



PUBLIC WORKS DEPARTMENT
10300 TORRE AVENUE
CUPERTINO, CALIFORNIA 95014

DESIGN-BUILD CONTRACT DOCUMENTS

FOR THE

CUPERTINO LIBRARY EXPANSION PROJECT

Project Number: Project 2020-03

DESIGN-BUILD CONTRACT DOCUMENTS
FOR THE
CUPERTINO LIBRARY EXPANSION PROJECT
PROJECT NO. 2020-03

REVIEWED BY:

Michael Zimmermann

Michael Zimmermann
Capital Projects Program Manager

APPROVED BY:

Roger Lee

Roger Lee
Director of Public Works

PROJECT DIRECTORY

Project Name: **Cupertino Library Expansion Project**

Project Number: **2020-03**

Location: 10800 Torre Avenue, Cupertino, CA 95014

Project Manager:

City of Cupertino
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Design-Build Contract

This design-build contract ("Contract") is entered into on this 18th day of August 2020 ("Effective Date") by and between the City of Cupertino ("City"), a municipal corporation, and Rodan Builders Incorporated ("DBE"), a California Corporation, for design and construction of the **Cupertino Library Expansion Project** ("Project").

RECITALS

- A. The Project involves design and construction of a 5626 square foot, two-story expansion of the existing Library, including 130-seat minimum audience capacity and presentation space, spillover seating, flexible space, kitchenette, and supplemental storage.
- B. Pursuant to § 22164 of the Public Contract Code, City issued a Request for Qualifications ("RFQ"), dated May 12, 2020, to qualify and short-list potential Design-Build Entities for the Project.
- C. Pursuant to § 22164 of the Public Contract Code, City issued a Request for Proposals ("RFP"), dated June 19, 2020, to short-listed Design-Build Entities, including DBE, requesting proposals to provide the design-build services ("Services") for the Project.
- D. DBE submitted its proposal ("Proposal") on July 29, 2020 in response to the RFP. On August 10, 2020, following discussions and negotiations with the City, as authorized by the RFP and § 22164 of the Public Contract Code, the DBE submitted an amendment to its Proposal to Roger Lee, the City's Director of Public Works ("Proposal Amendment 1"). City's evaluation panel determined that DBE's Proposal, as amended by Proposal Amendment 1 (collectively, the "Amended Proposal"), offered the best value to the City.
- E. On August 18, 2020, the City Council awarded the Contract for the Project to DBE and authorized the City to enter into this Contract with DBE.
- F. City has awarded the Contract for the Project to DBE in reliance on DBE's representations and qualifications in response to the RFQ and DBE's Proposal, and based on City's determination that DBE's Proposal offers the best value under the criteria set forth in the RFP.

TERMS AND CONDITIONS

The parties agree as follows:

- 1. **Contract Documents.** The Contract Documents are comprised of duly authorized and executed Change Orders; this Contract and any duly authorized and executed amendments thereto; the Notice to Proceed with Design Services; the Notice to Proceed with Construction Services; the Special Conditions; the General Conditions; the Bridging Documents; the City of Cupertino Standard Details; the required payment and performance bonds; the City-approved Construction Documents; the RFP and any addenda thereto; and the Amended Proposal (as defined above) and attachments thereto; all of which are incorporated herein.
 - 1.1 **Defined Terms.** Capitalized terms that are used in this Contract or elsewhere in the Contract Documents that are not otherwise defined have the same meanings provided for those terms in Article 1 of the General Conditions.

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

Library Record Drawings, dated November 29, 2004

Geotechnical Report by Treadwell & Rollo, dated May 29, 2002 and revised on November 4, 2002

