorporated by reference into this Joint Venture Agreement.

2. **Parties to Contracts.** Any Contracts shall be entered into in the name of the Parties as Joint Venturers and their obligations under the Contracts shall be joint and several.

2.1. The Parties for ease of reference shall to the extent they desire, refer to the Joint Venture as the "RABC-ECC A Joint Venture" and as between the Parties and as to third persons it shall be understood that the name shall have the same effect as if the full corporate names of the Parties were used in place of RABC-ECC Joint Venture.

3. **Joint Venturer Responsibilities.** The Parties shall work cooperatively to: (i) prepare responses to requests for qualifications and joint proposals; and (ii) furnish and perform the construction management and/or construction services necessary to the complete Contracts should any Contracts be awarded to the Joint Venture.

3.1. The Managing Party for the Joint Venture shall be RABC. In the event of a difference of opinion between the Parties with respect to the means or methods of performance under this Joint Venture Agreement, or any other matter relating to the management or conduct of the Joint Venture, the decision of the Managing Party shall be binding for the immediate purpose of executing the Work required to perform a Contract or to conduct the business of the Joint Venture.

3.1.1. By agreeing to the terms set forth in Section 3.1, ECC shall not be held to have waived any rights or remedies it may have to recover its loss or damage arising out of the failure by the Managing Party to exercise in good faith its control over the means or methods of performance or the management and conduct of the Joint Venture.

3.2. Both Parties shall provide personnel and perform duties for the Joint Venture in all phases of the construction management and/or construction services to be rendered in connection with a Contract as determined and directed by the Management Committee formed in Section 4 below.

3.3. Each Party shall bear its own costs in the preparation of any responses or joint proposals and any third party costs incurred in the preparation of any responses or joint proposals shall be paid by the Parties according to the proportionate share the Party has in the Joint Venture as set forth in Section 5 below.

3.4. All responses or joint proposals must be approved by both Parties prior to submission. If either Party refuses to approve a response or a joint proposal and the Parties are unable to agree to modifications, no response or proposal shall be submitted by the Joint Venture for that Contract, and the Parties shall have no further rights or responsibilities to one another as to an un-submitted response or proposal.

4. **Management Committee.** The management of the Joint Venture shall be controlled by a Management Committee, which shall consist of two people, one of whom shall be appointed by RABC and one of whom shall be appointed by EC Constructors.

RABC appoints the following as its representatives: Robert (Bob) Burch

EC Constructors appoints the following as its representative: James (Jim) Summers

4.1. The Management Committee shall have authority to act for the Joint Venture in all matters. The Management Committee representatives shall be subject to replacement at the discretion of the Party who appointed the individual.

4.2. The Management Committee shall determine the methods and manner of performance of any Contracts and the management powers and duties to be delegated to the persons designated for performance of any Contracts. The Management Committee shall appoint the management staff for the Contracts who shall be responsible for the general conduct and supervision of the performance of any Contracts in the field.

4.3. The Management Committee representatives appointed by a Party, shall act for that Party with full and complete authority to act on its behalf in relation to any matter or things in connection with, arising out of or relative to the Joint Venture, and the acts of the Committee shall bind the respective Parties in any and all matters or things involving the performance of any Contracts, including, but not limited to those of a contractual nature with third persons.

4.3.1. Notwithstanding the general authority given to the Management Committee, all documents of a legal and/or contractual nature shall be reviewed by both Parties prior to execution and shall be signed by the Chief Executive Officer of one of the Parties.

4.4. The Management Committee representatives shall meet from time to time as required to act on necessary matters pertaining to any Contracts. Meetings may be called by either Party or by any member of the Management Committee as they may deem it necessary or desirable.

4.4.1. The Management Committee shall be authorized to make decisions and take action without a face-to-face meeting after consulting with one another via telephone or email; however, if a decision is made or action taken without a meeting, the originator of the discussion shall prepare and circulate a record of the decision made or action taken.

4.4.2. The Management Committee may be given specific powers in addition to the foregoing as the Parties may from time to time delegate and they shall also have the authority to delegate such of their powers to person or persons as they may deem necessary or convenient in the best interests of the Parties.

4.5. No representative shall be liable to the Parties by reason of his or her acts as such except in the case of gross negligence or actual fraudulent or dishonest conduct.

4.6. Actions and decisions of the Management Committee shall be by agreeable vote as to any and all matters having to do with the Joint Venture or the Contracts.

5. **Proportionate Share.** The interests of the Parties in: (i) the Contracts; (ii) all property and equipment acquired in connection with the performance of the Contracts, (iii) all moneys which may be derived from the performance of the Contracts, (iv) the obligations and liabilities of each of the Parties as among themselves in connection with the Contracts, and (v)

with respect to any and all liabilities in connection with the Contracts, shall be in the following proportions (except as otherwise provided in Section 6 in the event a Party does not furnish its proportionate share of working capital and Section 7 in the event a Party advances additional capital):

RABC	Fifty percent (50%)
EC CONSTRUCTORS	Fifty percent (50%)

5.1. The proportionate shares expressed in percentages in Section 5 may be changed for a specific Contract by the mutual consent of the Parties as set forth in a written amendment to this Joint Venture Agreement signed by both Parties; however, in no event, shall either Party be assigned a proportionate share of less than twenty-five percent (25%) except as otherwise provided in Section 6 in the event a Party does not furnish its proportionate share of working capital and Section 7 in the event a Party advances additional capital.

6. **Working Capital.** The initial capitalization amount for the Joint Venture shall be \$10,000 and shall be furnished by a payment from each Party in their proportionate share as set forth in Section 5 upon being awarded a Contract. In the event the Management Committee determines that additional working capital is necessary for the prosecution of a Contract, additional capital shall be furnished by a payment from Each Party in their proportionate share as set forth in Section 5 within 10 days after written notice by the Management Committee.

6.1. In the event either of the Parties fails to contribute its proportionate share of the working capital within the time allotted, the other Party may, but is not required to, advance the deficiency or any part of the deficiency. The Party making the contribution shall be entitled to submit the other Party's failure to make a contribution to Dispute Resolution pursuant to Article 22.

6.2. All working capital advanced shall be repaid to the Parties prior to the distribution of any profits.

7. **Profit Distribution.** Profits resulting from the performance of the Contracts, shall be distributed and divided between the Parties in accordance with their proportionate share as set forth in Section 5 above at such times as may be determined by the Management Committee.

7.1. However, if one or more of the Parties has advanced for working capital a sum in excess of the proportionate share set forth in Section 5, then the Party making the advance shall be entitled to submit the advance dispute to Dispute Resolution pursuant to Article 22.

7.2. Any reserves when no longer required shall be similarly distributed in accordance with this Section 7.

8. **Loss Allocation.** If the performance of a Contract shall result in a loss, the Parties shall be obligated in their proportionate share as set forth in Section 5 above, irrespective of the fact that one or more Parties may advance more than their respective shares of working capital.

8.1. The liability of the Parties for the bearing of losses in connection with a Contract shall continue as to any claims which at any time, either before or after the performance of the Contract, shall be made against them or either of them by reason of carrying out this Joint Venture Agreement or any matter or thing in connection with this Joint Venture Agreement.

9. **Cost of Joint Venture.** For the purpose of determining cost to the Parties of the venture, the cost shall consist of the costs incurred in connection with the rendering of the services as defined in a Contract Agreement, including, but not limited to, all subcontracts, labor, material, and equipment purchased or rented, bonds, insurance, taxes on labor and material, taxes, charges, legal fees, liabilities not secured by insurance and all other expenses and obligations incurred or suffered in and about the performance of the Contract in accordance with Generally Accepted Accounting Principles properly charged as a cost of the performance of the Contract.

9.1. Cost of Joint Venture shall not include any charges against the Joint Venture for any overhead expenses or charges of the main or branch offices of the Parties or for the time which may be expended in connection with the work by any of the employees of the Parties, including their officers, not directly assigned at the site for the performance of the Contract, except as may be approved by the Management Committee.

9.2 The Parties shall provide salaried management employees to the Joint Venture. Such salaried employees shall remain employees of their respective Party, and shall be leased to the Joint Venture at cost, which shall include base salary, standard benefits, payroll taxes and workers compensation insurance.

9.3 Equipment which is owned by each of the Parties that is used on the Projects shall be rented to the Joint Venture at mutually agreeable rental rates as determined by the Management Committee.

10. **Bank Accounts and Borrowing.** A bank account or bank accounts shall be opened in a bank or banks chosen by the Management Committee, under such description as the Committee may determine, in which all funds advanced by the Parties for the performance of a Contract and all funds received by the Joint Venture from all sources in connection with a Contract shall be deposited. Funds may be withdrawn as the Management Committee may direct; however, any checks, drafts or other instruments must have two signatures, one from an authorized representative of each Party.

10.1. Neither of the Parties nor their representatives designated pursuant to Section 4 above, shall have the power to borrow moneys or to pledge the credit of any Party or to pledge the Parties' joint credit.

10.2. No part of any advances deposited in the Joint Venture bank account or accounts shall be returned to any of the Parties and no distribution of profits shall be made prior to the completion of a Contract except as may otherwise be authorized by the Committee.

11. **Working Capital and Contract Funds.** All moneys contributed by the Parties and all moneys received as payment under a Contract or otherwise received shall be treated and regarded as and are hereby declared to be trust funds for the performance of that Contract and

for no other purpose until that Contract shall have been fully completed and all obligations of the Parties have been paid or otherwise discharged or adequate reserves have been set up to take care of any such obligations. The reserves likewise shall be treated as trust funds until the reserves shall have been disbursed for the purpose for which they were created or returned to the Parties as provided in this Agreement.

12. **Books of Account and Contract Records.** Separate books of account of the transactions of the Joint Venture shall be kept and maintained by the Managing Party at its principal office or at the jobsite, and the same shall be available for inspection by either Party at any reasonable time.

12.1. The books of the Joint Venture shall be maintained on a percentage of completion basis and the tax returns of the Joint Venture shall be prepared in accordance with percentage of Completion - Capitalized Cost Method (IRS Section 460(A)).

12.2. The Managing Party shall furnish the other Party or Parties from time to time with such statements and reports relating to the progress of the performance of the Agreement and to the financial condition of the Joint Venture as the other Party reasonably may request.

12.3. At the completion of the Joint Venture Agreement, and at such intervals as the Parties may agree upon, each Party shall be furnished with a complete account of the receipts and disbursements of the Joint Venture. During the existence of the Joint Venture and at the completion of the Joint Venture Agreement, if requested by either Party, the accounts of the Joint Venture shall be audited by an independent certified public accountant mutually agreeable to the Parties. The requested audit shall be performed in a manner which will permit the accountant to express an unqualified accountant's opinion with respect to the financial statements of the Joint Venture. The cost of each audit shall be borne by the Party requesting the audit.

12.4. To the extent that accounting and/or project records must be kept after to the completion of a Contract, pursuant to a provision of law or the requirements of the Contract, the records shall be kept at such place or places as the Management Committee may determine, and the cost to store and maintain the records shall be borne by the Parties in the proportions stated in Section 5 above.

12.5. Each Party shall own its proportionate share as allocated in Paragraph 5 above, of all equipment, machines, tools, materials, supplies and other property purchased by the Joint Venture or charged to the account of the Joint Venture. At the completion of a Contract, or sooner if the property is deemed by the Management Committee to be no longer required for the performance of the Joint Venture Agreement, the property shall be divided between the Parties in a manner agreed upon by the Parties. If the Parties are unable to agree on the division of some or all of the property, the property as to which the Parties are unable to agree shall be sold and each Party shall be paid its Proportionate Share of the sale proceeds. All funds and property acquired by the Joint Venture shall be held in the name of the Joint Venture.

12.6 Pursuant to Section 6231(a) of the IRS Code, RABC is hereby designated as the "Tax Matters Partner" for the Joint Venture, and may take any action on behalf of the Joint

Venture as Tax Matters Partner. RABC is expressly authorized on behalf of the Joint Venture or any party any act that may be necessary to make this designation effective under any regulation, rule, procedure or instruction that may be issued by the Internal Revenue Service. The Parties may at any time elect a new Tax Matters Partner by vote of the Management Committee. The Tax Matters Partner shall prepare or supervise the preparation of all tax returns for the Joint Venture, and shall be entitled to reimbursement for any outside expenses associated with such preparation.

13. **Insurance and Surety Bonds.** The Joint Venture shall carry any insurance that may be required by a Contract or deemed advisable from time to time by the Management Committee, with insurers that are approved by the Parties. The types and amounts of insurance provided by the Joint Venture for a Contract or provided as determined by the Management Committee shall be incorporated into this Agreement by written amendment

13.1. Each certificate of insurance and endorsement for insurance obtained by the Joint Venture shall name the Parties, their officers, agents, and employees as additional insureds, provide contractual liability coverage as to the Contract(s), and shall provide that it will not be canceled without thirty (30) days written notice to each of the Parties.

13.2. The Joint Venture shall provide payment and performance surety bonds in the form and amount(s) required by a Contract. The Parties shall arrange for the payment and performance surety bonds to be obtained from their respective sureties in the proportion as provided for in Section 5 above. The cost of the surety bonds for a Contract shall be treated as a Cost of Joint Venture pursuant to Section 9 of this Agreement.

14. **Indemnification and Claims.** Each Party shall indemnify the other Party against any loss or liability, regardless of the proportions stated in Section 5 above, arising directly or indirectly from the indemnifying Party's breach of a Contract or the indemnifying Party's negligent or wrongful act or omission in the performance of its duties or obligations in connect with a Contract or in connection with this Joint Venture Agreement.

14.1. Each Party shall indemnify the other Party against any loss or liability exceeding the proportions stated in Section 5 above, which is incurred by reason of the execution of any surety company bonds or indemnity agreements executed in connection with the bonds and by reason of any payments required to be made in the performance of a Contract. This indemnity shall be limited to losses directly connected with or arising out of Contract, and shall not include consequential or indirect damages.

14.2. Each Party shall indemnify the other Party against any loss or liability suffered by the other Party, which exceeds the proportions stated in Section 4 above, in the event of a claim against the Joint Venture which is not due to either Party's act or omission as described in the first paragraph of this Section 14.

14.3. Each Party shall indemnify the other Party from any loss or liability arising from claims against the indemnifying Party which are unrelated to or outside of the scope of this Joint Venture Agreement.

14.4. The Parties shall have no liability to the other for any loss suffered which arises out of any action or inaction if, in good faith, it is determined that such course of conduct

was in the best interests of the Joint Venture and such course of conduct did not constitute negligence or misconduct. The Parties shall each be indemnified by the other against losses, judgments, liabilities, expenses and amounts paid in settlement of any claims sustained by it in connection with the Joint Venture provided each Party consents to or ratifies the settlement.

14.5. "Indemnify" or "Indemnifies" as used in this Joint Venture Agreement shall mean that the indemnifying Party shall fully indemnify, defend, and hold harmless the other Party.

14.6. Should any sums be owed by one Party to the other Party pursuant to this Section 14, the sums will be deducted from any distributions or returns to which the indemnifying Party would otherwise be entitled under this Joint Venture Agreement and shall be paid instead to the other Party; provided, however, that the payment shall in no way limit any legal, equitable or statutory rights or remedies which the other Party may have against the indemnifying Party or others.

14.7. In the event claims are alleged against the Joint Venture and it cannot be determined which of the Parties caused or contributed to the event giving rise to the claim, or the claim is due to a third party not acting on behalf of either of the Parties, then the Parties, in accordance with their respective proportionate share as set forth in Section 5 above, shall without prejudice to any claims they may have against each other, cooperate and assist one another in defending or seeking redress from the third party.

14.8. No claims arising out of, or related to, the operation or conduct of the Joint Venture which are asserted against one or both of the Parties or against the Joint Venture by a third party claimant shall be settled except with the unanimous consent of the Management Committee or of both Parties.

15. **Bankruptcy or Insolvency.** In the event of the bankruptcy or insolvency of any of the Parties or should any of the Parties commit any act of bankruptcy or take advantage of any bankruptcy, reorganization composition or arrangement statute, then the insolvent Party shall: (i) cease to have any say or voice in the management of any Contract; (ii) its delegation of authority to its appointed representative on the Management Committee shall be deemed cancelled; (iii) the representatives appointed by the other Party shall have the full power and authority previously delegated by the insolvent Party to its representatives, and (iv) whenever it is provided in this Joint Venture Agreement that the act, consent, or decisions of the Parties are required, it shall be deemed to mean the act, consent or decision of the other Party excluding the insolvent Party.

15.1. The insolvent Party shall remain liable for its share of any losses as provided in this Agreement and shall be entitled to receive its share of the profits, if any, as provided in this Agreement, to be paid at the time and in the manner as provided in this Agreement.

16. **No Assignment of Joint Venture Agreement or Joint Venture Interest.** Neither this Agreement nor any interest of the Parties or any of them in this Agreement, including interest in any moneys belonging to or which may accrue to the Joint Venture in connection with a Contract or any interest in the joint accounts or in any property of any kind employed or used in connection with any Contract may be assigned, pledged, transferred or hypothecated by the

Joint Venture or any Party to this Joint Venture Agreement without the prior written consent of all of the Parties.

16.1. In the event one of the Parties desires to obtain banking accommodations, that Party may assign, pledge or hypothecate its interest in the moneys to be received by that Party pursuant to this Joint Venture Agreement to the lending institution as security for a banking accommodation with the prior written consent of the other Party hereto.

17. **Rights of Creditors.** The right of any person or entity claiming by, through or under a Party (including without limitation creditors, receivers, trustees, assignees, garnishees, executors, or administrators), to assert any claim against the right, title and interest of the Party in the Joint Venture shall be limited solely to the right to claim or receive after completion of the Contract(s) and after the closing of the accounts of the Joint Venture, the distributive share of that Party in the net proceeds payable pursuant to this Joint Venture Agreement subject to the equities and prior rights of the other Party as set forth in this Agreement.

18. **Governing Law.** All questions relative to the execution, validity, interpretation and performance of this Joint Venture Agreement shall be governed by the laws of California.

19. **Binding on Successors.** This Agreement shall bind the Parties hereto and their respective successors. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon or give to any person, firm or corporation other than the Parties hereto and their successors, any right, remedy or claim under this Agreement or by reason hereof, or any covenant, stipulation, promise or agreement hereof, and all covenants, stipulations, promises and agreements herein contained shall be for the sole and exclusive benefit of the Parties hereto and their respective successors.