- 2. DBE's Responsibilities.** DBE is responsible for providing the Services necessary to design and construct the Project as required by the Contract Documents. DBE must exercise reasonable skill and judgment in the performance of the Services. DBE must provide, furnish, and supply all services and things necessary and incidental for the timely design, performance and completion of the Project, including provision of all necessary labor, materials, equipment, transportation, onsite facilities, and utilities, unless otherwise specified in the Contract Documents. DBE must use its best efforts to provide the Services in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.
- 3. Payment.**
- 3.1 Contract Price.** As full and complete compensation for DBE's timely performance and completion of the Project in strict accordance with the terms and conditions of the Contract Documents, City will pay DBE a lump sum price of \$6,476,168 ("Contract Price"), which consists of the following components:
- (A) **Design Services.** For complete and satisfactory performance of the Design Services, City will pay DBE \$645,000.
- (B) **Construction Services.** For complete and satisfactory performance of the Construction Services, City will pay DBE \$5,831,168..
- 3.2 Scope and Limitations.** The Contract Price includes all applicable federal, state, and local taxes and is fully inclusive of all direct and indirect costs, overhead, and profit. The Contract Price is not subject to adjustment due to inflation or due to the increased cost of labor, material, or equipment after the Effective Date.
- 4. Time for Completion.** DBE will achieve Final Completion of the Project within 484 calendar days from the date of the Notice to Proceed with Design Services ("Contract Time"). By signing below, DBE expressly waives any claim for delayed early completion.
- 5. Liquidated Damages.** If DBE fails to achieve Final Completion within the Contract Time, City will assess liquidated damages in the amount of \$3,000 per day for each day of unexcused delay in achieving Final Completion, and such liquidated damages may be deducted from City's payments due or to become due to DBE under this Contract.
- 6. Labor Code Compliance.**
- 6.1 General.** The Construction Services, as defined in Article 1 of the General Conditions, are subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance, as further specified in Article 9 of the General Conditions.

- 6.2 Prevailing Wages.** The Construction Services are subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are on file with the City and available online at <http://www.dir.ca.gov/DLSR>.
- 6.3 DIR Registration.** DBE, members of its Design-Build Team providing Construction Services, and its Subcontractors, and any other business entity or individual providing Construction Services for the Project, must be registered with the California Department of Industrial Relations ("DIR") to perform public work pursuant to Labor Code § 1725.5. The Construction Services under this Contract are subject to compliance monitoring and enforcement by the DIR pursuant to Labor Code § 1771.4.
- 6.4 Skilled and Trained Workforce.** By executing this Contract, DBE is providing an enforceable commitment pursuant to Public Contract Code § 2602 and § 22614(c), that a "skilled and trained workforce," as that term is defined in Public Contract Code § 2601, will be used to complete all Services on the Project that fall within an apprenticeable occupation in the building and construction trades, in accordance with Public Contract Code § 2600 et seq. DBE, members of the Design-Build Team providing Construction Services, and Subcontractors of every tier will comply with these requirements. DBE will provide City with a monthly report while the Project is being constructed evidencing that the DBE, its Design-Build Team (as applicable), and Subcontractors are complying with this requirement.
- 7. Workers' Compensation Certification.** Pursuant to Labor Code § 1861, by signing this Contract, DBE certifies as follows: "I am aware of the provisions of Labor Code § 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Services on this Contract."
- 8. Conflicts of Interest.** DBE, members of the Design-Build Team, Subcontractors, and their respective employees and agents, may not have, maintain or acquire a conflict of interest in relation to this Contract in violation of any City ordinance or requirement or in violation of any California law, including Government Code section 1090 et seq., or the Political Reform Act, as set forth in Government Code section 81000 et seq. and its accompanying regulations. No officer, official, employee, consultant, or other agent of the City ("City Representative") may have, maintain, or acquire a "financial interest" in the Contract, as that term is defined under the Political Reform Act (Government Code section 81000, et seq., and regulations promulgated thereunder); or under Government Code section 1090, et seq.; or in violation of any City ordinance or requirement while serving as a City Representative or for one year thereafter. Any violation of this Section constitutes a material breach of the Contract.
- 9. Independent Contractor.** DBE is an independent contractor under this Contract and will have control of the Services and the manner in which they are performed. DBE, members of the Design-Build Team, and its Subconsultants and Subcontractors are not employees of City and are not entitled to participate in any health, retirement, or any other employee benefits from City.
- 10. Notice.** Any notice, billing, or payment required by or pursuant to the Contract Documents must be made in writing, signed, dated and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, or by email as a PDF file. Notice is deemed

effective upon delivery, except that service by U.S. Mail is deemed effective on the second working day after deposit for delivery. Notice for each party must be given as follows:

City:

Name: City of Cupertino
Address: 10300 Torre Avenue
City/State/Zip: Cupertino, CA 95014
Phone: (408) 777-3354
Attn: Director of Public Works
Email: MichaelZ@cupertino.org
Copy to: PWInvoices@cupertino.org

DBE:

Name: Rodan Builder, Inc
Address: 3486 Investment Boulevard
City/State/Zip: Hayward, CA 94545
Phone: (605) 508-1700
Attn: Dan Oliver
Email: doliver@rodanbuilders.com
Copy to: _____

11. General Provisions.

- 11.1 Assignment and Successors.** DBE may not assign its rights or obligations under this Contract, in part or in whole, without City's prior written consent. This Contract is binding on DBE's lawful heirs, successors and permitted assigns.
- 11.2 Third Party Beneficiaries.** There are no intended third-party beneficiaries to this Contract.
- 11.3 Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Santa Clara County Superior Court, and no other place. DBE waives any right it may have pursuant to Code of Civil Procedure § 394, to file a motion to transfer any action arising from or relating to this Contract to a venue outside Santa Clara County, California.
- 11.4 Amendment.** With the exception of unilateral Change Orders issued by City pursuant to Section 6.4 of the General Conditions, no amendment or modification of this Contract will be binding unless it is in a Change Order duly authorized and signed by the parties to this Contract.
- 11.5 Integration.** This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and DBE.
- 11.6 Severability.** If any provision of the Contract Documents, or portion of a provision, is determined to be illegal, invalid, or unenforceable, the remaining provisions of the Contract Documents will remain in full force and effect.
- 11.7 Iran Contracting Act.** DBE certifies, by signing below, that it is not identified on a list created under the Iran Contracting Act, Public Contract Code § 2200 et seq.

(the "Act"), as a person engaging in investment activities in Iran, as defined in the Act, or is otherwise expressly exempt under the Act.

- 11.8 Authorization.** Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If DBE is a corporation, signatures from two officers of the corporation are required pursuant to California Corporation Code § 313.

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

DESIGN-BUILD ENTITY

Rodan Builders, Inc

By Rodan Builders, Inc

Dan Oliver

Chief Financial Officer

Signature *Dan Oliver*

Date Aug 13, 2020

CITY OF CUPERTINO

A Municipal Corporation

By _____

Deborah Feng

City Manager

Date _____

By Rodan Builders, Inc.

Rory Morgan

Chief Executive Officer

Signature *Rory Morgan*

Date Aug 13, 2020

APPROVED AS TO FORM:

By _____

Heather Minner

City Attorney

Date _____

ATTEST:

Kirsten Squarcia

City Clerk

Date _____

Contract Amount: _____

P.O. No. _____

Account No. _____

END OF DESIGN-BUILD CONTRACT

Payment Bond

The City of Cupertino ("City") and Rodan Builders, Inc. ("DBE") have entered into a design-build contract, dated _____, 20____ ("Contract") for design-build delivery of the **Cupertino Library Expansion Project** ("Project"). The Contract is incorporated by reference into this Payment Bond ("Bond").

1. **General.** Under this Bond, DBE as principal and _____, its surety ("Surety"), are bound to City as obligee in an amount not less than \$5,831,168, based on 100% of the Construction Services price as specified in Section 3 of the Contract (and as defined in Article 1 of the Contract General Conditions), under California Civil Code § 9550 et seq., to ensure payment to authorized claimants. This Bond is binding on the respective successors, assigns, owners, heirs, or executors of Surety and DBE.
2. **Surety's Obligation.** If DBE or any of its contractors or subcontractors fails to pay any person authorized in California Civil Code § 9100 to assert a claim against a payment bond, any amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, or any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of DBE and its contractors or subcontractors, under California Unemployment Insurance Code § 13020, with respect to the work and labor, then Surety will pay the obligation.
3. **Beneficiaries.** This Bond inures to the benefit of any of the persons named in California Civil Code § 9100, so as to give a right of action to those persons or their assigns in any suit brought upon this Bond. DBE must promptly provide a copy of this Bond upon request by any person with legal rights under this Bond.
4. **Duration.** If DBE promptly makes payment of all sums for all labor, materials, and equipment furnished for use in the performance of the Work required by the Contract, in conformance with the time requirements set forth in the Contract and as required by California law, Surety's obligations under this Bond will be null and void. Otherwise, Surety's obligations will remain in full force and effect.
5. **Waivers.** Surety waives any requirement to be notified of alterations to the Contract or extensions of time for performance of the Work under the Contract. Surety waives the provisions of Civil Code §§ 2819 and 2845. City waives the requirement of a new bond for any supplemental contract under Civil Code § 9550. Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

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

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

7. **Effective Date; Execution.** This Bond is entered into and is effective on _____,
20__.