20. **Notices.** Any notices required to be given by the terms and provisions of this Agreement shall be in writing and shall be deemed to have been served and given on the day such notice is personally delivered or five (5) calendar days after the date the notice is deposited by either registered or certified mail, postage prepaid, in a United States General or Branch Post Office, addressed to the Party hereto to whom directed, at its respective address, to the attention of the Party's current representatives to the Management Committee.

21. **Automatic Termination.** This Agreement shall remain in effect only for such length of time as may be necessary to carry out the undertaking and the terms and conditions of this Agreement. If any Contracts are awarded to the Joint Venture, this Joint Venture Agreement shall remain in effect until all obligations arising under or relating to the Contracts have been fully performed, including satisfaction or settlement of any third party liability claims that may arise.

22. **Disputes.** The Parties will expeditiously resolve disputes among the Parties as follows:

22.1 Any dispute arising among the Parties under this Agreement shall be first submitted to the Management Committee for resolution.

22.2 In the event the Management Committee is unable to resolve the dispute within 30 days after the dispute is referred to the Management Committee for resolution, or such

other time as the Parties mutually agree, the matter will be referred upon the written notice of either Party to the Chief Executive Officers of RABC and EC Constructors, respectively, for resolution, and shall be empowered and authorized to bind their respective Party with respect to the matter in dispute, and to settle the issue on behalf of their respective Party.

22.3 In the event the dispute cannot be resolved by the Parties' representatives within 30 days, the dispute shall be submitted to non-binding mediation. The Parties shall endeavor to agree on a mediator. If the Parties cannot agree on a mediator, then the Parties shall submit the dispute to the American Arbitration Association for selection of a mediator. The Parties shall share equally all costs and expenses of the mediator.

22.4 Pending resolution of a dispute under this Section, the Management Committee may make an interim decision and such interim decision will be executed by the Joint Venture if an immediate decision is necessary to continue the Joint Venture's operations, including execution or performance of a Contract, and compliance with such decision would not cause irreparable harm to the Joint Venture or any Party.

22.5 In the event the dispute cannot be resolved by the Parties' representatives within 30 days, the dispute shall be resolved exclusively by binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, or such other arbitration service as may be mutually agreed by the parties. The resulting arbitration decision shall be final and conclusive without resort to any court or judicial tribunal except that the award of the appointed arbitrator may be submitted for judgment and execution in a court of competent jurisdiction. The parties shall jointly appoint an arbitrator. The arbitration shall take place in San Diego, California. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The costs and fees imposed by the arbitrator for its expenses shall be borne equally by the Parties. Each Party shall bear entirely its own attorney's fees and expenses, unless otherwise contemplated in this Agreement or awarded in such arbitration. If the parties are unable to agree on a single arbitrator, then the administering arbitration service shall appoint an arbitrator utilizing the AAA Commercial Arbitration Rules procedures.

23. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and together shall constitute a single instrument.

Date: OCT 11TH, 2013 RA Burch Construction Company Inc.



Robert A. Burch
Chief Executive Officer

Date: Oct. 9th, 2013 EC CONSTRUCTORS, INC.



Sherri L. Summers
Chief Executive Officer

STATE OF CALIFORNIA

Contractors State License Board

Pursuant to Chapter 9 of Division 3 of the Business and Professions Code
and the Rules and Regulations of the Contractors State License Board,
the Registrar of Contractors does hereby issue this license to:

RABC - ECC A JOINT VENTURE

License Number 986034

to engage in the business or act in the capacity of a contractor
in the following classification(s):

A - GENERAL ENGINEERING CONTRACTOR
B - GENERAL BUILDING CONTRACTOR

Witness my hand and seal this day,

August 15, 2013

Issued August 14, 2013



Paul Schifino, Board Chair



Stephen P. Sands, Registrar of Contractors

This license is the property of the Registrar of Contractors,
is not transferrable, and shall be returned to the Registrar
upon demand when suspended, revoked, or invalidated
for any reason. It becomes void if not renewed.

EXHIBIT A: GENERAL CONDITIONS



GARDEN GROVE

GENERAL CONDITIONS

FOR

**CITY OF GARDEN GROVE
FIRE STATION NO. 6 AND COMMUNITY BUILDING PROJECT**

between

**The City of Garden Grove
as Owner**

and

**RABC-ECC A Joint Venture
as Design-Builder**

GENERAL CONDITIONS

1. GENERAL PROVISIONS

1.1 DEFINITIONS.

Whenever the words defined in this section, or pronouns used in their stead, occur in any of the Agreement, they shall have the meaning herein given unless the context clearly indicates otherwise.

Affidavit of Final Completion. A sworn affidavit from Design-Builder and all Design Team Members identified in the Agreement submitted to City in a form approved by the City that the Work has been completed in strict accordance with the Contract Documents, no lawful debts for labor or materials are outstanding, all requests for payment of undisputed funds are accurate, complete and final and no additional compensation above the final payment is due under the Agreement, there is no existing default by Design-Builder or pending claim by a third party, and, upon receipt of final payment, Design-Builder and its Subcontractors acknowledge that City will be released from any claims or liability for additional sums on account of undisputed Work.

Agreement. When capitalized, means document signed by City and Design-Builder for performance of the Work, as amended from time to time, which sets forth the rights and obligations of the Parties, including all exhibits and attachments.

Applicable Laws. All laws, statutes, codes, ordinances, requirements, rules, tariffs, development regulations and other regulations of governmental authorities having jurisdiction over the Project, including, but not limited to, Applicable Law relating to disabled access.

Application for Payment. Application for Payment means the payment process described in Section 9.2 herein.

As-Built Drawings. A set of drawings updated and marked to show deviations made during construction, details in the Work not previously shown, changes to existing conditions found to differ from those shown on existing drawings, and the actual installed position of equipment and fixtures.

Best and Final Offer. The Best and Final Offer means the Design-Builder's best and final offer dated [INSERT] which is on file at [INSERT]

Certificate of Final Acceptance. The formal written acknowledgement issued by City to Design-Builder that the Work has been fully completed.

Certificate of Substantial Completion. The formal written acknowledgement issued by City to Design-Builder that the Project has attained Substantial Completion.

Change. Substitutions, alterations, additions or deletions in the Work.

Change Order. A written order implementing changes in the Work for which adjustments to the Contract Price and Contract Time as those terms are defined in the Agreement, if any, have been agreed upon prior to the issuance of the change order.

Change Order Request. A document submitted at the Design-Builder's own initiative to the City requesting that a Change Order be issued.

Change Notice. A document issued by City to Design-Builder detailing a proposed change in the Work, stating a proposed basis for adjustment, if any, in the Contract Price and Contract Time.

Change Proposal. A proposal for a Change Order submitted by the Design-Builder to the City, describing revisions to the Work and the basis for adjustment of the Contract Price and Contract Time, either in response to City's Change Notice or at the Design-Builder's own initiative in connection with a Change Order Request.

City. The City of Garden Grove.

City Manager. The Person holding the position of City Manager for the City of Garden Grove.

City Standards. The City Standards include Standard Plans and Specifications, 2015 ed., which include Street & Highway Standards, Storm Drain Standards, Traffic & Lighting Standards and Water and Sewer Standards.

Claim. A demand by Design-Builder for a time extension which is disputed by the City or payment of money or damages for work performed in connection with this Agreement that is disputed by the City.

Construction Documents. All technical drawings, shop drawings, working drawings, schedules, diagrams, specifications and samples, setting forth in detail the requirements necessary for construction of the Project in accordance with the Contract Documents, approved by the City and incorporated into this Agreement after such approval. All amendments to the Construction Documents must be approved by City in writing prior to incorporation into the Agreement and prior to the construction of the Work affected by the change.

Contract. Depending on the context, "Contract" shall mean the Agreement, or the Contract Documents, which establish the respective rights and obligations of the Parties.

Contract Documents. The documents described in Article 1 of the Agreement.

Contract Price. The Contract Price indicated in the Agreement.

Council. The Council of the City of Garden Grove.

Day. As used throughout the Agreement the terms "Day" or "Days" mean calendar days unless otherwise specifically designated.

Department. The Garden Grove Public Works Department.

Design and Performance Criteria. Those minimum performance and quality standards contained in the Preliminary Design Documents provided to the Design-Builder by the City.

Design-Builder. The Design-Builder means [INSERT NAME].

Design Documents. All drawings (including plans, elevations, sections, details and diagrams), Specifications, reports, calculations, records and submittals necessary for the design of the Project in accordance with the Contract Documents, following approval thereof by City and others as required by the Contract Documents.

Design-Build Team Members. The licensed Trade Subcontractors and Design Subcontractors identified in the Proposal.

Engineer. The Person designated by the City's Public Works Director as the Engineer for the Project.

Final Completion. The stage of performance when all Work has been completed in accordance with the Contract Documents including, without limitation, all correction or completion items noted in the Certificate of Substantial Completion. The determination of the date of Final Completion shall be made reasonably and in good faith by the City and shall be fixed in a Certificate of Final Acceptance issued by City.

Force Majeure. Failure of performance due to an uncontrollable force. The term "uncontrollable force" shall mean any cause beyond the control of the party unable to perform, including but not limited to, failure of or threat of failure of facilities, flood, earthquake, storm, drought, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, strike, labor dispute, labor or material shortage, sabotage, government priorities, restraint by court order or public authority and action or non-action by or inability to obtain the necessary authorization or approvals from any governmental agency or authority, which by the exercise of due diligence such party could not reasonably have been expected to avoid and which by exercise of due diligence has been unable to overcome.

Governmental Approval. Any approval, authorization, certification, consent, exemption, filing, permit, registration, or ruling required to design and construct the Project, excluding only those approvals identified as the responsibility of the City in the Contract Documents.

Lead Design-Build Team Member. The entity with overall management responsibility for the Project.

Milestone Dates. Has the meaning set forth in Section 3.8.1.

Modification. A modification is (1) a written amendment to the Contract signed by both Parties; (2) a Change Order signed by both Parties; (3) a Unilateral Time and Material Change Order issued by the City.

Notice to Proceed. The written notice given by City to Design-Builder which authorizes the Design-Builder to commence performance of the Work.

Owner. Same as the City.

Parties. The Parties to the Agreement, City and Design-Builder.

Person. Any individual, corporation, company, joint venture, association, partnership, trust or unincorporated organization.

Preliminary Design Documents. Preliminary Design Documents are those documents approved by the City in writing in accordance with Section 5.6 of the Agreement.

Project. The terms "Project" shall have the same meaning contained in the Agreement and as further specified in the Proposal.

Project Schedule. The schedule for performance of the Work attached to the Proposal. The Project Schedule shall be adjusted pursuant to the provisions of the Contract Documents.

Proposal. The Proposal and amendments thereto means the Design-Builder's proposal dated [INSERT] on file at the [INSERT]. The Proposal also includes the Best and Final Offer.

Record Documents. The documents described in Section 3.9 herein.

Recovery Schedule. A plan submitted by Design-Builder in the event the Work is lagging behind the critical path, demonstrating Design-Builder's proposed plan to regain lost schedule progress and to achieve Substantial Completion in accordance with the requirements of the Contract Documents.

Request for Information. A document issued by the Design-Builder requesting information or clarification of the Contract Documents.

Services. When capitalized, means the sum total of productive and operative efforts used to generate the results as specified, indicated or implied in the Contract Documents, including all technical and professional services and Construction Documents. The term Services when used throughout the Contract Documents is interchangeable with the term "Work."

Shop Drawings. Shop drawings shall mean drawings, diagrams, performance curves, data sheets, schedules, templates, patterns, reports, calculations, instructions, measurements, and similar information, for the Work furnished by or on behalf of Design-Builder to illustrate a portion of the Work.

Site. Fire Station 6 and Community Building site is located 12252 West Street. The site is located within the City of Garden Grove, CA in the County of Orange and is depicted in the Conceptual Site Plan in Exhibit J.

Specifications. The Specifications mean the technical specifications of the product, material, equipment, and workmanship required for construction of the Project. The Specifications shall be prepared and submitted by the Design-Builder and shall conform to Applicable Laws and shall be approved by the City.

Subcontractor. Any Person who enters into a subcontract with Design-Builder to perform any part of the Work. Unless otherwise specified, Subcontractor excludes suppliers, manufacturers and distributors.

Substantial Completion. This terms is defined in Section 9.4.1.

Supplier. Any Person, other than employees of Design-Builder, who supplies machinery, equipment, materials or systems to Design-Builder or any Subcontractor in connection with performance of the Work.

Time and Material Change Order (TMCO). A Time and Materials Change Order, unilaterally issued by the City, shall instruct Design-Builder to perform Work, indicating expressly the intention to treat the items as changes in the Work, and setting forth the kind, character and limits of the Work as far as they can be ascertained, the terms under which changes to the Contract Price and Contract Time, if any, will be determined and the not to exceed estimated cost of the change. Upon final determination of the allowable costs, the Change Order shall be finalized to set forth the final adjustment to the Contract Price.

Turnkey Contract Basis. The Design-Builder agrees to provide a completely finished facility ready for occupancy and use in accordance with the requirements of the Contract Documents, not to exceed the Contract Price, within the Contract Time, and the Design-Builder assumes all risks relating to cost overruns, defects and delays arising from the design and/or the method of construction.

Work. All of the administrative, design, engineering, professional, manufacturing, supply, installation, construction, supervision, management, testing, verification, labor, materials, equipment, maintenance, documentation and other duties and services to be furnished and provided by Design-Builder as required by the Contract Documents, including all efforts necessary and appropriate to achieve Final Completion of the Project at the Site, except for those efforts which the Contract Documents specify will be performed by City or other Persons.

Work Directive. A written order signed by the City in the event of any dispute regarding the scope of the Work. The Work Directive will describe the Work in question and will state the basis for determining compensation, if any, pending resolution of the dispute.

1.2 CORRELATION AND INTENT OF CONTRACT DOCUMENTS.

1.2.1 Complimentary Documents. It is the intent of the City and Design-Builder that the Contract Documents include all items necessary for proper execution and completion of the Work. The Contract Documents are complimentary, and what is required by one shall be as binding as if required by all, that is, to the extent there is no conflict in which case the order of precedence set forth Article 1 of the Agreement shall govern.

1.2.2 Severability. In the event any provision of the Contract Documents shall be deemed illegal, invalid, unenforceable and/or void by a court of competent jurisdiction or any other governmental agency of competent jurisdiction, such provision shall be deemed to be severed and deleted from the Contract Documents, and all remaining provisions hereof shall, in other respects, continue in full force and effect.

1.2.3 Provisions Required by Law Deemed Inserted. Each and every provision and clause required by law to be inserted in the Contract Documents shall be deemed to be inserted herein and the Contract Documents shall be read and enforced as though such provision or clause is included herein.

1.2.4 Explanations, Errors and Omissions. The Design-Builder will not be allowed to take advantage of any error or omission in the Contract Documents. Should it appear that the Work to be done or any matter relative thereto is not sufficiently detailed or explained in the Contract Documents, Design-Builder shall submit a Request for Information to Engineer, in writing, asking for such further written explanations as may be necessary. Design-Builder shall conform to the explanation provided. Design-Builder shall promptly notify the Engineer of all errors, omissions, inconsistencies or other defects (including inaccuracies and inconsistencies) which it may discover in the Contract Documents, and obtain specific instructions in writing regarding any such error, omission or defect, before proceeding with the Work affected thereby. Omission from the Contract Documents or the misdescription of details of Work which are necessary to carry out the intent of the Contract Documents, or which are customarily performed, shall not relieve Design-Builder from performing such omitted Work (no matter how extensive) or misdescribed details of the Work and they shall be performed as if fully and correctly set forth and described in the Contract Documents, without entitlement to a Change Order hereunder.

1.2.5 Interpretation. The Contract Documents are intended to be coordinated so that figures, words or notes exhibited on plans and not mentioned in the Construction Documents (including, the Design Documents), or vice versa, are to be executed to the true intent and meaning thereof, the same as if mentioned in the Construction Documents (including, the Design Documents). Work shown on plans, the dimensions of which are not given, is to be accurately followed according to the scale to which plans are made, but figured dimensions in all cases are to be followed, although they may differ from the scale measurements. The Engineer will interpret the meaning of any part of the Contract Documents about which any misunderstanding may arise, and his decision shall be final. In the event of the Design-Builder's failure to give such notice, the Design-Builder shall make good any damage or defect caused thereby. The execution of work specially detailed or explained without a previous written claim for an extra charge, shall constitute an acceptance by the Design-Builder of the detailed explanations as being in conformity with the Work covered by the Contract.

1.2.6 Meaning of Words. Unless otherwise stated in the Contract Documents, words which have well-known, technical or construction industry meanings are used in accordance with such recognized meanings. Whenever in the Contract Documents the words "directed," "required," "permitted," "ordered," "designated," "prescribed," or words of like import are used, it shall be understood that the direction, requirement, permission, order, designation,

or prescription of the Engineer is intended, and similarly the words "approved," "acceptable," "satisfactory," or words of like import, shall mean approved or acceptable to, or satisfactory to the Engineer unless otherwise expressly stated.

1.3 OWNERSHIP AND USE OF DOCUMENTS.

1.3.1 The Construction Documents and other Project-related documents and electronic data prepared by or on behalf of the Design-Builder for the Project shall be deemed to be "works for hire" and are the property of the City. The Design-Builder hereby assigns to the City, without reservation, all copyrights to all Project-related documents, models, computer drawings and other electronic expression, photographs, and other expression produced by the Design-Builder. Among those documents are certain "Instruments of Service," including the design drawings, Construction Documents (including, the Design Documents), and other documents that are required by the Contract Documents. Design-Builder shall obtain a valid written assignment of copyrights from its consultants in terms identical to those that obligate the Design-Builder to the City as expressed in this subsection, which copyrights the Design-Builder hereby assigns to the City. The City, in turn, hereby grants to the Design-Builder a nonexclusive license to reproduce the documents for purposes relating directly to the Design-Builder's performance of this Project, for the Design-Builder's archival records, and for the Design-Builder's reproduction of drawings and photographs in the Design-Builder's marketing materials provided the contents of those materials, as to this Project, are approved by City in writing. No other Project-related documents may be reproduced for any other purpose without the express written permission of the City. No other copyrights are included in this grant of nonexclusive license to the Design-Builder. This nonexclusive license shall terminate immediately upon the breach of this Agreement by the Design-Builder.

1.3.2 A copy of every technical memorandum and report prepared by Design-Builder shall be submitted to the City to demonstrate progress toward completion of Work. In the event City rejects or has comments on any such work product, City shall identify specific requirements for satisfactory completion by Design-Builder. Design-Builder shall provide City with Project-related documents in reproducible or electronic format, upon City's written request. Complete Record Documents shall be turned over to City upon termination of this Agreement or Final Completion, whichever occurs first. If the City subsequently reproduces Project-related documents or creates (or causes to create) a derivative work based upon Project-related documents created by the Design-Builder, the City shall remove or completely obliterate the original professional seals, logos, and other indications on the documents of the identity of the Design-Builder and its consultants. However, where required by law, such identification with appropriate qualifying language or other statutorily prescribed information identifying the original architect or the scopes of the reuse of the documents may remain or be applied. City agrees to hold harmless and indemnify to the fullest extent permitted by law, Design-Builder against claims and costs that may arise from the alteration of these project-related documents by City when used for other projects unless the claims or costs arise from the negligence or willful acts of the Design- Builder.

1.3.3 If the Design-Builder believes or is advised by any design professional retained to provide services on the Project that implementation of any instructions received from the City would cause a violation of any Applicable Law, the Design-Builder shall notify the City in writing.

2. OWNER

2.1 INSPECTION BY CITY

2.1.1 The Work shall be done in strict compliance with the approved Contract Documents to the satisfaction of the Engineer. The Engineer shall decide all questions, which may arise as to the quality or acceptability of the Work performed and as to the manner or performance and rate of progress of the Work, and all questions as to progress payments or compensation.

2.1.2 The Engineer shall, at all times, have the right to inspect the Work and materials in the course of manufacture, assembly or installation and make such tests from time to time as may be deemed advisable. The Design-Builder shall keep the Engineer, or his designated representative, informed as to the progress of the Work, giving ample notice, in advance, of appropriate times for inspection and tests, and shall furnish reasonable facilities for such inspection and tests for obtaining such information as Engineer may require respecting the Work and the character of the materials used.

2.1.3 The Engineer may, in his discretion, inspect upon delivery all equipment and material purchased for this Project, and if any equipment or material is found not to comply with the Contract Documents, such equipment or material will be rejected.

2.1.4 The Design-Builder shall make available all facilities providing materials or equipment to the Project for inspection during manufacture, and at the Site and shops or yards as desired, and shall not conceal any Work requiring inspection until the same has been approved by the Engineer. If such Work should be concealed before inspection, the Design-Builder will be required to remove such portions of the Work already installed as may be necessary to enable such inspection to be made.

2.1.5 As more particularly described in Article 12 herein, all Work rejected shall be remedied, or removed and replaced by the Design-Builder in a manner acceptable to the Engineer and no compensation therefor will be allowed or paid therefor to the Design-Builder. Any work done beyond the lines and grades shown on the Contract Documents or established by the Engineer, or any extra work done without valid written authority, will be considered as unauthorized and will not be paid for. Such unauthorized work done may be ordered removed at the Design-Builder's expense. Upon failure on the part of the Design-Builder to comply promptly with any order of the Engineer made under the provisions of these Contract Documents, the Engineer shall have authority to cause defective work to be remedied or removed and replaced and unauthorized work to be removed at the expense of Design-Builder, and to deduct the cost from any monies due or to become due the Design-Builder under this Contract.

2.1.6 Inspection or approval of the Work shall not relieve the Design-Builder of any obligation to faithfully perform and comply with the Contract, and defective work shall be made good and noncompliant materials rejected and replaced at Design-Builder's expense, notwithstanding that such defective work has been previously overlooked by the Engineer and approved.

2.1.7 The Engineers' inspections, as provided for in this Section 2.1, shall not be in-lieu of the City building officials' inspections.

3. DESIGN-BUILDER

3.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS

3.1.1 By executing this Agreement, Design-Builder represents: (1) that it has visited the Site, familiarized itself with the local and as-built conditions under which the Work is to be performed; (2) that it has familiarized itself with the nature, location and extent of concurrent construction projects in the vicinity of the Project; (3) that it has familiarized itself with the nature and extent of the Contract Documents, the Work, all Applicable Laws that may affect costs, progress, performance or furnishing of the Work; (4) that it has correlated local conditions and requirements with the City's requirements, schedule and budget; (5) that it has advised City of any local conditions or requirements which vary from City's requirements and made recommendations to cure such variances; (6) that it is fully experienced, qualified and competent to perform the services set forth in this Agreement; (7) that it is properly equipped, organized and financed to perform the Work; (8) that it is properly permitted, licensed and registered by the State of California to perform the services of a design-build Design-Builder; (9) that it has familiarized itself with all conditions bearing upon transportation, disposal, handling and storage of materials; (10) that it has familiarized itself with the availability of labor, water, electric power, and roads; (11) that it has familiarized itself with uncertainties of weather and physical conditions at the Site; (12) that it has familiarized itself with the character of equipment and facilities needed preliminary to and during performance of the Work; and (13) that it has familiarized itself with the staging and material storage constraints of the Site and will confine its staging and storage operations to approved areas. In addition, and without limiting the foregoing warranties, Design-Builder represents and warrants to City as follows:

3.1.2 Design-Builder has obtained and studied (or assumes responsibility to do so) all such examinations, investigations, explorations, tests, reports and studies which pertain to the physical conditions at or contiguous to the Site or conditions which otherwise may affect the cost, progress, performance or furnishing of the Work, as Design-Builder considers necessary for the performance of the Work hereinafter defined, within the Contract Time and schedule and in accordance with the other terms and conditions of the Contract Documents and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by Design-Builder for such purposes. Design-Builder may rely upon the accuracy of the technical data contained in any such documents provided by the City, but not upon non-technical data, interpretations, opinions or conditional statements contained therein or for the completeness thereof for Design-Builder's purposes.

3.2 LABOR AND MATERIALS

3.2.1 Labor Code. The Design-Builder shall strictly adhere to the provisions of the Labor Code regarding minimum wages, the 8-hour day, the 40-hour week, overtime, Saturday, Sunday and holiday work, apprentice employment and training, workers' compensation,

certification, non-discrimination and prevailing wages, all as more specifically set forth in Article 15 herein.

3.2.2 Preparation for Shipment. The Design-Builder or Design-Builder's Suppliers shall prepare all articles and materials for shipment in such a manner as to protect them from damage in transit, and shall be responsible for and repair all damaged parts or replace all losses incurred in transit to the designated delivery point. When necessary, heavy parts shall be mounted on skids or crated, and all articles or materials that might otherwise be lost shall be boxed or wired in bundles. All articles shall be plainly marked for identification and destination. The Design-Builder shall prepare proper commercial bills of lading, three copies of which, together with a complete shipping list, shall be sent to the Engineer.

3.2.3 Identification. All correspondence, drawings, shipping papers, documents and invoices pertaining to equipment described in the Contract Documents shall be plainly marked with the number of the Purchase Order Number. All bundles, boxes, crates, containers, and pieces of equipment shipped under the Contract Documents shall be plainly labeled with said number.

3.2.4 Delivery. Delivery shall mean the delivery to the Site of complete equipment or material components required by, and complying with, the Contract Documents.

3.2.4.1 The Design-Builder shall place orders for all equipment in time to prevent any delay in the Project Schedule or Substantial Completion of Project. If any materials or equipment are not ordered in time, additional charges made by equipment manufacturers to complete their equipment in time to meet the Project Schedule, together with any special handling charges, shall be borne by the Design-Builder.

3.2.4.2 Materials shall be delivered in sample quantities from time to time as may be necessary for the uninterrupted progress of the Work. They shall be stored so as to cause the least obstruction to the Site and distributed so as to prevent overloading any portion of the structure. These areas shall be only in approved locations and shall not interfere with the work of any Separate Design-Builders with the use of property adjacent to the Site.

3.2.4.3 The Design-Builder shall provide facilities and personnel for unloading, receiving, and warehousing all equipment and materials at the Site. The City may, at the written request of the Design-Builder, furnish the personnel and facilities to unload, receive and warehouse the equipment and materials required under this Contract. For this service, the Design-Builder agrees to promptly pay the expense of the use of City personnel and equipment. Before the City will arrange to render the service, however, the Design-Builder shall first send a copy of the bill of lading to the Engineer. In performing this service, the City shall act as the agent of the Design-Builder. It is distinctly understood that the City shall in no event be responsible for, nor does it assume any liability for, the equipment or materials received under this section, although reasonable care will be taken to check and store them.

3.2.4.4 All Work, equipment and materials shall be protected at all times. The Design-Builder shall make good all damage caused either directly or indirectly by his employees or Subcontractors. The Design-Builder shall also protect his own Work from damage. The Design-Builder shall close all pipe openings with caps or plugs during installation. The

Design-Builder shall protect all of his equipment and materials against dirt, water, chemical and mechanical injury. Upon completion, all Work shall be thoroughly cleaned and delivered in a new condition.

3.2.5 Property Ownership

3.2.5.1 Except as otherwise provided for in these General Conditions, title to all material and equipment shall vest in the City upon shipment thereof, but all risk or loss in respect thereto shall remain with the Design-Builder until the City has accepted the material and equipment following Final Completion. This risk of loss includes insuring the shipment and acting as the principal plaintiff in case of damage incurred during shipment or erection of the equipment.

3.2.5.2 Although title to the equipment and material passes to the City upon shipment, as above specified, the Design-Builder shall have the charge and care thereof until Final Completion. The Design-Builder shall bear the expense of any theft or damage whatever to the equipment and materials during that period except that the City will bear the expense of any such damage that is caused by its negligence.

3.2.5.3 In case of a personal property tax being levied upon the equipment and materials to be furnished and installed under the Contract after delivery on the Site and the Design-Builder is required to pay such tax, the City will reimburse the Design-Builder for such tax upon presentation of a certified copy of such tax statement. In the event of such reimbursement by the City, the Design-Builder shall cooperate with the City and furnish such authority to the City as it may need in order to prosecute an action for refund of such taxes, and in the event of such a refund, the refunded taxes shall become the property of the City.

3.2.5.4 The Design-Builder offers and agrees 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. Sec. 15) or under the Cartwright Act (Chapter 2 (Section 16700, et seq.) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to this Agreement. This assignment shall be made and become effective at the time the City tenders final payment to the Design-Builder, without further acknowledgment by the Parties.

3.3 SUBSTITUTIONS

3.3.1 The burden of proof as to the type, function, and quality of any such substitution product, material or equipment shall be upon the Design-Builder. The final determination of the acceptability of substitute items rests solely in the discretion of the City.

3.3.2 Without any increase in cost to the City, the Design-Builder shall be responsible for and pay all costs in connection with proposed substitutions and of inspections and testing of equipment or materials submitted for review prior to the Design-Builder's purchase thereof for incorporation in the Work, whether or not the City accepts the proposed substitution or proposed equipment or material. The Design-Builder shall reimburse the City for the charges of the City for evaluating each proposed substitution.

3.4 WARRANTY

3.4.1 Without limiting any other rights of Design-Builder, Design-Builder warrants to City that: all equipment and materials furnished under the Contract will be of good quality and new; that the Work will be free from defects, including design defects, errors and omissions; the Project shall be fit for use for its intended function; and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not made in accordance with the Contract Documents, shall be considered defective. If required by the Engineer, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment furnished. Without limiting any other rights or remedies of the City, if any defect in the Work arises within one (1) year after the date of Substantial Completion or five (5) years after the date of Substantial Completion for the proposed Work, the Design-Builder, upon receipt of written notice of such defect, as provided in Article 12 herein, shall promptly repair or replace such defective Work without cost to City.

3.4.2 Design-Builder shall obtain in the name of the City (or such other name as City may designate in writing to Design-Builder) and transfer or assign to City or City's designee at the time of Final Completion of the Work, any and all warranties or guarantees which Design-Builder is required to obtain pursuant to the Contract Documents which Design-Builder obtained from any other person or entity other than Design-Builder and further agrees to perform the Work in such a manner so as to preserve any and all such warranties.

3.4.3 Design-Builder agrees to obtain from Subcontractors, material suppliers and manufacturers, warranties for labor and materials which extend beyond the one (1) year warranty and correction period required by the Contract for the following systems: any warranty upgrades or extensions which are offered by manufacturers of any equipment or system utilized in the Project, as part of the manufacturer's standard warranties shall be offered to the City by the Design-Builder.

3.5 TAXES

Design-Builder shall pay all sales, consumer, use, gross receipts and other similar taxes required to be paid by Design-Builder in accordance with Applicable Laws, which are applicable during the performance of the Work.

3.6 APPLICABLE LAW

The Design-Builder shall keep fully informed of all Applicable Laws which in any manner affect those engaged or employed in the Work, or the materials used in the Work, or which in any way affect the conduct of the Work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. If any discrepancy or inconsistency is discovered in the Contract Documents for the Work in relation to any Applicable Law, including a change in Applicable Law, the Design-Builder shall forthwith report the same to the Engineer in writing. The Design-Builder shall at all times, observe and comply with and shall cause all of his agents and employees to observe and comply with, all Applicable Laws. If the Design-Builder performs the Work knowing it to be contrary to

Applicable Law, the Design-Builder shall assume full responsibility and bear costs applicable to correction.

3.7 PERMITS, LICENSES AND INSPECTIONS

The City will apply for the plan check or checks, and the Design-Builder will apply for the general construction permit or permits. The Design-Builder shall obtain and pay for all plumbing and electrical permits and licenses, all permits and inspection in connection with the work or operations in or over public streets and highways, and all other permits and inspections required in connection with the Work to be done under the Contract Documents, unless otherwise specified herein. The Design-Builder shall comply with and give notices required by all Applicable Laws.

3.8 SCHEDULE

3.8.1 Design-Builder shall prepare and submit a Project Schedule and any amendments thereto for City's approval. Amendments to the Project Schedule shall be in a detailed precedence-style critical path method (CPM) format satisfactory to the City and the Design-Builder which shall also: (1) provide a graphic representation of all activities and events that will occur during performance of the Work; (2) identify each phase of construction and occupancy; and (3) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as Milestone Dates). Upon review by the City of the Project Schedule as a whole and of the Milestone Dates, the Project Schedule shall be deemed part of the Contract Documents.

The Project Schedule shall be promptly revised by the Design-Builder in accordance with the recommendations of the City, if needed, and resubmitted. The Design-Builder shall monitor the progress of the Work for conformance with the requirements of the Project Schedule and shall promptly advise the City of any delays or potential delays.

3.8.2 With each Application for Payment submitted by Design-Builder, other than the Final Application for Payment, the Design-Builder shall submit to the City, as directed by the City project manager, a current Project Schedule revised to indicate the portion of the Work executed during the time period covered by the Application for Payment, all progress slippages occurring during the previously covered time periods and the corrective actions taken or slippage carry-over into the time period covered by the Application for Payment, all anticipated delays or difficulties, a Recovery Schedule, as applicable, and all other information required to accurately present the actual status of the progress of the Work as of the date of Application for Payment and as may be further required by the City or Design-Builder. If the Design-Builder does not submit the currently revised Project Schedule with an Application for Payment, the City may withhold payment, in whole or in part, in addition to other causes for such withholding provided for in the Contract Documents. In the event any amendments to the Project Schedule indicate any delays, the Design-Builder shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any update constitute an adjustment in the Contract Time, any Milestone Date or the Contract Price unless any such adjustment is agreed to by the City and authorized pursuant to a Change Order.

3.8.3 In the event any update to the Project Schedule shows the Work or any part thereof is lagging the critical path by ten (10) days or more, Design-Builder shall submit a Recovery Schedule, demonstrating Design-Builder's proposed plan to regain lost schedule progress and to achieve Substantial Completion of the Work in accordance with the requirements of the Contract Documents.

3.9 RECORD DOCUMENTS AND AS-BUILTS

3.9.1 Design-Builder shall maintain in a safe place at the Site and make available to City for inspection and copying, one record copy of all drawings, specifications, requests for information, written amendments, Change Orders, field orders and work change directives, in good order. In addition, Design-Builder shall maintain at the Site, approved shop drawings, product data, samples and mock-ups, permits, inspection reports, test results, daily logs, schedules, subcontracts and purchase orders ("Record Documents"). The Record Documents shall be prepared and continuously updated during the prosecution of the Work. As part of Record Documents, Design-Builder shall maintain a set of As-Built Drawings on Site in good condition and shall use colored pencils to mark-up said set with "record information" in a legible manner to show:

- A. deviations from the drawings made during construction;
- B. details in the Work not previously shown;
- C. changes to existing conditions or existing conditions found to differ from those shown on any existing drawings, including unknown buried utilities or structures found;
- D. the actual installed position of equipment, piping, conduits, light switches, electrical fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings, stub-outs and like items; and
- E. such other information as City may reasonably request.

Design-Builder's submittal of evidence of updated Record Documents shall be a condition precedent to City's duty to process payment applications.

3.9.2 Design-Builder, as part of the Contract Price, within thirty (30) calendar days after Substantial Completion or earlier termination of the Agreement and as a condition precedent to certifying of the final payment under the Contract, shall transfer the "As-Built" changes to the Work maintained by Design-Builder from the record drawings kept at the Site to: (a) a true and complete final set of "As-Built" mylar drawings capable of being reproduced and in the latest version of AUTOCAD format on compact disks or other City approved technology; (b) final approved shop drawings; and (C) a complete certified "As-Built" survey for the Site indicating the actual location of the improvements as constructed on the Site. The Design-Builder's duty to provide such As-Built Drawings, Shop Drawings and survey obligation shall survive the completion of the Work or termination of the Agreement.

3.10 INTELLECTUAL PROPERTY AND PATENT RIGHTS

3.10.1 The Design-Builder shall secure in writing from all patentees, copyright holders, and assignees of all Project-related documents, all copyrights, assignments, and licenses related to such expression (e.g., designs, drawings, Contract Documents, specifications, documents in computer form, etc.) as necessary to allow the City the full, unlimited, and unencumbered use of that expression for the execution, operation, maintenance, modernization or expansion of the Project. The Design-Builder shall immediately convey all such copyrights, assignments, and licenses to the City without reservation except that which is expressly allowed in this Article. In the case of products, materials, systems, etc., protected by patent, the Design-Builder and its consultants shall not specify or cause to be specified any infringing use of a patent.