SURETY: _____
Business Name

s/ _____

Name/Title

Date: _____

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

DBE: Rodan Builders, Inc.
Business Name

s/ _____

Name/Title

Date: _____

s/ _____

Name/Title

END OF PAYMENT BOND

Performance Bond

The City of Cupertino ("City") and Rodan Builders, Inc. ("DBE") have entered into a design-build contract, dated August 18, 2020 ("Contract") for design-build delivery of the **Cupertino Library Expansion Project** ("Project"). The Contract is incorporated by reference into this Performance Bond ("Bond").

1. **General.** Under this Bond, DBE as Principal and _____, its surety ("Surety"), are bound to City as obligee for an amount not less than \$5,831,168, based on 100% the Construction Services price as specified in Section 3 of the Contract (and as defined in Article 1 of the Contract General Conditions), to ensure DBE's faithful performance of its obligations under the Contract. By executing this Bond, DBE and Surety bind themselves and their respective heirs, executors, administrators, successors, and assigns, jointly and severally, to the provisions of this Bond.
2. **Surety's Obligations.** Surety's obligations are co-extensive with DBE's obligations under the Contract. If DBE fully performs its obligations under the Contract, including its warranty obligations under the Contract, Surety's obligations under this Bond will become null and void. Otherwise Surety's obligation will remain in full force and effect.
3. **Waiver.** Surety waives any requirement to be notified of and further consents to any alterations to the Contract made under the applicable provisions of the Contract Documents, including changes to the scope of the Construction Services or extensions of time for performance of the Construction Services under the Contract. Surety waives the provisions of Civil Code §§ 2819 and 2845.
4. **Application of Contract Balance.** Upon making a demand on this Bond, City will make the Contract Balance available to Surety for completion of the Construction Services under the Contract. For purposes of this provision, the Contract Balance is defined as the total amount payable by City to DBE as the Construction Services price minus amounts already paid to DBE for the Construction Services, and minus any liquidated damages, credits, or back charges to which City is entitled under the terms of the Contract.
5. **DBE Default.** Upon written notification from City of DBE's termination for default under Article 13 of the Contract General Conditions, time being of the essence, Surety must act within the time specified in Article 13 to remedy the default through one of the following courses of action:
 - 5.1 Arrange for completion of the Construction Services under the Contract by DBE, with City's consent, but only if DBE is in default solely due to its financial inability to complete the Construction Services;
 - 5.2 Arrange for completion of the Construction Services under the Contract by a qualified contractor acceptable to City, and secured by performance and payment bonds issued by an admitted surety as required by the Contract Documents, at Surety's expense; or
 - 5.3 Waive its right to complete the Construction Services under the Contract and reimburse City the amount of City's costs to have the remaining Construction Services completed.
6. **Surety Default.** If Surety defaults on its obligations under the Bond, City will be entitled to recover all costs it incurs due to Surety's default, including legal, design professional, or delay costs.

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

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

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

9. **Effective Date; Execution.** This Bond is entered into and effective on _____, 20____.

SURETY: _____
Business Name

s/ _____

Name/Title

(Acknowledgment with Notary Seal for Surety and Surety's Power of Attorney must be attached.)

DBE: Rodan Builders, Inc.
Business Name

s/ _____

Name/Title

Date: _____

s/ _____

Name/Title

Date: _____

END OF PERFORMANCE BOND

General Conditions

Article 1 – Definitions

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

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

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

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

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

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

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

City Engineer means the City Engineer for City and his or her authorized delegee(s).

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

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

Construction Manager means the designated representative(s) of the City, which may be a City employee or a consultant retained under separate contract with the City to provide construction management services for the Project.

Construction Phase means the period during which Work is performed to construct the Project, beginning with City's issuance of a Notice to Proceed with Construction Services.

Construction Services means all of the Work required to construction the Project based on the City-approved Design Documents, excluding the Design Services, but including all of the services required to be provided or customarily provided by or under the direction of a licensed general contractor.

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

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

Contract Price means the total compensation to be paid to DBE for performance of the Design Services and the Construction Services as set forth in Section 3 of the Contract and as may be amended by Change Order.

Contract Time means the time specified for completion of the Project, as set forth in Section 4 of the Contract and as may be amended by Change Order.