3.10.2 Should the Design-Builder become aware of or receive notice of potential infringement of any intellectual property right related to the Project, regardless of the source of that awareness or notice, the Design-Builder shall (a) immediately cease the copying and any other activity which is the potential source of infringement; and within seven (7) calendar days (b) investigate the potential infringement; (c) submit to the City copies of all documents relating to that awareness, the notice, or the object thereof; and (d) issue to the City a complete written response and analysis of the potential infringement and the course of action recommended by the Design-Builder. The Design-Builder shall submit to the City a supplement of the initial report within seven (7) calendar days of the Design-Builder's receipt of, or awareness of, additional related information. Nothing in this Agreement shall be deemed to relieve the Design-Builder of its obligations under this Article, nor shall the City's receipt of the information indicated in this Article give rise to any duty or obligation on the part of City.

3.10.3 The Design-Builder and its Faithful Performance Bond Surety shall indemnify, defend, and hold harmless, the City from all liability, costs, and attorneys' fees incurred which are related to infringement of intellectual property rights, whether or not the infringement is potential, accused, or proven. Should the City become aware of, or receive notice of, potential, accused, or actual infringement of intellectual property rights, the City shall, in its sole option, have the right to engage independent legal counsel to advise the City as to the infringement. The costs and fees for such counsel shall be borne by the Design-Builder and shall be immediately recoverable by the City against amounts due or soon to be due to the Design-Builder or amounts already paid to the Design-Builder.

3.11 SUBMITTALS AND SHOP DRAWINGS

3.11.1 Design-Builder will review for compliance with the Contract Documents, approve and submit to Engineer, Shop Drawings, product data and similar submittals required by the Contract Documents. City will review and approve submittals in accordance with the Contract Documents. City's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the construction, conform to the information given in the Contract Documents and be compatible with the design concept of the completed project as a functioning whole as indicated by the Contract Documents. City's review and approval will not extend to means, methods, techniques, sequences or procedures of construction (except where a particular means, method,

technique, sequence or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item, as such, will not indicate approval of the assembly in which the item functions. Design-Builder shall make corrections required by City, and shall return the required number of corrected copies of the required submittal for review and approval. Design-Builder shall direct specific attention in writing to revisions other than the corrections called for by City on previous submittals. City's review and approval of required submittals shall not relieve Design-Builder from responsibility for any variation from the requirements of the Contract Documents unless Design-Builder has in writing called City's attention to each such variation at the time of submission and City has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the submittal.

3.11.2 Where a submittal is required by the Contract Documents of related construction provided prior to City's review and approval, Design-Builder shall bear the risk at the sole expense and responsibility of Design-Builder.

3.11.3 The Design-Builder shall prepare Shop Drawings necessary for the Work and shall check the same for accurate measurements taken from the Work, and when assured that such drawings have been properly prepared, shall submit same to the Engineer for approval.

3.11.4 When Shop Drawings cannot be made from actual dimensions taken from the Work but are prepared from the preliminary plans, it is distinctly understood that the Design-Builder is responsible for the accuracy of the information on which such drawings are prepared, for the City does not vouch for their accuracy, but will make available to the Design-Builder information upon which such plans were made.

3.11.5 It is definitely understood that the Engineer's approval of the Shop Drawings is for the design only and not for dimensions or structural accuracy, but will make available to Design-Builder information upon which such plans were made.

3.11.6 Any material ordered by the Design-Builder prior to the approval of Shop Drawings, shall be at his own risk. The Engineer shall have the right to keep Shop Drawings submitted for approval one week before returning to the Design-Builder with corrections or approval, and no claim for delay on this account shall be recognized. Any approved drawing prepared by the Design-Builder shall be furnished to the Engineer in PDF format.

3.12 USE OF SITE AND OTHER AREAS

3.12.1 Design-Builder shall confine construction equipment, the storage of materials and equipment and the operations of construction workers to those lands and areas allowed by the City and other land and areas allowed by laws and regulations, rights-of-way, permits and easements, and shall not unreasonably encumber the Site with construction equipment or other materials or equipment. Design-Builder shall assume full responsibility for any damage to any such land or area, or to the City or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work. Design-Builder shall, to the fullest extent permitted by laws and regulations, indemnify and hold harmless City, City's consultants and anyone directly or indirectly employed by any of them from and against all

claims, costs, losses and damages (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court and arbitration or other dispute resolution costs) arising out of or resulting from any claim or action, legal or equitable, brought by any such City or occupant against City, or any other party indemnified hereunder to the extent caused by or based upon Design-Builder's performance of the construction.

3.12.2 During the performance of the construction, Design-Builder shall keep the Site free from accumulations of waste materials, rubbish and other debris resulting from the construction. At the completion of the construction Design-Builder shall remove all waste materials, rubbish and debris from and about the Site as well as all tools, appliances, construction equipment, temporary construction and machinery and surplus materials. Design-Builder shall leave the Site clean and ready for occupancy by City at Substantial Completion.

3.12.3 Design-Builder shall restore to original condition all property not designated for alteration by the Contract Documents by Substantial Completion.

3.12.4 Design-Builder shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Design-Builder subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

3.12.5 The Design-Builder shall be responsible for protecting its property, material and equipment on the Site from vandalism and loss. Design-Builder shall be responsible for any fines, damages, and restoration costs associated with the staging area(s). The Design-Builder shall demobilize, leaving this storage area in a neat and clean condition prior to filing the Notice of Completion.

3.13 INDEMNITY

3.13.1 Subject to Section 3.13.3, Design-Builder shall release, defend, indemnify and hold harmless the City and its council members, officers, directors, agents and employees (collectively referred to as the "Indemnified Parties") from and against any and all alleged claims, causes of action, suits, judgments, investigations, legal or administrative proceedings, and losses (including those incurred in connection with the enforcement of this indemnity) arising out of, relating to or resulting from the following (each an "Indemnified Claim"):

- A. The breach or alleged breach of any of the contract terms by Design-Builder or any Design-Builder related entity; and/or
- B. The failure or alleged failure by Design-Builder or any Design-Builder related entity to comply with any governmental regulations (including regulations relating to the hazardous materials management); and/or
- C. Any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions in performance of the work, or arising out of any use in connection with the project of methods, processes, designs,

information, or other items furnished or communicated to the City or another Indemnified Party pursuant to the contract; provided that this indemnity shall not apply to any infringement resulting from the City's failure to comply with specific written instructions regarding use provided to the City by Design-Builder; and/or

- D. The alleged culpable act, error, omission, negligence, fraud, recklessness, willful misconduct, breach or misconduct of Design-Builder or any Design-Builder related entity; and/or
- E. Any and all claims by any governmental entity or taxing authority claiming taxes based on gross receipts, purchases or sales, the use of any property or income of any Design-Builder related entity or any of their respective agents, officers or employees with respect to any payment for the Work made to or earned by Design-Builder or any Design-Builder related entity; and/or
- F. Any and all stop payment notices and/or liens filed in connection with the Work, including all expenses and attorneys', accountants' and expert witness fees and costs incurred in discharging any stop payment notice or lien and any other liability to subcontractors or materialmen for failure to pay sums due for their work, services or material; provided, however that the City is not in default in undisputed payments owing to Design-Builder with respect to such Work or material; and/or
- G. Any release of hazardous materials or threatened release of hazardous materials (i) which was brought onto the site by Design-Builder or any Design-Builder related entity, or (ii) attributable to the negligence, fraud, recklessness, willful misconduct, or breach of applicable regulation, contract or regulatory permit by Design-Builder or any Design-Builder related entity regardless of the source, origin, or method of deposit of such hazardous materials; and/or
- H. To the extent of the negligence of Design-Builder or any Design-Builder related entity, the claim or assertion by any other contractor that Design-Builder or any Design-Builder related entity (i) interfered with or hindered the progress or completion of work being performed by such other contractor, so as to cause inconvenience disruption, delay, or loss, except where the Design-Builder or Design-Builder related entity was not in any manner engaged in performance of the Contract, or (ii) failure of Design-Builder or any Design-Builder related entity to cooperate reasonably with other contractors in accordance with the contract; and/or
- I. Design-Builder or any Design-Builder related entity's breach of or failure to perform an obligation that the City owes to a third party under law or under any agreement between the City and a third party, where (i) the City has delegated performance of the obligation to Design-Builder under the Contract or (ii) the acts or omissions of Design-Builder or any Design-Builder related entity which render the City unable to perform or abide by an obligation that the City owes

to a third party, under any agreement between the City and a third party, where the agreement was expressly disclosed to Design-Builder; and/or

- J. Inverse condemnation, trespass, nuisance or similar taking of or harm to real property by reason of any act or omission, whether intentional, reckless, negligent or otherwise of Design-Builder or any Design-Builder related entity, or the actual physical entry onto or encroachment upon another's property by Design-Builder or any Design-Builder related entity; and/or
- K. The failure of Design-Builder to fully comply with any insurance requirements; and/or
- L. Any failure to protect and/or maintain valuable papers and records that the Contract requires Design-Builder to maintain.

3.13.2 Subject to Section 3.13.3, Design-Builder shall release, defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, causes of action, suits, judgments, investigations, legal or administrative proceedings, and losses, arising out of, relating to or resulting from errors in the Design Documents furnished by Design-Builder, regardless of whether such errors were also included in the Project description or design concept drawings. Design-Builder agrees that, because the concepts in the Project description or design concept drawings are subject to review and modification by Design-Builder, (a) it is appropriate for Design-Builder to assume liability for errors in the completed project even though they may be related to errors in the Project description or design concept drawings and (b) such documents shall not be deemed "design furnished" by the City or any of the other Indemnified Parties, as the term "design furnished" is used in Civil Code section 2782. Design-Builder hereby waives the benefit (if any) of Civil Code section 2782 and agrees that this Section 2 constitutes an agreement governed by Civil Code section 2782.5.

3.13.3 The following restrictions shall apply to the indemnities set forth in Sections 3.13.1 and 3.13.2 above:

- A. Design-Builder's indemnity obligations shall not extend to any loss, damage or expense arising from the sole negligence or willful misconduct of an Indemnified Party.
- B. Except as permitted by Civil Code sections 2782.1, 2782.2 and 2782.5, such indemnities shall not inure to the benefit of an Indemnified Party so as to impose liability on Design-Builder for the active negligence of the City, or to relieve the City of liability for such active negligence.
- C. The requirement to provide an indemnity for breach of contract set forth in Section 3.13.1.A is intended to provide protection to the City with respect to third-party claims associated with such breach. It is not intended to provide the City with an alternative cause of action for damages incurred by the City with respect to such breach.

- D. With respect to work performed by a design professional as defined in California Civil Code section 2782.8, such indemnities shall apply only to the extent permitted by said Section 2782.8.

3.13.4 In claims by an employee of Design-Builder, a Design-Builder related entity, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Design-Builder or a subcontractor under workers' compensation, disability benefit or other employee benefits laws.

3.13.5 Design-Builder hereby acknowledges and agrees that it is its obligation to cause the project to be designed and to construct the project in accordance with the contract and that the Indemnified Parties are fully entitled to rely on its performance of such obligation. Design-Builder further agrees that any review and/or approval by the City and/or others under the Contract shall not relieve Design-Builder of any of its obligations under the contract or in any way diminish its liability for performance of such obligations to provide indemnities under the Contract.

4. ADMINISTRATION OF THE CONTRACT

4.1 ROLE OF THE ENGINEER

The Engineer or his designee(s) shall be responsible for oversight of the design, permitting and construction on City's behalf. Design-Builder shall deliver all Design Documents and Construction Documents and other submittals to the Engineer. All meetings regarding design and construction shall be coordinated through the Engineer. Design-Builder shall not be relieved of its obligations under the Contract Documents by City approvals.

4.2 CLAIMS AND DISPUTE RESOLUTION

4.2.1 Continuing the Work. Design-Builder shall carry on the Work and adhere to the Project Schedule during all disputes or disagreements with City. No Work shall be delayed or postponed pending resolution of any disputes or disagreements or pending change order requests.

4.2.2 Dispute Resolution. If a dispute arises out of or relates to this Contract, or the breach thereof, the Parties agree that the following negotiation and mediation process shall be used before the filing of a legal action.

If the Design-Builder believes that any instruction, request, drawing, specifications, action, condition, omission, default or other situation obligates the City to pay additional compensation to the Design-Builder or to grant an extension of time for the completion of the Work, the Design-Builder shall notify the Engineer, in writing and certified under penalty of perjury of such claim within five (5) business days from the date he has actual or

constructive notice of the factual basis supporting the claim or at the weekly progress meeting required by the Contract Documents, whichever is sooner. The Design-Builder's failure to notify the Engineer within such period shall be deemed a waiver and relinquishment of the claim against the City.

If the Engineer determines that the work in question is Work covered by the Agreement and not extra work, or that the determination or order complained of is proper, the Engineer will issue a Work Directive ordering the Design-Builder to proceed and the Design-Builder must promptly comply. However, in order to reserve his right to claim compensation for such work or damages resulting from such compliance, the Design-Builder must within five (5) days after receiving notice of the Engineer's determination and direction, notify the Engineer in writing that the work is being performed as extra work and that the determination and direction is being complied with under protest.

After sending such notification, the Design Builder shall, within three (3) days schedule a meet and confer conference with the Engineer for settlement of the dispute.

4.2.3 If the Design-Builder fails to strictly adhere to the foregoing procedure for the resolution of disputes, the Design-Builder shall be deemed to have waived any claim for extra compensation or damages therefore, including any damages for delay. No oral appeals or oral protests, no matter to whom made, shall be deemed even substantial compliance with these provisions.

5. SUBCONTRACTORS, SUPPLIERS AND CONSULTANTS

5.1 SUBCONTRACTING ACT

5.1.1 The Subletting and Subcontracting Fair Practices Act, Sections 4100 et seq. of the California Public Contract Code ("Subcontracting Act") requires Persons bidding on public works contracts to identify certain major Subcontractors as part of their bids. Owner recognizes that because a design-build contract may be awarded prior to the completion of the design, it is often impracticable for the design-build entity to list all Subcontractors during the design and procurement phase of the Work. As a result, the Subcontractor listing requirements contained in the Subcontracting Act can create a conflict with the implementation of the design-build process by requiring all Subcontractors to be listed at a time when a sufficient set of plans may not be available. Owner recognizes that certain Subcontractors can only be selected by the Design-Builder after a certain amount of design work is completed. Therefore, Owner has postponed Design-Builder's obligation to identify certain Subcontractors, subject to Design-Builder's compliance with the Subcontractor selection policy set forth in this Article 5. All Subcontractors shall be afforded the protections contained in the Subcontracting Act.

5.1.2 Design-Builder shall comply with the Subcontracting Act when Design-Builder selects a Subcontractor to perform any portion of the Work. Design-Builder agrees that any Subcontractor not identified within the Proposal who will perform Work or labor or render Service in the performance of the Contract in the amount exceeding $\frac{1}{2}$ of 1% of the difference between the Total of the Contract Price and the amount allocated to Design Services, shall be submitted to the City for approval prior to the execution of any subcontract. Unless waived

in writing by the City, Design-Builder shall submit to the City for approval its final list of Subcontractors no later than Design Documents being 50% complete. Once a Subcontractor approved by the City has been selected for any such Work, Design-Builder shall not have the right to make any substitution of such Subcontractor except in accordance with the provisions of the Subcontracting Fair Practices Act, Public Contract Code §§ 4100, et seq. The Engineer shall serve as the hearing officer for the purposes of any hearing dealing with the substitution of a subcontractor.

5.2 OBJECTION

Design-Builder shall not employ any subcontractor, engineer, supplier or other individual or entity against whom City may have reasonable objection. Design-Builder shall not be required to employ any subcontractor, engineer, supplier or other individual or entity to furnish or perform any of the Work against whom Design-Builder has reasonable objection.

5.3 RESPONSIBILITY

Design-Builder shall be fully responsible to City for all acts and omissions of the subcontractors, engineers, suppliers and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Design-Builder. Nothing in the Contract Documents shall create for the benefit of any such subcontractor, engineer, supplier or other individual or entity any contractual relationship between City and any such subcontractor, engineer, supplier or other individual or entity, nor shall it create any obligation on the part of City to pay or to see to subcontractor, engineer, supplier or other individual or entity except as may otherwise be required by laws and regulations.

5.4 COORDINATION

Design-Builder shall be solely responsible for scheduling and coordinating subcontractors, engineers, suppliers and other individuals and entities performing or furnishing any of the Work under direct or indirect contract with Design-Builder. Design-Builder shall require all subcontractors, engineers, suppliers and such other individuals and entities performing or furnishing any of the Work to communicate with the City through Design-Builder.

5.5 SUBCONTRACT AGREEMENTS

All services performed or provided to and material and equipment supplied to Design-Builder by a Subcontractor or Supplier will be pursuant to an appropriate design subagreement or construction sub-agreement between Design-Builder and the Subcontractor, engineer or supplier which specifically binds the Subcontractor, engineer or supplier to the terms and conditions of the Contract Documents for the benefit of City. City shall have the right but not the obligation to review and accept the form and substance of Design-Builder's agreements with Subcontractors. Whenever any such agreement is with a Subcontractor, engineer or supplier who is listed as an additional insured on the property insurance provided for herein, the agreement between the Design-Builder and the Subcontractor, engineer or supplier will contain provisions whereby the Subcontractor, engineer or supplier waives all rights against City, Design-Builder, City's consultants and all other additional insureds for all losses and damages caused by any of the perils or causes of loss covered by such policies and any

other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any subcontractor, engineer or supplier, Design-Builder shall obtain the same.

5.6 ASSIGNMENT

Each subcontract agreement for a portion of the Work is assigned by the Design-Builder to the City provided that assignment is effective only after termination of the Contract by the City and only for those subcontract agreements which the City accepts by notifying the Subcontractor in writing. Said assignments are subject to the prior rights of the sureties obligated on the bonds relating to this Agreement. Each subcontract shall specifically provide that the City shall only be responsible to the Subcontractor for those obligations of the Design-Builder that accrue subsequent to the City's exercise of any rights under this contingent assignment.

6. PAYMENTS TO SUBCONTRACTORS AND STOP NOTICE CLAIMS

6.1 PROMPT PAYMENT

Design-Builder shall make prompt payment to its Subcontractors and Suppliers within ten (10) days after receipt of payment from City.

6.2 STOP NOTICE CLAIMS

If at any time there shall be evidence of the existence, whether or not same has been asserted, of any stop notice or claim arising out of or in connection with the performance or default in performance of this Contract or any subcontract or supply contract entered into by Design-Builder to perform this Contract, and if the City might become liable for the discharge or satisfaction of such stop notice or claim, then City shall have the right to retain out of any payment then due or thereafter to become due, in addition to amounts for retainage and as otherwise set forth in Article 9 herein, an amount of one hundred and twenty-five percent (125%) to discharge such stop notice or satisfy such claim and to reimburse the City and the representatives of City for all costs and expenses in connection therewith, including attorney's fees. Further, the City, in its sole discretion, shall have the right to discharge or satisfy such stop notice or claim and pay all costs and expenses in connection therewith if the Design-Builder does not have such stop notice or claim discharged, bonded, or satisfied within ten (10) calendar Days after receiving notice thereof from City, or unless some other procedure for discharge or satisfaction of such stop notice or claim is agreed upon between City and Design-Builder. If the amounts retained by City are insufficient for the aforesaid purposes, or if such stop notice or claim remains undischarged or unsatisfied after all payments have been made to Design-Builder, then the Design-Builder shall refund to the City all monies that may have been paid to discharge such lien or satisfy such claims, including costs, expenses and attorney's fees in connection therewith.

7. CHANGES IN THE WORK

7.1 CHANGES

The City, without invalidating the Contract, and as provided by law, may order extra work or make changes by altering, adding to, or deducting from Work, the Contract Price being adjusted accordingly. All changes in the Work shall be performed under applicable provisions of the Contract Documents. Design-Builder shall proceed promptly to perform the change unless otherwise directed in writing by the City. In giving instructions, the Engineer shall have authority to make minor Changes in Work not involving change in cost or time and not inconsistent with the intent of the Contract Documents. Otherwise, except in an emergency endangering life or property, no extra work or change shall be made except in pursuance of a written Change Notice, Change Order or Time and Material Change Order issued by the City, and no claim for addition to contract sum shall be valid unless so ordered.

7.2 AUTHORITY TO ORDER CHANGES

7.2.1 No change shall be made nor extra work done except with the prior approval thereof by the Engineer and in conformity with the provisions of this Article. Minor changes in the Work that involve no extra cost, may be approved, authorized and ordered by the Engineer. The City's Public Works Director may execute any Change Orders for the Project provided the accumulated sum of this and all previous Change Orders do not exceed ten percent (10%) of the Contract Price. The City Council must approve any order for changes and/or extra work which exceed the foregoing limitation.

7.2.2 Design-Builder shall undertake, at its risk Work included in any oral request, order, Change Notice, Change Order or Time and Material Change Order issued by a Person in excess of that Person's authority as provided herein. Any Work performed by the Design-Builder beyond the lines and grades shown on the Contract Documents or any extra Work performed or provided by the Design-Builder without notice to the Engineer shall be considered unauthorized and at the sole expense of the Design-Builder. Work so done will not be measured or paid for and no extension of Contract Time will be granted on account thereof. Any such Work may be ordered removed at the Design-Builder's sole cost and expense. The failure of the City to direct or order removal of such Work shall not constitute acceptance or approval of the Work nor relieve the Design-Builder from any liability on account thereof.

7.3 OWNER INITIATED CHANGE NOTICE

7.3.1 City may issue a Change Notice, in writing, to the Design-Builder, describing a proposed Change to the Work and requesting the Design-Builder to submit a Change Proposal, in a format acceptable to City, within fifteen (15) calendar Days after City's issuance of the Change Notice. The Change Proposal shall include an analysis of impacts to cost and time, if any, to perform the extra work, or delete Work, as applicable, including the effects and impacts, if any, on unchanged Work, estimates of costs (broken down by the categories listed in Section 7.5 herein relating to change of the Contract Price) and Design-Builder's proposed methods to minimize costs, delay and disruption to the performance of the Work. If Design-Builder fails to submit a Change Proposal within such period of time, it

shall be presumed that the Change described in the Change Notice will not result in an increase to the Contract Price or Contract Time and the Change shall be performed by Design-Builder without such increases. A Change Notice does not authorize the Design-Builder to commence performance of the changed work, unless otherwise specified in the Change Notice.

7.3.2 If the Parties reach agreement on the cost of pricing such change, a Change Order will be issued. If the Parties do not agree on all terms for performance or compensation of the change, City will issue a unilateral Time and Material Change Order.

7.4 DESIGN-BUILDER INITIATED CHANGE ORDER REQUEST

If the Design-Builder alleges that instructions issued after the date of the Contract will result in increases to the Contract Price or Contract Time or the Design-Builder otherwise becomes aware of the need for or desirability of a Change in the Work, a Change Order Request ("COR") may be submitted to the Engineer in writing, in a format acceptable to City, and must specify the reasons for such change, including relevant circumstances and impacts on the schedule. Design-Builder shall submit a Change Proposal concurrently with the COR. The Design-Builder may request additional compensation and/or time through a COR but not for instances that occurred more than five (5) calendar Days prior to the COR. Design-Builder's failure to initiate a COR within such period shall be deemed a waiver of the right to adjustment of the Contract Price or the Contract Time for the alleged Change. Any COR that is approved by City will be incorporated by a Change Notice, Change Order, or Time and Material Change Order. If the Engineer determines that the Work in question is not a Change, the Engineer will issue a Work Directive, ordering the Design-Builder to proceed with the Work without delay. If the COR is denied but the Design-Builder believes that it does have merit, the Design-Builder may submit a Claim in accordance with the procedures set forth herein.

7.5 CHANGE ORDER

Definition. A Change Order is a written order implementing Changes in the Work for which adjustments to the Contract Price and Contract Time, if any, have been agreed upon by the parties, prior to the issuance of the Change Order either in the context of a City-initiated Change Notice or a Design-Builder-initiated COR. A Change Order shall be issued by the Engineer and expressly indicates the intention to treat the items described therein as changes in the Work. A Change Order must be issued and signed by the Engineer before any work is started on the items covered by the order.

7.5.1 Determination of Costs. The Contract Price may only be changed by a Change Order or a Time and Material Change Order. The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:

A. Lump Sum Method. Acceptable lump sum proposal from Design-Builder properly itemized and supported by sufficient substantiating data to permit evaluation. Estimates for lump sum proposals shall be limited to direct expenditures necessitated specifically by the subject extra work. In addition, the Design-Builder and Subcontractor will be paid a lump

sum for overhead, profit, and bond. Supervision of the extra work shall be included in the lump sum percentage for overhead. For added or omitted work by Subcontractors, the Design-Builder shall furnish to the City the Subcontractor's detailed estimate of the cost for labor, material, and equipment, including the markup by the Subcontractor for overhead and profit. Such estimate of cost shall be signed by the Subcontractor. The same requirement shall apply to any Sub-subcontractor or material supplier.

B. Time and Material Method. Direct cost of the Work for labor, material, and equipment rental plus markups for overhead and profit for Design-Builder, Subcontractor, and Sub-subcontractors as applicable. (Supervision is to be included in markup unless specifically agreed to in advance that special supervision is required.)

7.5.2 Documentation.

For either method used, the Design-Builder shall submit the following information as required by the Engineer:

- a. LABOR: Attach itemized direct hourly rates in accordance with certified payroll records times total hours expended. Separately show dollar amount for employer-paid payroll taxes/ insurance benefits.
Enter total as direct labor item. _____
- b. MATERIAL: Attach receipts, invoices or itemized quantity and unit costs plus tax and delivery.
Enter total as material item. _____
- c. EQUIPMENT: Attach receipts, invoices or tear tickets indicating unit costs and total hours or loads charged. (Small tools with a value of less than \$500.00 are to be included in markup.)
Enter total as equipment rental item. _____
- d. SUBTOTAL (Lines a + b + c) _____
- e. COMBINED MARKUP FOR ALL OVERHEAD AND PROFIT SHALL BE BASED ON THE FOLLOWING:
 - (1) For the Design-Builder, for Work performed by his forces, *fifteen percent (15%)* of his direct subtotal cost. _____
 - (2) For the Design-Builder, for Work performed by a Subcontractor's forces, *five percent (5%)* of the direct subtotal cost due the Design-Builder. _____

- (3) For a Subcontractor or Sub-subcontractor, for Work performed by their own forces, *fifteen percent (15%)* of their own direct subtotal costs. _____
- (4) For a Subcontractor, for Work performed by a Subcontractor, *five percent (5%)* of the direct subtotal cost due the Sub-subcontractor. _____
- f. SUBTOTAL (Lines d + e) _____
- g. DESIGN-BUILDER'S BOND (NTE 1% Line f) _____
- h. TOTAL CHANGE ORDER REQUEST (Lines f + g) _____

7.5.3 Final Agreement. Agreement on any Change Order shall constitute a final settlement of all matters relating to the direct and indirect cost and time of performance of Change in the Work which is the subject of the Change Order including, but not limited to, all direct and indirect costs associated with such Change and any and all adjustments to the Contract Price and Contract Time. The execution of a Change Order constitutes a mutual accord and satisfaction of the compensation for the Change and Design-Builder specifically waives and release any and all claims, rights or interest, including but not limited to those for delay, impact, disruption, acceleration, loss of efficiency or other extraordinary or consequential costs arising directly or indirectly out of the Work described in the Change Order. There shall be no reservation of rights by either party on a Change Order.

7.5.4 Design-Builder's Overhead Profit. Extra work ordered on the basis of time and materials will be paid for at the actual necessary cost as determined by the Engineer, plus allowances for overhead and profit. The allowance for overhead and profit will include full compensation for superintendence, taxes, field office expense, extended overhead, home office overhead, and all other items of expense or cost not included in the cost of labor, materials, or equipment provided for under Section 7.5. The allowance for overhead and profit will be made in accordance with the provisions of Section 7.5.

7.5.5 It is understood that labor, materials, and equipment for extra work may be furnished by the Design-Builder or by the Subcontractor of the Design-Builder. When all or any part of the extra work is performed by a Subcontractor, the allowance specified herein will be applied to the labor, materials, and equipment costs of the Subcontractor, to which the Design-Builder may add five percent (5%) of the Subcontractor's total cost for the extra work. Regardless of the number of hierarchical tiers of Subcontractors, the five percent (5%) increase above the Subcontractor's total cost which includes the allowances for overhead and profit specified herein may be applied one time only.

7.6 EXCLUDED COSTS

7.6.1 The term "cost of the Work" shall not include any of the following:

7.6.1.1 Payroll costs and other compensation of Design-Builder's officers, executives, proprietors, partners, principals, general managers, engineers, contractors, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by the Design-Builder whether at the Site or in the Design-Builder's principal or a branch office for general administration of the Work all of which are to be considered administrative costs covered by the Design-Builder's allowance for overhead and profit;

- a. Expenses of the Design-Builder's principal and branch offices including the Design-Builder's office at the Site;
- b. Any part of Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work and charges against the Design-Builder for delinquent payments;
- c. Cost of premiums for all Bonds and for all Insurance whether or not the Design-Builder is required by the Contract Documents to purchase and maintain the same (except as provided by Section 7.5).
- d. Costs due to the negligence or mistake of the Design-Builder, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of Defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property; and
- e. Other overhead or general expense costs of any kind and the cost of any item not specifically and expressly included in Section 7.5.

7.7 ALLOWABLE COST BASIS

7.7.1 For the purpose of evaluating and approving proposed Change Order costs, the City will use as its basis the latest edition of the Means Building Construction Cost Data Book Western Edition. No other cost data books or manuals will be considered. The maximum allowable cost for Change Orders resulting in additions to the Contract Price shall not exceed the cost of the Work identified in the Means Cost Data Book, not including Design-Builder's overhead and profit, and bond as set forth elsewhere within this Agreement.

7.8 AUDIT RIGHTS

7.8.1 Design-Builder shall keep a correct and current accounting of payroll costs, travel, subsistence, field and incidental expenses.

7.8.2 Design-Builder shall use recognized accounting methods in preparing such invoices and reports. City reserves the right to designate its own employee representative(s) or its contracted representative(s) with a certified public accounting firm who shall have the right to audit Design-Builder's accounting procedures and internal controls of Design-Builder's financial systems and to examine any cost, revenue, payment, claim, other records or

supporting documentation resulting from any items set forth in this Agreement. If Design-Builder fails to provide supporting documentation satisfactory to City for any costs charged City, then Design-Builder agrees that City may delete such items from the invoice or Design-Builder shall reimburse City for those costs. Any such audit(s) shall be undertaken by City or its representative(s) at reasonable times and in conformance with generally accepted auditing standards. Design-Builder agrees to fully cooperate with any such audit(s).

7.8.3 This right to audit shall extend during the length of this Agreement and for a period of three (3) years, or longer if required by law, following the date of final payment under this Agreement. Design-Builder agrees to retain all necessary records/documentation for the entire length of this audit period.

7.8.4 Design-Builder will be notified in writing of any exception taken as a result of an audit or pre-payment review of an invoice. Any adjustments and/or payments which must be made as a result of any such audit or inspection of Design-Builder's invoices and/or records shall be made within thirty (30) days from presentation of City's findings to Design-Builder. If Design-Builder fails to make such payment, Design-Builder agrees to pay interest, accruing monthly, at a rate of ten percent (10%) per annum unless another section of this Agreement specifies a higher rate of interest, then the higher rate will prevail. Interest will be computed from the date of written notification of exception(s) to the date Design-Builder reimburses City for any exception(s). If an audit inspection or examination in accordance with this article discloses overcharges (of any nature) by Design-Builder to City in excess of one percent (1%) of the value of that portion of the contract that was audited, the actual cost of City's audit shall be reimbursed to City by Design-Builder. Design-Builder reserves the right to contest any exception.

7.8.5 Design-Builder shall include a similar clause in its agreements with Subcontractors reserving the right to designate its own employee representatives from a certified public accounting firm, and/or representative(s) from City, who shall have the right to audit and to examine any cost, payment, settlement or other supporting documentation resulting from any item set forth in its agreements.

7.9 DEDUCTION FROM WORK

7.9.1 The amount of credit to be allowed by the Design-Builder to the City for a deletion or change that results in a net decrease in the contract sum shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

7.10 DESIGN-BUILDER AND SURETIES BOUND

7.10.1 Any changes or extra work hereunder shall be a part of and subject to all the provisions of the Contract and the Design-Builder, and his Sureties shall be bound thereby and to the same extent as under the original Contract.

7.11 TIME AND MATERIAL CHANGE ORDER (TMCO)

7.11.1 If it be impossible or impracticable to ascertain the total cost of changes in the Work to be done before such work is begun, or if no agreement can be reached on changes in the Work and additions to the Contract Price, then a TMCO shall be issued unilaterally by the Engineer instructing the Design-Builder to do the Work, indicating expressly and unmistakably the intention to treat the items as changes in the Work, setting forth the kind, character and limits of the Work as far as can be ascertained, the terms under which changes to the Contract Price will be determined and the estimated total change in Contract Price anticipated thereunder. The TMCO shall be fully executed by City. Such TMCO will become the basis for the Change Order when the amounts of adjustment to the Contract Price can be determined and the prior approval of the TMCO will be considered necessary authority within the limits of the estimated change in Contract Price. Without additional authority, no costs exceeding the estimated amount will be paid.

7.11.2 The Design-Builder shall maintain records sufficient to distinguish the direct cost of TMCO Work from the cost of other operations. The Design-Builder shall furnish daily, on forms approved by City, reports of TMCO Work. The reports shall itemize all costs for labor, materials, and equipment rental and give a total of costs to date for the Time & Material Work. The reports shall include hours worked, rates of pay, names and classifications. The reports shall include equipment size, type, identification number, rental rate, and hours of operation. All records and reports shall be made immediately available to the Engineer upon request. The cost of furnishing such reports shall be included in Design-Builder's overhead and fee percentages.

7.11.3 All time and material reports shall be signed by the Design-Builder or authorized representative, and witnessed by City's inspector each and every Work day. The Engineer will compare the Engineer's records with the Design-Builder's reports, make the necessary adjustments and compile the costs of time and material Work. When such reports are agreed upon and signed by both parties, they will become the basis of payment.

7.11.4 Construction Equipment compensation shall not be allowed while it is inoperative due to breakdown. Except as otherwise specified in this Section 7.11.4, time will be computed in half and full hours. In computing the time for use of Construction equipment, less than thirty-one (31) minutes shall be considered one-half hour. Costs for Construction equipment on standby shall be limited to the sum of the hourly overhead and depreciation rates for eight (8) hours per twenty-four (24) hour period, accrued after the construction equipment is idle for sixteen (16) hours in a twenty-four (24) hour period.

7.11.5 The City may authorize and approve payment for necessary services and expenditures other than labor, materials, and equipment rentals.

7.11.6 Materials, equipment rental and other costs shall be substantiated by vendors' invoices submitted with the current reports; or, if not then available, shall be submitted with subsequent reports. If vendors' invoices are not submitted within 30 days after completion of the Time & Material Work or if in the opinion of the Engineer the cost of materials is excessive, then the cost of such items shall be deemed to be the lowest current wholesale

prices at which the items are available in the quantities required, delivered to the Site, less cash or trade discounts.

7.11.7 Labor costs, overhead and profit and Design-Builder's fee percentages shall conform to that specified in the section entitled Change Orders herein.

7.12 FORCE ACCOUNT WORK

If no agreement can be reached on Changes in the Work and adjustment of the Contract Price or Contract Time, or the Design-Builder refuses to accept a Change Notice, Change Order, or Time and Material Change Order, the City shall have the right to have the Work in question done by Persons other than the Design-Builder.

8. TIME

8.1 EXTRAORDINARY MEASURES

8.1.1 In the event the City determines that the performance of the Work, as of a Milestone Date, has not progressed or reached the level of completion required by the Contract Documents, the City shall have the right to order the Design-Builder to take corrective measures necessary to expedite the progress of construction, including, without limitation, (1) working additional shifts or overtime, (2) supplying additional manpower, equipment, and facilities and (3) submitting a Recovery Schedule for re-sequencing performance of the Work or other similar measures (hereinafter referred to collectively as Extraordinary Measures). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The City's right to require Extraordinary Measures is solely for the purpose of ensuring the Design- Builder's compliance with the Project Schedule.

- 1) The Design-Builder shall not be entitled to an adjustment in the Contract Sum in connection with the Extraordinary Measures required by the City under or pursuant to this Article 8.
- 2) The City may exercise the rights furnished the City under or pursuant to this Article 8 as frequently as the City deems necessary to ensure that the Design-Builder's performance of the Work will comply with the Contract Time, any Milestone Date or completion date set forth in the Contract Documents.