Day means a calendar day unless otherwise specified.

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

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

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

Design Documents means, collectively, the City-approved plans and specifications developed for construction of the Project based on the Bridging Documents, including Design Development Documents, and Construction Documents.

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

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

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

DIR means the California Department of Industrial Relations.

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

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

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

Final Payment means City's payment to DBE of the unpaid Contract Price, following City acceptance of the Project, including release of undisputed retention, but excluding amounts withheld pursuant to the Contract Documents, including liquidated damages, up to 125% of the

amount of any unreleased stop notice, amounts subject to setoff, and up to 150% of any amount in dispute as authorized by Public Contract Code § 7107.

Furnish means to purchase and deliver for the Project.

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

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

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

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

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

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

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

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

Project means the **Cupertino Library Expansion Project**.

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

Proposal means the Proposal dated July 29, 2020, submitted by DBE in response to City's Request for Proposals, as amended by Proposal Amendment 1, as set forth in Recital D of the Design-Build Contract, and referenced collectively as the "Amended Proposal."

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

Request for Proposals (or RFP) means the request for proposals issued by City on June 19, 2020, soliciting proposals for design-build delivery of this Project, and includes any addenda thereto.

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

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

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

Specifications, whether or not capitalized, means the technical specifications in the City-approved final Construction Documents for the Project, unless otherwise indicated by the context (e.g., development of specifications for approval during the Design Phase).

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

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

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

Work Day or Working Day, whether or not capitalized, means a weekday when the City is open for business, and does not include holidays observed by the City or furlough days when City staff is unavailable. If a holiday falls on a Saturday, the preceding Friday will be the holiday. If a holiday falls on a Sunday, the following Monday will be the holiday. Holidays observed by the City and furlough days are:

- a. New Year's Day, January 1;
- b. Martin Luther King Jr.'s Birthday, third Monday in January;
- c. Lincoln's Birthday, February 12;
- d. Presidents' Day, third Monday in February;
- e. Memorial Day, last Monday in May;
- f. Independence Day, July 4;
- g. Labor Day, first Monday in September;
- h. Veterans' Day, November 11;
- i. Thanksgiving Day, as designated by the President;
- j. The Day following Thanksgiving Day;
- k. Christmas Day, December 25;
- l. City Closure, December 24, 26, 27, 28, 29, 30 and 31; and
- m. Each day appointed by the Governor of California and formally recognized by the Santa Clara County Board of Supervisors as a day of mourning, thanksgiving, or special observance.

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

Article 2 – Roles and Responsibilities

2.1 Relationship with City. DBE accepts the relationship of trust and confidence established between it and City under this Contract. DBE agrees to provide the Services

necessary for the complete design and construction of the Project and to use its best efforts to complete the Project in the best and soundest way and in the most efficient and economical manner consistent with the City's objectives as expressed in the RFP and Bridging Documents, and in compliance with Laws.

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

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

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

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

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

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

and omissions from DBE to City. DBE is solely responsible for any and all costs incurred due to errors and omissions in the Construction Documents.

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

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

(B) ***Project Schedule.*** Within 10 days following the date of the City's Notice to Proceed with Design Services, DBE must prepare, and submit for City's review and approval, a preliminary Project Schedule showing the timing and sequencing of all Services required to design and construct the Project. The preliminary Project Schedule should include development and approval of Design Documents; DBE's procurement of permits and utility services; procurement of Subcontractors; submission and approval of construction cost estimate updates; construction; Final Completion; submission of as-builts; as well as any other milestones applicable to the Project as may be further specified in the Notice to Proceed with Design Services.

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

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

(a) Assume a minimum review period of one week following submittal of 100% Design Development Documents and 100% Construction Documents pursuant to subsection (C), below, plus an additional week to revise and resubmit if requested by City.

(b) Assume a minimum review period of one week following submittal of any permit drawings, plus an additional week to revise and resubmit if requested by City.

(c) Assume the following City Building Department plan check review periods for all required permits (including trade permits): 21 calendar days for initial plan check review, and 15 calendar days for each subsequent review.