8.1.2 If the Design-Builder's Project Schedule shows completion of the Work in advance of the Contract completion date, the Design-Builder agrees that in the event actual completion occurs, for any reason, after the completion date specified in the Design- Builder's Project Schedule but within the Contract completion date, the Design-Builder shall not be entitled to and waives any claim against the City for delay, disruption or impact costs or damages including, without limitation claims for extended general conditions, home office overhead, job-site overhead and management or administrative costs.

8.2 TIME EXTENSIONS

8.2.1 If the critical path of the Work is delayed at any time in the progress of the Work by the Non-Compensable Delays defined in the Agreement, and did not result from the acts of the Design-Builder, and provided further that the Design-Builder has taken reasonable precautions to prevent further delays owing to such causes, then the Contract Time shall be extended by Change Order. The Design-Builder agrees that the extension of time granted under this Article 8 shall be its sole and exclusive remedy for the consequences of any delay described above.

8.2.2 Any claim for extension of time shall be made in writing to the City not more than ten (10) days after the commencement of the delay. Within thirty (30) days after such delay the Design-Builder shall furnish the City with detailed information concerning the circumstances of the delay, the number of days actually delayed, the appropriate Contract Document references, and the measures taken to prevent or minimize the delay. The Design-Builder acknowledges the extreme importance of promptly notifying and thoroughly documenting any request for time extension and further specifically acknowledges that the City will suffer extreme prejudice should Design-Builder fail in any way to comply with this requirement. Failure to comply with the procedures contained within this Article 8 including the time limits established in this Section 8.2.2 shall constitute a waiver of such request. Evidence presented by the Design-Builder that the City had actual notice of the time extension request, that the City was not prejudiced by Design-Builder's failure to comply with this requirement, and/or that the City considered Design-Builder's request despite Design-Builder's failure to strictly comply with this provision shall not render this requirement unenforceable.

8.2.3 An extension of time will not be granted for a delay caused by a shortage of materials, except the City furnished materials, unless the Design-Builder furnishes to the City documented proof that the Design-Builder has made every effort to obtain such materials from every known source within reasonable reach of the Work. The Design-Builder shall also submit proof, in the form of network analysis data that the inability to obtain such materials when originally planned did, in fact, cause a delay in Final Completion of the Work which could not be compensated for by revising the sequence of operations. Only the physical shortage of material will be considered under these provisions as a cause for extension of time. No consideration will be given to any claim that material could not be obtained at a reasonable, practical, or economical cost, unless it is shown to the satisfaction of the Design-Builder that such material could have been obtained only at exorbitant prices, entirely inconsistent with current rates taking into account the quantities involved and the usual practices in obtaining such quantities and that such fact could not have been known or anticipated at the time the Contract was entered into.

8.2.4 No extension of time will be granted under this Article 8 for any delay to the extent (1) that performance would have been so delayed by any Design-Builder induced causes, including, but not limited to, the fault or negligence of the Design-Builder or its Subcontractors; or (2) for which any remedies are provided for or excluded by any other provision of the Contract.

8.2.5 A Change Order will be issued to the Design-Builder within a reasonable period of time after approval of a request for extension of the Contract Time, specifying the number of

days allowed, if any, and the new date or number of Days after the date of commencement for completion of the Work or specified portions of the Work.

8.2.6 An extension of time granted shall not release the Design-Builder's Surety from its obligations. Work shall continue and be carried on in accordance with all the provisions of the Contract and said Contract shall be and shall remain in full force and effect during the continuance and until Final Completion and Final Acceptance of the Work covered by the Contract unless formally suspended or annulled in accordance with the terms of the Contract.

8.2.7 Neither the grant of an extension of time beyond the date fixed for Substantial Completion of the Work, nor the performance and acceptance of any part of the Work or materials specified by the Contract after the time specified for Substantial Completion of the Work, shall be deemed to be a waiver by the City of the City's right to abrogate this Contract for abandonment or failure to complete within the time specified or to impose and deduct damages as may be provided.

9. PAYMENTS AND COMPLETION

9.1 PAYMENTS TO DESIGN-BUILDER

9.1.1 Before the first Application for Payment and within the time specified in the Agreement, the Design-Builder shall submit to City a detailed Schedule of Values, which shall be used as the basis for payment.

9.1.2 Within thirty (30) calendar days of receipt of a full and complete Invoice for Payment, the City will make a partial payment upon the request of the Design-Builder on the basis of an approved estimate of the Work performed during the preceding calendar month under this Contract. The City will retain from such payments five percent (5%) of the amount of each estimate until sixty (60) days after Final Completion and acceptance by the City of all the Work covered by this Contract. No such estimate or partial payment shall be required to be made when in the judgment of the Engineer, the Work is not proceeding in accordance with the provisions of the Contract, or when in his judgment, the total value of the Work done since the last estimate is less than Five Hundred Dollars (\$500.00).

9.1.3 It is mutually agreed between the Parties hereto that the making of any payment to the Design-Builder under this Contract or any certificate given shall not relieve the Design-Builder of his guarantee obligations or responsibilities under this Contract, or full compliance with the Contract Documents, including the Construction Documents (including, the Design Documents), or be construed as accepting any portion of the equipment, materials or Work until the Contract is fully complete and formally accepted by the City.

9.1.4 The Design-Builder further agrees that the payment of the final amount due under the Contract, and the adjustment and payment for any extra work done and work in accordance with any changes of the same, shall release the City, its officers, agents and employees from any and all claims or liability on account of the work performed under the Contract, and any changes thereof, and any extra work.

9.1.5 Pursuant to Public Contracts Code Section 22300, the Design-Builder may substitute securities in place of retained funds withheld by the City or, in the alternative, request that the City make payment of retentions earned directly to an escrow agent at the expense of the Design-Builder.

9.2 APPLICATION FOR PAYMENT

9.2.1 In submitting each Application For Payment; Design-Builder warrants that: title to all Work covered by each Application for Payment shall pass to the City no later than the time of payment. The Design-Builder further warrants that all Work covered by the previous Application for Payments is free and clear of liens, claims, security interest or other encumbrances.

9.2.1.1 Each Application for Payment shall:

1. Reference the Project;
2. Describe the services performed;
3. Include an estimate of the percentage of Work completed;
4. Show the total amount of the payment due;
5. Include a certification by a principal member of the Design-Builder's firm as Design-Builder and by the Design Team Members, that the Work has been performed in accordance with the provisions of the Contract Documents;
6. Maintain and, upon request, include such documentation as may be necessary to substantiate the percentage of completion of Work;
7. Include duly completed and executed forms of Conditional Waiver and Release in accordance with California Civil Code Section 8132 of all persons eligible to file stop notices in connection with the Work covering the payment requested; and
8. Include duly completed and executed forms of Unconditional Waiver and Release, in accordance with California Civil Code Section 8134 of all persons eligible to file stop notices in connection with the Work covering the payment received by Design-Builder for the previous Application for Payment.

9.3 PAYMENT

9.3.1 Upon submission of any such Application for Payment, if City is satisfied that Design-Builder is making satisfactory progress toward completion of Work in accordance with this Agreement, City shall promptly approve the Application, in which event payment shall be made within thirty (30) days of receipt of the Application by City. Such

approval shall not be unreasonably withheld. If the City does not approve an Application for Payment, City shall notify Design-Builder in writing of the reasons for non-approval, within seven (7) calendar days of receipt of the Application.

9.3.2 Subject to verification of the value of Work completed, the City shall pay the Design-Builder for the percentage of Work completed through the period covered by the Application for Payment less 5% retainage. After 50% of the value of the Work has been completed and if, in the sole and reasonable discretion of the City, the Work is satisfactory, City may make subsequent payments without retainage, fixing the total retainage at no less than 5%.

9.3.3 City shall have the right, but not the obligation, to make payments jointly to Design-Builder and any of its Subcontractors or suppliers.

9.4 SUBSTANTIAL COMPLETION

9.4.1 Substantial Completion is defined to mean the stage in the progress of the Work when, in the City's sole and reasonable discretion, the Work is sufficiently complete in accordance with the Contract Documents so that City can occupy or utilize the Work for its intended use and:

1. Successful start-up of completed Work, in accordance with the Design and Performance Criteria. If startup and final testing of the Work does not occur within a reasonable time through no fault of Design-Builder then Design-Builder may request release of the sum held in retention upon providing the City a letter of credit from a bank located in Orange County in the amount of the sum held in retention;
2. There are no stop notice or pending claims against construction funds or Design-Builder has provided release bonds or other adequate security to City to satisfy such claims;
3. All systems included in the Work are operational as designed and tested;
4. Design-Builder provides evidence that it has completed or is ready to perform designated instruction and training of City's personnel in the operations and maintenance of the Work has been completed;
5. All final finishes, fixtures and equipment required by the Contract Documents are in place;
6. Certifications from all Design Team Members that the Work has been completed in accordance with the design and the Contract Documents.
7. Design-Builder has submitted to City a written certification that all remaining Work shall be completed within thirty (30) calendar days following the date of Substantial Completion and that reproducible As-Built Drawings will be

completed and submitted to City within thirty (30) calendar days following the date of Substantial Completion.

9.4.2 When the Design-Builder considers that the Work has reached Substantial Completion, the Design-Builder shall prepare and submit to the City a written request for issuance of a Certificate of Substantial Completion and a comprehensive list of items to be completed. The Design-Builder shall proceed promptly to complete and correct the items. Upon receipt of the Design-Builder's request for issuance of a Certificate of Substantial Completion, the City will make an inspection to determine whether Substantial Completion has occurred. The City may either reject the Design-Builder's request for issuance of a Certificate of Substantial Completion or issue a Certificate of Substantial Completion with the punchlist items of Work to be completed or corrected ("Punchlist") and fixing the time within which Design-Builder shall complete the Punchlist items and achieve Final Completion. Failure to include an item on the Design-Builder's list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Contract Documents.

9.5 FINAL COMPLETION AND FINAL PAYMENT

9.5.1 The Design-Builder shall, upon completion of the Work and final clean up, submit to the Engineer, a sworn Affidavit of Final Completion, signed by Design-Builder and each of the Design Team Members that to the best of the signatory's knowledge and belief, the Work has been completed in strict accordance with the Contract Documents, that no lawful debts for labor or materials are outstanding, that all requests for funds for undisputed Work under the Contract, including changes in the Work, and under all billings of whatever nature are accurate, complete and final and that no additional compensation over and above the final payment will be requested or is due under the Contract or under any adjustment issued thereunder for said undisputed Work, and that upon receipt of final payment the Design-Builder will release City from all claims or liability for additional sums on account of undisputed Work. The City will inspect the Work and will either reject the request or accept the Work as evidenced by the recordation of a Notice of Completion.

9.5.2 Neither final payment nor any final release of retainage shall become due to Design-Builder until a maximum of sixty (60) days following completion of all Punchlist Work, issuance of a Final Certificate by the appropriate governmental agency, City's recordation of a Notice of Completion and the Design-Builder submits to the City:

9.5.2.1 Completed and executed forms of unconditional waiver and release of rights from all persons eligible to file stop notices in connection with the previous application for payment;

9.5.2.2 Completed and executed forms of unconditional waiver and release of rights upon final payment in accordance with California Civil Code Section 8134 from all persons eligible to file stop notices in connection with the Work;

9.5.2.3 An affidavit that all payrolls, bills for materials and equipment and other indebtedness connected with the Work for which the City might in any way be responsible, have been paid or otherwise satisfied;

9.5.2.4 Consent of surety to final payment;

9.5.2.5 Data establishing payment or satisfaction of all obligation such as receipts, releases and waivers from all persons legally eligible to file stop notices in connection with the Work;

9.5.2.6 Submittal of As-Built Drawings in reproducible format;

9.5.2.7 Submittal of warranties, operation and maintenance manuals and other submittals required by the Contract Documents;

9.5.2.8 Submission of Design-Builder's Waiver, removal of temporary facilities and services; and

9.5.2.9 Such other documentation as the City may reasonably require.

9.6 CITY TO WITHHOLD PAYMENT

In addition to the amount, which the City may otherwise retain under the Contract, the City may withhold a sufficient amount or amounts of any payment or payments otherwise due the Design-Builder, as in the judgment of the Engineer may be necessary to cover:

9.6.1 Payment, which may be due, and payable for just claims against the Design-Builder or any Subcontractor for labor, materials or equipment in the performance of this Contract.

9.6.2 For defective or noncomplying work not remedied.

9.6.3 For failure of the Design-Builder to make proper payments to his Subcontractors.

9.6.4 Failure to withhold such amounts shall not affect any rights or obligations of the Design-Builder or Sureties under this Contract.

9.7 DISPUTED ITEMS

In the event of a dispute between City and Design-Builder, the City may withhold from final payment an amount not to exceed 150% of disputed items including all incomplete punchlist items and those items necessary to obtain a final Certificate of Occupancy.

9.8 WAIVER OF CLAIMS

Acceptance of Final Payment by the Design-Builder shall constitute a waiver of affirmative claims by the Design-Builder, except those previously made in writing and identified as unsettled of the time of final payment.

10. PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRACTICES

10.1.1 The Design-Builder shall provide such lights, guards, temporary fences, barricades and the like, as may be necessary to prevent damage to the work or injury to persons or property, and he shall also provide protection for adjoining property during the progress and until completion of the Work. The Design-Builder shall abide by all applicable Safety Orders of the Division of Industrial Safety, State of California, and Applicable Laws, and shall schedule and perform his work to avoid any danger or hazard to other contractors or workmen on the Project, or his own men due to work being performed by others.

10.1.2 Weekly safety meetings with the Design-Builder's representatives, City representatives, and the State Industrial Safety Engineer, shall be held if, in the opinion of the Engineer, conditions on the Project warrant such meetings.

10.1.3 Before the Notice to Proceed, the Design-Builder shall supply the City with Material Safety Data Sheets (MSDS) for all chemicals to be used in the performance of this Contract. The City will make available to the Design-Builder the MSDS of any products in use in the areas of Work covered by this Contract. All hazardous materials to be properly disposed of off-Site.

10.1.4 The Design-Builder is fully responsible for the safe performance of all Work for which they are contractually committed, whether performed by themselves or by their Subcontractors. The Design-Builder shall use foresight and shall take such steps and precautions as its operations warrant to protect the public, City employees and agents, and its employees from danger, loss of life, or loss of property. The Design-Builder must have in place their own **Injury and Illness Prevention Program** as required by Labor Code § 6401.7 and Title 8 § 1509 and § 3203 of the California Code of Regulations and shall submit same to the Engineer for review. California law also requires that the aforementioned program cover all employees and personnel controlled, directed or supervised by the Design-Builder to the extent that they are exposed to worksite and job assignment specific hazards. The program shall be written and shall include but not be limited to the following elements:

10.1.4.1 Identification of the person or persons responsible for implementing the Design-Builder's safety program. List name of the Design-Builder's on-Site Safety Representative.

10.1.4.2 The Design-Builder's system for identifying and evaluating workplace hazards including scheduled periodic inspections to identify unsafe conditions and work practices.

10.1.4.3 The Design-Builder's methods and procedures for correcting unsafe or unhealthy conditions and work practices in a timely manner. The Design-Builder shall correct unsafe and unhealthy conditions and work practices in a timely manner based on the severity of the hazard.

10.1.4.4 The Design-Builders occupational health and safety training program designed to instruct employees in general safe and healthy work practices and to provide specific instruction with respect to hazards specific to each employee's job assignment.

10.1.4.5 The Design-Builder's system for communicating with employees on occupational health and safety matters, including provisions designed to encourage employees to inform the Design-Builder of hazards at the Site without fear of reprisal.

10.1.4.6 The Design-Builder's system for ensuring that employees comply with safe and healthy work practices, which may include disciplinary action.

10.1.4.7 The Design-Builder shall keep appropriate records of steps taken to implement and maintain the program such as inspection and training documentation. Design-Builder shall maintain and provide inspection checklist and training documentation forms to the City on a monthly basis.

10.1.4.8 The Design-Builder shall include procedures to investigate occupational injury or occupational illness.

10.1.4.9 For construction portion of the Project, the Design-Builder shall adopt a written code of safe practices which relates to the employers operations. Tailgate meetings shall be held at least every ten (10) working days with employees/crews.

10.1.5 Design-Builder shall retain services of California-licensed civil, structural or traffic engineer, as appropriate, to (a) design and prepare plans for necessary safety equipment required by OSHA, Cal OSHA, and other state and local regulatory authorities during construction of the Work, and (b) prepare summary documents for Design-Builder's use for accomplishing said Work including, but not limited to sheeting, shoring, trench plating, excavation protection, falsework, formwork, scaffolding, barricading, pedestrian safety and traffic control. Design-Builder shall submit to the City original summary documents which are signed and sealed by the engineer of record.

10.1.6 Unusual conditions may arise during the Work which will require the Design-Builder to take immediate and unusual provisions to protect the public, City employees and agents, and its employees and agents from danger, loss, or damage to life and property, due directly or indirectly to prosecution of Work.

Whenever, in the opinion of the Engineer, (a) an emergency exists against which the Design-Builder has not taken sufficient precaution for the public safety or protection of utilities, adjacent structures or property, or (b) immediate action is necessary in order to protect the public or property due to the Design-Builder's performance of the Work, the Engineer may request that the Design-Builder provide such remedial measures to safeguard the public and property. If the Design-Builder fails to act as required within such time required by the Engineer, the City may provide undertake the remedial measures as, in the opinion of the Engineer, may seem reasonable and necessary. The cost and expense of said labor and material, together with the cost and expense of such repairs as are deemed necessary, shall be borne by the Design-Builder.

The cost and expense of said labor and material, together with the cost and expense of such repairs as are deemed necessary, shall be borne by the Design-Builder. All expenses incurred by the City for emergency repairs will be charged to the Design-Builder.

If the City does not request the Design-Builder to take remedial measures or Garden Grove does take it upon itself to do so, the Design-Builder is not relieved of their full responsibility for public safety or protection of property.

11. INSURANCE AND BONDS

11.1 INSURANCE COVERAGE

11.1.1 COMMENCEMENT OF WORK. Design-Builder shall not commence work under this Agreement until all certificates and endorsements have been received and approved by the City. Subcontractors shall provide the same insurance as required herein of Design-Builder, and shall not commence work until all certificates and endorsements have been received and approved. Design-Builder shall be responsible to collect and maintain all insurance from Subcontractors, and shall provide the insurance to the City upon request. All insurance required by the Agreement shall contain a Statement of Obligation on the part of the carrier to notify the City of any material change, cancellation, or termination at least thirty (30) days in advance. Insurers for each policy shall waive their rights of subrogation against the City of Garden Grove, and its respective officers, officials, agents, employees, and volunteers, and all public agencies from whom permits will be obtained and their directors, officers, agents, and employees as determined by City. Insurers shall provide a waiver of subrogation for each policy.

11.1.2 WORKERS COMPENSATION INSURANCE. For the duration of the Agreement, Design-Builder shall maintain Workers Compensation Insurance in the amount and type required by California law. The insurer shall waive its rights of subrogation against the City of Garden Grove, and its respective officers, officials, agents, employees, and volunteers, and all public agencies from whom permits will be obtained and their directors, officers, agents, and employees as determined by City.

11.1.3 INSURANCE AMOUNTS. Design-Builder shall maintain the following insurance for the duration of the Agreement:

- (a) Commercial general liability, including mobile equipment, and not excluding XCU, in an amount not less than \$5,000,000 per occurrence; **(claims made and modified occurrence policies are not acceptable)**; Insurance companies must be acceptable to CITY and have an AM Best's Guide Rating of A-, Class VII or better, as approved by the CITY.
- (b) Automobile liability in an amount not less than \$2,000,000 combined single limit; **(claims made and modified occurrence policies are not acceptable)**; Insurance companies must be acceptable to CITY and have an AM Best's Guide Rating of A-, Class VII or better, as approved by the CITY.

- (c) Contractors Pollution Liability in an amount not less than \$5,000,000 per occurrence; **(claims made and modified occurrence policies are not acceptable)**; Insurance companies must be acceptable to City and have an AM Best's Guide Rating of A-, Class VII or better, as approved by the City.
- (d) Builder's Risk/Course of Construction in an in an amount equal to the value of the completed Project with no coinsurance penalty provisions; **(claims made and modified occurrence policies are not acceptable)**; Insurance companies must be acceptable to City and have an AM Best's Guide Rating of A-, Class VII or better, as approved by the City.
- (e) Professional liability in an amount not less than \$5,000,000 per occurrence; Insurance companies must be acceptable to City and have an AM Best's Guide Rating of A-, Class VII or better, as approved by the City. If the policy is written on a "claims made" basis, the policy shall be continued in full force and effect at all times during the term of the Agreement, and for a period of three (3) years from the date of the completion of services provided. In the event of termination, cancellation, or material change in the policy, professional/consultant shall obtain continuing insurance coverage for the prior acts or omissions of professional/consultant during the course of performing services under the term of the Agreement. The coverage shall be evidenced by either a new policy evidencing no gap in coverage, or by obtaining separate extended "tail" coverage with the present or new carrier.

Follows Form Excess liability coverage shall be provided for any underlying policy that does not meet the insurance requirements set forth herein. **(claims made and modified occurrence policies are not acceptable)** Insurance companies must be acceptable to City and have a Best's Guide Rating of A-Class VII or better, as approved by the City.

11.1.4 An Additional Insured Endorsement, **ongoing and products-completed operations**, not excluding XCU and including mobile equipment, for the policy under section 11.1.3(a) shall designate City of Garden Grove, and its respective officers, officials, agents, employees, and volunteers, and all public agencies from whom permits will be obtained and their directors, officers, agents, and employees as determined by City as additional insureds for liability arising out of work or operations performed by or on behalf of the Design-Builder. Design-Builder shall provide to City proof of insurance and endorsement forms that conform to City's requirements, as approved by the City.

11.1.5 An Additional Insured Endorsement for the policy under section 11.1.3(b) shall designate City of Garden Grove, and its respective officers, officials, employees, agents, and volunteers for this contract and all public agencies from whom permits will be obtained and their directors, officers, agents, and employees, as determined by the City, as additional insureds for automobiles owned, leased, hired, or borrowed by the Design-Builder. Design-Builder shall provide to City proof of insurance and endorsement forms that conform to City's requirements, as approved by the City.

11.1.6 An Additional Insured Endorsement for the policy under section 11.1.3(c) shall designate City of Garden Grove, and its respective officers, officials, agents, employees, and

volunteers for this contract and all public agencies from whom permits will be obtained and their directors, officers, agents, and employees, as determined by the City, as additional insureds for ongoing and products-completed operations under the pollution liability policy as approved by the City.

11.1.7 A Loss Payee Endorsement for the policy under section 11.1.3(d) shall designate City of Garden Grove as Loss Payee, as approved by the City.

11.1.8 In the event any of Design-Builder's underlying policies do not meet policy limits within the insurance requirements, Design-Builder shall provide the schedule of underlying policies for a follows form excess liability policy, state that the excess policy follows form on the insurance certificate, and provide an additional insured endorsement for the excess liability policy under section 11.1.3(f) designating the City of Garden Grove, and its respective officers, officials, employees, agents, and volunteers for this Agreement and all public agencies from whom permits will be obtained and their directors, officers, agents, and employees as determined by the City, as additional insured, as approved by City.

11.1.9 For any claims related to this Agreement, Design-Builder's insurance coverage shall be primary insurance as respects the City of Garden Grove, and its respective officers, officials, employees, agents, and volunteers for this contract and all public agencies from whom permits will be obtained and their directors, officers, agents, and employees. Any insurance or self-insurance maintained by the City of Garden Grove and its respective officers, officials, employees, agents, or volunteers, for this contract and all public agencies from whom permits will be obtained and their directors, officers, agents, and employees, as determined by the City shall be excess of the Design-Builder's insurance and shall not contribute with it.

11.1.10 If Design-Builder maintains higher insurance limits than the minimums shown above, Design-Builder shall provide coverage for the higher insurance limits otherwise maintained by the Design-Builder.

11.2 BONDS

11.2.1 General. From the Effective Date, Design-Builder shall promptly furnish, at his own cost and expense, the requisite Faithful Performance and Payment Bonds with a responsible Corporate Surety authorized to issue such bonds in California on the bond forms provided by the City, and subject to approval of the City Attorney. The bonds shall be executed by a California admitted surety with the Best's Insurance Guide rating satisfactory to the City. If a Best's Insurance Guide rating is not available, the proposed Surety must meet comparable standards of another rating service satisfactorily to City. Bonds issued by a surety listed in the latest version of the U.S. Department of Treasury Circular 570 shall be deemed to be accepted unless specifically rejected by City. Bonds from sureties not listed in Treasury Circular 570 must be accompanied by all of the documents enumerated in California Code of Civil Procedure Section 995.660(a). Every Bond must display the Surety's bond number and incorporate the Contract by reference. The terms of the Bonds shall provide that the Surety agrees that no change, extension of time, alteration or modification of the Contract Documents or the Work to be performed thereunder shall in anyway affect

its obligations and shall waive notice of any such change, extension of time, alteration or modification of the Contract Documents.

11.2.2 Faithful Performance Bond. The Faithful Performance Bond shall be in the sum of not less than one hundred percent (100%) of the maximum amount of the Contract Price and in the form set forth in Exhibit B of the Agreement. The bond shall be furnished as a guaranty of the faithful performance of all covenants, terms, conditions and stipulations contained in the Contract Documents including, but not limited to, the covenants that all materials used and workmanship employed in the performance of the Agreement shall be free from defects, and that should any defects therein appear within a period of one year from the date of Substantial Completion, the Design-Builder shall, at his own cost and expense, repair, replace and correct such defects to the satisfaction of the Engineer within thirty (30) days after notice thereof by the City.

11.2.3 Payment Bond. The Design-Builder to whom the contract is awarded shall, in addition to the Faithful Performance Bond, furnish a Payment Bond in the sum of not less than one hundred percent (100%) of the maximum amount of the Contract Price in the form set forth in Exhibit C of the Agreement. The Payment Bond shall be conditioned and provide that if the Design-Builder or Subcontractors, fails to pay for any materials, transportation, appliances, or utilities used in, upon, for or about the performance of the Work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, said Surety will pay the same in an amount not exceeding the sum set for above, and also in case suit is brought upon this bond a reasonable attorney's fee to be fixed by the court.

11.3 RESPONSIBILITY FOR LOSS TO THE WORK

The Design-Builder shall take every necessary precaution against and assume all liability for injuries to persons or damages to property during the performance of the Contract caused by any equipment or materials furnished or Work done under the Contract or the operation thereof until Final Completion and acceptance of the Work by the City.

11.3.1 **Damage and Theft.** The Design-Builder may insure the equipment, materials and Work to cover Design-Builder's interest in the same from time to time, as required. The City will not, under any circumstances, be liable, answerable or accountable for any theft, loss or damage, however and by whatever cause, to said equipment, materials and work, or any part or parts thereof, used or employed in fully completing the Contract, until after the contract is completed and formal acceptance of the Work by the City.

11.3.2 **Alternative Blanket Insurance Policies.** Alternative blanket insurance policies complying with the above requirements carried by the Design-Builder, or acceptable and approved certificates and endorsements thereof, may be substituted for specific policies upon approval by the City's Risk Manager.

12. QUALITY AND CORRECTION OF WORK

12.1 QUALITY OF WORK AND MATERIAL

12.1.1 All Work must be done and completed in a thorough, workmanlike manner by mechanics skilled in their various trades, notwithstanding any error or omission in the Contract Documents, and all parts shall be made accurately to standard gauge so that renewals and repairs may be made when necessary with the least possible expense. All materials employed shall be new and homogenous and of high quality throughout. Any forgings and castings shall be free from flaws and imperfections, the determination of which shall follow the latest and most improved practice. All Work must be in accordance with the Contract Documents and shall be made to conform thereto. Any material specified by reference to the number, symbol or title of a standard such as ASTM shall comply with the requirements of the latest revisions thereof or any supplement or amendment thereto except where a different edition is specified. The referenced standards shall have the same force and effect as if they were printed in full in the Contract Documents. If the Design-Builder wishes to use codes or standards not specified in the Contract Documents, Design-Builder shall submit for approval sufficient information to City to determine equivalency. The Design-Builder shall be held to guarantee all material, apparatus, and equipment, to fulfill all requirements and special guarantees set forth in the Construction Documents (including, the Design Documents).

12.1.2 Should the test of any material, apparatus, or equipment show that it does not meet the guarantees or requirements of the Contract Documents, the Design-Builder shall at once proceed to furnish such new parts as may be necessary to bring it up to requirements. All expenses of furnishing new parts, or alteration to existing parts, and of tests made necessary by such failure to meet the guarantees and other requirements of the Construction Documents (including, the Design Documents), shall be at the expense of the Design-Builder.

12.2 UNCOVERING OF WORK

12.2.1 If a portion of the Work is covered contrary to the Engineer's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Engineer, be uncovered for the Engineer's observation and be replaced at the Design-Builder's expense without change in the Contract Time.

12.2.2 If a portion of the Work has been covered which the Engineer has not specifically requested to observe prior to its being covered, the Engineer may request to see such Work and it shall be uncovered by the Design-Builder. If such Work is in accordance with the Contract Documents, cost of uncovering and replacement shall, by appropriate Change Order, be at the City's expense. If such Work is not in accordance with the Contract Documents, correction shall be at the Design-Builder's expense unless the condition was caused by the City or a separate Design-Builder in which event the City shall be responsible for payment of such costs.

12.3 CORRECTION OF WORK

12.3.2 Before Substantial Completion.

12.3.2.1 The Design-Builder shall promptly correct Work rejected by the Engineer or failing to conform to the requirements of the Contract Documents, whether discovered before or

after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections and compensation for the Engineer's services and expenses made necessary thereby shall be at the Design-Builder's expense.

12.3.3 After Substantial Completion.

12.3.3.1 In addition to the Design-Builder's warranty obligations under the Agreement if, within five (5) years after the date of Substantial Completion of the Work or designated portion thereof after the date for commencement of an applicable special warranty required by the Contract Documents any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Design-Builder shall repair or replace it promptly after receipt of written notice from the City to do so unless the City has previously given the Design-Builder a written acceptance of such condition. The City shall give such notice promptly after discovery of the condition.

12.3.3.2 The Design-Builder shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the City or separate Design-Builders caused by the Design-Builder's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

12.3.3.3 Nothing contained in this Section 12.3.3 shall be construed to establish a period of limitation with respect to other obligations which the Design-Builder might have under the Contract Documents. Establishment of the five (5) year period for correction of Work as described in Subsection 12.3.3.1 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

13. MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW AND SERVICE OF PROCESS

13.1.1 The terms of the Contract Documents shall be interpreted according to the laws of the State of California. All matters, disputes, and lawsuits shall be filed, tried and remain in Orange County and no other venue.

13.1.2 Design-Builder hereby designates the City Clerk of the City as its local agent for service of process in any legal action or proceeding that may arise out of or in connection with this Agreement. City shall transmit to Design-Builder a copy of any legal process served on its City Clerk on the same date such service is made, in the manner and to the address set forth herein.

13.2 SUCCESSORS AND ASSIGNS

13.2.1 The Contract Documents shall be binding upon and inure to the benefit of City and Design-Builder and their successors and assigns.

13.2.2 This Contract, nor any part thereof, shall not be assigned, hypothecated, sold, alienated or transferred by the Design-Builder or by operation of law or otherwise, and will not be recognized or create any liability of the City thereby, with the sole exception and unless the prior formal approval of the City has been obtained thereto and the Surety has consented thereto in writing filed with the City.

13.3 NO PERSONAL LIABILITY

No member of the City Council or other officer, employee or agent of the City, or their consultants shall be personally responsible for any liability arising under or by virtue of the Contract or the Work performed hereunder.

13.4 INTERFERENCE

The Design-Builder shall employ, insofar as possible, such methods and means in the performance of the Work as will cause the minimum of interruption to public utilities, or interference with the Work of the City or any other Design-Builder, or the activities of others whose property may be used by the Design-Builder.

13.5 CLEAN PREMISES

The Design-Builder shall leave all glass, plumbing fixtures, equipment, tile, paint and the Site in clean, perfect and undamaged condition; all buildings, structures, and pavements used by Design-Builder shall be left broom clean and all debris shall be removed and disposed of by Design-Builder, and all Design-Builder's tools and equipment shall be removed from the premises, before acceptance of the Work by the City.

13.6 TELEPHONE

If the Design-Builder requires a telephone, he shall make all necessary arrangements and pay therefore; it shall be maintained in some convenient location as directed by the Engineer until Work is completed.

13.7 SANITARY FACILITIES

The Design-Builder shall provide adequate sanitary facilities for all construction personnel at the Site in a location approved by the Engineer, and maintain the same in a clean and sanitary condition and also provide for the removal and disposal of all garbage, excrement and waste matter from said premises to the satisfaction of the Engineer.

13.8 ADVERTISING

No advertising of any kind or description, bill posters, printed, painted or by the use of any other method or application legible to human sight, shall appear on any buildings, structures, fences, canopies, posts or signs except valid and authorized legal notices required to be placed thereon.

13.9 NOISE CONTROL

The Design-Builder shall perform the Work shall be done as quietly as possible to prevent any annoyance to adjacent properties. The Design-Builder shall install noise suppression and shielding devices on all equipment until compliance with the requirements of all Applicable Laws is achieved. Design-Builder shall comply with Chapter 8.47 of the Garden Grove Municipal Code and limits its Work hours accordingly.

13.10 DUST AND SMOKE CONTROL

The Design-Builder shall conduct the Work in a manner that will provide dust and smoke control consistent with applicable AQMD Rules 401 and 403 and ensure the following:

(a) No fuel shall be used nor shall any operation be conducted that will emit into the atmosphere any smoke that is equal to Ringelmann No. 1 or darker.

(b) No operation shall be conducted that emit into the atmosphere any flying dust or dirt that is noticeable or that might constitute a nuisance to persons living nearby or occupying buildings in the vicinity of the Work.

(c) Dust control operations shall be performed to prevent construction operations from producing dust in amounts harmful to, or causing a nuisance to, persons living nearby or occupying buildings in the vicinity of the Work.

(d) Dry materials and rubbish shall be wet down to prevent blowing dust.

(e) Excavated material leaving the Site, or material being imported, shall be covered or wet down to prevent excessive dust from being created.

13.11 AIR POLLUTION

Pursuant to Section 2449(d)(3) of Title 13 of the California Code of Regulations, Design-Builder shall ensure all self-propelled diesel-fueled vehicles, 25 horsepower and up and not designed to be driven-on road, limit idling to no more than five (5) minutes, except under the following conditions:

(a) Idling when queing;

(b) Idling to verify the vehicle is in safe operating condition;

(c) Idling for testing, servicing, repairing, or diagnostic purposes;

(d) Idling necessary to accomplish work for which the vehicle was designed (such as operating a crane);

(e) Idling required to bring the machine system to operating temperature; and

(f) Idling necessary to ensure safe operation of the vehicle.

13.12 PROTECTION OF CONSTRUCTION SITE

The Design-Builder shall perform the Work in such a manner as to minimize the disruption of traffic flow. Design-Builder shall submit a Traffic Control Plan to the City's Traffic Engineer for review and approval at least fourteen (14) days prior to the start of construction. This plan shall be prepared and stamped by a registered traffic engineer.

All traffic control methods shall conform to the publication entitled "State of California of Traffic Control for Construction and Maintenance Work Zone" (SAF-T Manual). Design-Builder shall station flag persons at each end of the Site where it is necessary to temporarily stop or detour traffic for the movement of materials and equipment. Design-Builder shall the flag persons with radio or cell phone to maintain communication with one another. During the construction activity hours, the Design-Builder shall ensure flagmen and workers wear bright orange vests while working in street areas. Traffic stoppages shall be limited to time periods approved by the City Engineer.

Design-Builder shall maintain pedestrian traffic in a safe manner during the construction period. Design-Builder shall maintain pedestrian and emergency vehicular access to all residences, businesses, and manufacturing establishments within the construction area.

13.13 WATER POLLUTION PREVENTION AND BEST MANAGEMENT PRACTICES (BMP's)

Storm water and non-storm water discharges resulting from municipal construction activities (less than 1 acre) are currently governed by the Santa Ana Regional Water Quality Board NPDES Permit No. CAS618030. The permit applies to activities within the County of Orange and is available from the City of Garden Grove, Department of Public Works. Also available from the Department of Public Works is the Local Implementation Plan which provides specific guidance and sets requirements regarding proper pollution control practices and includes a list of Best Management Practices which must be implemented where applicable. This list can be found on line at <http://www.cabmphandbooks.com> and the Local Implementation Plan is available from the Department of Public Works.

The Design-Builder shall develop, implement and maintain a Water Pollution Control Program (WPCP) conforming to the requirements of Caltrans Specifications Section 7-1-.01G, "Water Pollution Control", as approved by the Field Engineer. The Design-Builder shall implement and maintain the appropriate BMPs to prevent storm water pollution within the project site at all times during the contract period.

Copies of the Construction Design-Builder's Guide and Specifications of the Caltrans Storm Water Quality Handbook may be obtained from the Department of Transportation, Material Operations Branch, Publication Distribution Unit, 1900 Royal Oaks Drive, Sacramento, CA 95815, Phone No. (916) 445-3520. Electronic copies can be found at <http://www.dot.ca.gov/hq/construc/stormwater.html>.

A Municipal Activities Procedures Manual has been developed by the County of Orange to assist with permit implementation. Specifically, the Municipal Activities Procedures Manual

contains Model Maintenance Procedures with Best Management Practices (BMPs) that the Design-Builder shall adhere to.

The City's inspector, accompanied by the Design-Builder will conduct inspections of the Site. Such inspections will typically occur prior to anticipated storm events and after actual storm events to identify areas contributing to a storm water discharge associated with construction activity. This inspection will assist in evaluating whether BMPs to reduce pollutant loadings are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed.

Payment to provide and maintain the WPCP and BMPs shall be considered included in the Contract Price paid for other items of Work and shall be considered incidental for accomplishing the Work and no additional compensation will be allowed therefore.

Failure of the Design-Builder to comply with the Engineer's requested corrective actions may result in an order to suspend Work until the condition is corrected. No additional compensation will be allowed as a result of such suspension.

14. TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 TERMINATION FOR DEFAULT

14.1.1 If the Design-Builder (a) refuses or fails to commence or prosecute the Work, or any separate part thereof, or with such diligence as will ensure its completion within the time specified in this Contract and any authorized extension thereof, (b) fails to perform the Work in strict accordance with the Contract Documents, (c) fails to use an adequate number of skilled workers, (d) fails to make prompt payment to Subcontractors or for material or labor, (e) fails to install Work that is free of defects, (f) disregards Applicable Laws, or (g) breaches and other provisions of this Contract, the City may serve written notice upon Design-Builder and its Surety of City's intention to terminate the Work to be performed under this Contract, such notice to contain the reasons for such intention, and unless within ten (10) days after the serving of such notice, such violation shall cease and arrangements satisfactory to the Engineer for the correction thereof be made, upon the expiration of said ten (10) days Design-Builder shall be determined to be in default, and further work thereunder by the Design-Builder shall immediately cease and terminate.

14.1.2 It is recognized that in the event a voluntary or involuntary petition in bankruptcy is filed by or against the Design-Builder, or if the Design-Builder signs or makes a general assignment for the benefit of creditors, or if an application or other procedure for appointment of a receiver for the Design-Builder or his business is favorably ruled upon by competent authority providing for such appointment of a receiver, such events could impair or frustrate Design-Builder's performance of the Work. Accordingly, it is agreed that upon the occurrence of any such event, City shall be entitled to request of Design-Builder, or its successor in interest, adequate assurance of future performance in accordance with the Contract Documents. Design-Builder's failure to comply with City's request for adequate assurances within ten (10) calendar days of the request shall entitle City to terminate the Design-Builder for default.

14.1.3 In the event of any such termination as provided in Sections 14.1.1 and 14.1.2 above, legal title to all equipment, materials, and supplies, whether or not incorporated or installed in the Work to be done hereunder, and all construction or installations and Work done shall immediately vest in and pass to the City, and the City may take charge of the Work and complete all the Work to be furnished and done under this Contract in any manner considered to be for the best interest of the City. In completing this Contract, the City may take possession of and use any or all of the materials and supplies in the discretion of the City, for which the Design-Builder has a valid agreement with the supplier. The City may procure other materials, equipment, supplies and provide the necessary labor for the completion of the Work, or enter into a Contract therefore, and charge all the cost and expenses to fully complete the Contract to the Design-Builder. In the event such cost and expense to fully complete the Contract shall exceed the amount which would have been due the Design-Builder under the Contract had it been completed by him, any such excess cost and expense shall be due and paid to the City by the Design-Builder and his Surety. If Design-Builder or its Surety fails to pay such amount immediately upon City's demand, then City shall be entitled to collect interest from the date of said demand.

14.1.4 In lieu of entering the provisions of this Article for termination for fault, City may pay the Design-Builder for portions of Work already completed and treat the unperformed Work as if it had never been included in the Contract. If this provision is invoked by City, Design- Builder shall have no claim for prospective profits on Work not performed.

14.1.5 Upon a determination by a court of competent jurisdiction that any default termination of Design-Builder, or its successor in interest was wrongful, such termination will be deemed to be converted to a termination for convenience pursuant to the provisions of this Section 14.1 and Design-Builder's remedy for wrongful termination in such event shall be limited to the recovery of the payments permitted for termination for convenience as set forth herein.

14.1.6 The provisions of this Section 14.1 shall be non-exclusive, and shall be in addition to all other rights and remedies available to City under law or in equity.

14.2 TERMINATION FOR CONVENIENCE

14.2.1 City reserves the right to terminate Design-Builder's performance, without regard to cause or fault or breach of Design-Builder, upon issuance of a written Notice of Termination for Convenience, effective immediately unless otherwise provided in said Notice of Termination.

14.2.2 The amount to be paid to the Design-Builder by City in the event of termination for Convenience shall consist solely of:

14.2.2.1 The cost of Work completed in accordance with the Contract Documents up to the date of issuance of the Notice of Termination; and

14.2.2.2 The Design-Builder's reasonable costs of demobilization for a period of thirty (30) days following the effective date of the Notice of Termination, including costs of the Design-Builder's personnel reasonably required to effectuate the cancellation, and such storage,

transportation, and other costs incurred which are reasonably necessary for the preservation, protection or disposition of the Work.

14.2.3 In no event shall City be responsible for and Design-Builder hereby waives any claim for overhead or anticipated profits on unperformed work or other economic loss upon termination for convenience.

14.3 SUSPENSION BY CITY FOR CONVENIENCE

The City may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the City may determine. If such suspension, delay or interruption causes the Design-Builder to incur increased cost for the performance of the Work, an adjustment to the Contract Price shall be made for such costs as are directly attributable to such suspension, delay or interruption. If such suspension, delay or interruption causes a delay to the critical path of the Work, an adjustment to the Contract Time shall be made. All adjustments made pursuant to this section shall be subject to, and made in accordance with Article 7.

15. LABOR CODE REQUIREMENTS AND PREVAILING WAGE RATES

15.1 In accordance with the provisions of Division 2, Part 7, Chapter 1 of the Labor Code, the general prevailing rates of per diem wages for each craft, classification and type of Work needed to execute this Project have been determined by the Director of the California Department of Industrial Relations. The Design-Builder and each Subcontractor shall pay all workers not less than the prevailing wage rates as determined by the Director of Industrial Relations in accordance with the provisions of the Labor Code. As provided in Labor Code Section 1775 the Design-Builder shall forfeit, as a penalty to the City, Fifty Dollars (\$50) for each calendar day or portion thereof, for each workman paid less than the stipulated prevailing wage rate for such work or craft in which such workman is employed for any Work done pursuant to the Contract Documents by Design-Builder or by any Subcontractor in violation of the provisions of the Labor Code and in particular, Labor Code Section 1770 to 1780, inclusive. In addition to said penalty and pursuant to said Section 1775, the difference between such stipulated prevailing wage rates and the amount paid to each workman was paid less than the stipulated prevailing wage rates shall be paid to each workman by Design-Builder.

15.1.1 Design-Builder shall strictly adhere to the provisions of the Labor Code, including Sections 1810 through 1813 and 1815, regarding minimum wages, the 8-hour day and 40-hour week, overtime, Saturday, Sunday, and holiday work. Design-Builder shall forfeit to City the penalties prescribed in the Labor Code for noncompliance, including the penalties set forth in Section 1813 for violations of Sections 1810 through 1815.

15.1.2 Design-Builder shall comply with the provisions of Labor Code, Sections 1777.5 and 1777.6, and Title 8, Code of Regulations, Sections 200 et seq., relating to apprentice employment and training. Design-Builder shall assume full responsibility for compliance with said sections with respect to all apprenticeable occupations upon the project. To ensure compliance and complete understanding of the law regarding apprentices, and specifically the required ratio thereunder, Design-Builder should, where some question exists, contact

the Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, CA 94102, or one of its branch offices, prior to commencement of the Work. In the event of noncompliance by Design-Builder, City shall withhold the penalties provided for under Section 1777.7 of the Labor Code from progress payments then due.

15.1.3 Pursuant to the requirements of Section 1860 of the Labor Code, Design-Builder will be required to secure the payment of workers' compensation to his employees in accordance with the provisions of Section 3700 of the Labor Code.

15.1.4 Pursuant to Section 1861 of the Labor Code, Design-Builder is obligated to sign and file with City a certification in the form included in Exhibit D.

15.1.5 Design-Builder shall comply with the applicable provisions of the Labor Code and implementing regulations relating to Labor Nondiscrimination.

15.2 Pursuant to the provisions of Section 1770 of the Labor Code of the State of California, the Director of the Department of Industrial Relations has ascertained the general prevailing rate of wages (which rate includes employer payments for health and welfare, vacation, pensions and similar purposes) applicable to the Work to be done, for straight time, overtime, Saturday, Sunday and holiday work. Design-Builder shall obtain a copy of prevailing wage rate determinations of the Director of the Department of Industrial Relations and post it in a conspicuous place on the Site.

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

15.4 The Design-Builder shall maintain accurate payroll records in accordance with the provisions of Labor Code Section 1776 and shall, upon request, file said records with the City.

15.5 The Design-Builder shall forfeit as a penalty to the City Twenty Five Dollars (\$25) for each worker employed in the execution of the Work by the Design-Builder or any Subcontractor for each calendar day during which such workman is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week, in violation of the provisions of the Labor Code and, in particular, Section 1810 to Section 1815 thereof, inclusive, except that Work performed by the employees of Design-Builder or Subcontractor in excess of eight (8) hours per day and forty (40) hours during any one week shall be permitted upon compensation of all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay as provided in said Section 1815.

15.6 The Design-Builder shall pay to all workmen needed to execute the contract all travel and subsistence payments defined in the applicable collective bargaining agreements filed in accordance with Section 1773.8 of the Labor Code of the State of California.

15.7 Attention is directed to the provisions in Section 1777.5 and 1777.6 of the Labor Code concerning the employment of apprentices by the Design-Builder or any Subcontractor under him.

15.8 The Design-Builder and any Subcontractor under him shall comply with the requirements of Section 1777.5 and 1777.6 in the employment of apprentices.

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

15.10 This Contract is subject to Public Contract Code Section 6109: The Design Builder shall be prohibited from performing Work with a subcontractor who is ineligible to perform the Work pursuant to Sections 1777.1 or 1777.7 of the Labor Code.

16. POTHOLING AND LOCATING EXISTING UNDERGROUND UTILITIES

The Design-Builder is responsible for investigating and locating existing underground utilities, and for determining the need for and performing any necessary Work for conducting potholing, including where connection to an existing utility is required, prior to submitting shop drawings for the construction.

All costs incurred in exposing and locating the existing utilities including all labor, tools, equipment for excavation, backfill, restoring existing surface and site improvements, shall be included in the Contract Price.

Without any adjustment to the Contract Price or contribution from the City, the Design-Builder shall bear the cost of repairing or replacing any existing utility damaged by his potholing work to the satisfaction of the owner of the affected utility.

END OF GENERAL CONDITIONS

EXHIBIT B: PERFORMANCE BOND

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS that, _____ as PRINCIPAL,
and

_____ as SURETY,
are held and firmly bound unto the City of Garden Grove (CGG), in the penal sum of _____ dollars (\$ _____), lawful money of the United States of America, for the payment of which sums well and truly to be made, we as CONTRACTOR and SURETY bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that, whereas the PRINCIPAL has been awarded and is about to enter into a Contract Agreement ("Contract") with the CGG for the construction of _____ ("Project").

If the above bound PRINCIPAL, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by and will and truly keep and perform, the covenants, conditions and agreements as defined in the said Contract and any alteration thereof, which PRINCIPAL and SURETY agree is hereby fully incorporated into this performance bond by this reference, on his or their part, to be kept and performed at the times and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the CGG, its officers and agents, as therein stipulated, then this obligation shall become null and void, otherwise, it shall be and remain in full force and virtue.

As a condition precedent to the satisfactory completion of the Contract, the above obligation shall hold good for a period of one (1) year after the acceptance of the Project by CGG, during which time if PRINCIPAL shall fail to make full, complete, and satisfactory repair and replacements and totally protect the CGG from loss or damage made evident during the period of one (1) year from the date of acceptance of the Project, and resulting from or caused by defective materials or faulty workmanship, the above obligation in penal sum thereof shall remain in full force and effect. However, nothing in this section shall limit the obligation of the SURETY and the obligation of the SURETY shall continue so long as any obligation of PRINCIPAL remains.

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

In the event suit is brought upon this bond by the CGG and judgment is recovered, the SURETY shall pay all costs incurred by the CGG in such suit, including a reasonable attorney's fee to be fixed by the court.

IN WITNESS WHEREOF, this instrument has been duly executed by the PRINCIPAL and SURETY above named, on the _____ day of _____, 2017.

(Corporate Seal)

_____ Principal

By _____

_____ Typed or Printed Name

Title _____

(Corporate Seal)

_____ Surety

By _____

(Attach Attorney-in-Fact Certificate)

_____ Typed or Printed Name

Title _____

EXHIBIT C: LABOR AND MATERIALS PAYMENT BOND

LABOR AND MATERIALS PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS that,
_____ as PRINCIPAL,
and

_____ as SURETY,
are held and firmly bound unto the City of Garden Grove (CGG), in the penal sum of
_____ dollars (\$_____),
lawful money of the United States of America, for the payment of which sums well and
truly to be made, we as CONTRACTOR and SURETY bind ourselves, our heirs,
executors, administrators, successors and assigns, jointly and severally, firmly by these
presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractor,
heirs, executors, administrators; successors or assigns, shall fail to pay for any materials,
provisions, provender or other supplies, used in, upon, for or about the performance of the work
contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the
Unemployment Insurance Code with respect to work or labor, or for any amounts required to be
deducted, withheld, and paid over to the Employment Development Department from the wages
of employees of the Contractor pursuant to Section 13020 of the Unemployment Insurance Code
with respect to the work and labor, or for amounts due as withholding tax pursuant to Section
18806 of the Revenue and Taxation Code, then said Surety will pay for the same, in or to an
amount not exceeding the amount hereinabove set forth, and also will pay in case suit is brought
upon this bond, such reasonable attorney's fees, as shall be fixed by the court, awarded and
taxed as provided in Division III, Part 4, Title XV, Chapter 7, (commencing at Section 3247) of
the California Civil Code.

This bond shall inure to the benefit of any and all persons, companies, and corporations entitled
to file claims under Section 3181 of the Civil code of the State of California, so as to give a right
of action to them or their assigns in any suit brought upon this bond.

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

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety above named, on the day of _____, 20_____.

(Corporate Seal)

Principal

By _____

Typed or Printed Name

Title _____

(Corporate Seal)

Surety

By _____

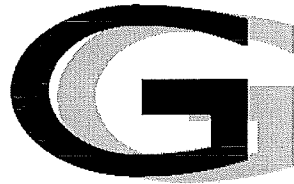
(Attach Attorney-in-Fact Certificate)

Title _____
Typed or Printed Name

PRELIMINARY DESIGN DOCUMENTS

To be provided during the First Phase of Design-Build Project


2015 STANDARD PLANS AND SPECIFICATIONS ARE IN FILE WITH
THE CITY ENGINEER'S OFFICE.



GARDEN GROVE

**STANDARD PLANS
AND
SPECIFICATIONS
2015 EDITION**

CITY OF GARDEN GROVE
PUBLIC WORKS DEPARTMENT



WILLIAM E. MURRAY JR.
PUBLIC WORKS DIRECTOR

CONSTRUCTION DOCUMENTS PREPARED BY
DESIGN-BUILDER AND APPROVED BY THE CITY
IN WRITING

To be provided during the First Phase of Design-Build Project

REQUEST FOR PROPOSALS

Request for Proposals for this Project, dated December 21, 2016, and its addenda are all on file at the City Engineer's Office.

DESIGN DOCUMENTS PREPARED BY DESIGN-
BUILDER AND APPROVED BY THE CITY IN
WRITING

To be provided during the First Phase of Design-Build Project

BEST AND FINAL OFFER

APPENDIX B

PRICING PAGE

The design and construction of the project shall be completed within a Guaranteed Maximum Price (GMP) of \$5,239,000 for the new Fire Station and Community Building, all Furniture, Fixtures & Equipment (FF&E) costs, IT/Data, Communications, all code requirements and fees, infrastructure, inclusive of all requirements set forth in this RFP.

The undersigned certifies that he/she has read all documents related to this Request for Proposal and understands all terms and conditions related thereto and as required in the RFP and the contract documents. In conformity with the Scope of Work and the Contract Documents, the undersigned proposes to the CGG the following:


Guaranteed Maximum Price not to exceed \$5,239,000: Furnish all labor, materials and equipment necessary to design and build Fire Station 6 and the Community Building in conformance with the requirements set forth in this RFP.

Fire Station 6: FOUR MILLION SEVEN HUNDRED FIVE THOUSAND THREE HUNDRES FIFTY SEVEN dollars (\$4,705,357.00)

Community Building: EIGHT HUNDRED THIRTY THOUSAND FIVE HUNDRED SIXTY TWO dollars (\$830,562.00)

Total GMP: FIVE MILLION FIVE HUNDRED THIRTY FIVE THOUSAND NINE HUNDRED NINETEEN dollars (\$5,535,919.00)

Term of Offer: It is understood and agreed that this offer may not be withdrawn for a period of one hundred eighty (180) days from the Proposal Submittal Deadline, and at no time in case of successful Offeror.



Signature of Person Authorized to Sign
ROBERT BURCH

Printed Name

3-6-2017

Date
JV PARTNER

Title