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

(C) ***Design Documents.*** DBE must prepare, and submit for City's review and approval, Design Documents based on and consistent with the Bridging Documents. Any deviation from or inconsistency from the Bridging Documents must be approved in writing in advance by City. The Design Documents must also comply with City's Standard Details, to the extent applicable to the Project, as determined by the Engineer. The Design Documents must be developed and submitted for City's review and approval at completion of each design phase as specified below. City's approval of the Design Documents at any phase, including final approval of the Construction Documents, does not operate as a waiver of any deviations from the Bridging Documents that specifically

were not approved by City. City retains the right at all times to condition approval on design modifications to ensure the Project is completed within budget and suited for its intended purposes.

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

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

(a) *Design Development Phase (100%).* Within 5 weeks after City's after issuance of the Notice to Proceed with Design Services, DBE must submit Design Development Documents, including and incorporating all City modifications, as applicable. The Design Development Documents should include, at a minimum, more detailed site improvement plans, plans, sections, elevations with full dimensions, details, and outline material specifications. Following City review, DBE must incorporate any modifications, additions or deletions required by City prior to the next submission.

(b) *Construction Document Phase (100%).* Within 12 weeks after City's approval or conditional approval of the Design Development Documents, DBE must submit Construction Documents for approval by City. The Construction Documents should include all pertinent details and information for planning review, permitting, and construction of the Project. Following City review and comment, DBE must incorporate any modifications, additions or deletions required by City before resubmitting the Construction Documents for final approval. DBE may not proceed with any of the Construction Services until City has approved the Construction Documents as final and issued the Notice to Proceed with Construction Services, unless and to the extent that City provides written authorization for DBE to commence specific portions of the Work, e.g., preliminary site work, prior to final approval.

(3) *Substitutions.* Any specification in the Bridging Documents or in the City-approved final Construction Documents designating a material, product, thing or service (collectively, an "item") by specific brand or trade name, followed by the words "or equal," is intended only to indicate quality and type of item desired, and DBE may request use of any equal item. A request for substitution of an item specified in the Bridging Documents must be submitted to City for approval with the Design Development Documents. All data substantiating the proposed substitute as an equal item must be submitted with the written request for substitution. DBE has the burden of proving the equality of the proposed substitution. The City has sole discretion to determine whether a proposed substitution is equal, and the determination is final.

(D) ***Ownership of Documents.*** No portion of the Contract Documents may be used for any purpose other than construction of the Project, without prior written

consent from City. DBE is deemed to have conveyed the copyright in any Design Documents (at any stage of development), Shop Drawings, as-builts, or other documents (in paper or electronic form) developed by DBE for the Project, and City will retain all rights to such works, including the right to possession.

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

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

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

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

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

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

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

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

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

representative for the Project, and who has authority to act on DBE's behalf. A Subcontractor may not serve as DBE's primary representative.

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

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

(F) **Meetings.** DBE, its project manager, superintendent, and any primary Subcontractors and suppliers requested by City, must attend a Preconstruction Conference before beginning Work on the Project, and will also be required to attend regular progress meetings, as further specified below and as may be otherwise specified in the Notice to Proceed with Construction Services. City will notify DBE in advance of the date, time, place and required attendees for the Preconstruction Conference and progress meetings and will provide and administer the agenda. DBE is responsible for notifying its major Subcontractors and suppliers, and other required attendees, as applicable, of the date, time and place for the Preconstruction Conference and progress meetings; for providing them with the City's agenda; and for requiring their attendance at these meetings. If applicable, DBE may also be required to participate in coordination meetings with other parties relating to other work being performed on or near the Project site or in relation to the Project, including work or activities performed by City, other contractors, or other utility owners.

(1) **Preconstruction Conference.** The Preconstruction Conference agenda items may include schedules, personnel and vehicle permit procedures, use of the premises, locations for staging area(s) and jobsite trailers, security, housekeeping, submittal and RFI procedures, Project forms and procedures, inspection and testing procedures, utility shutdown procedures, control and reference point procedures, injury and illness prevention program, DBE's schedule of values, DBE's schedule of submittals, and such other matters that the City deems necessary to address before the Work begins.

(2) **Progress Meetings.** During the course of the Construction Phase, progress meetings will be conducted on a weekly basis by the City and at DBE's on-site office, unless otherwise specified. Progress meeting agenda items may include review of past meeting minutes, review of Work in progress since previous progress meeting, schedule status and updates, status of submittals or change orders, worker safety, and other such matters pertaining to the progress of the Work.

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

(H) **Correction of Defects.** DBE must promptly correct, at DBE's sole expense, any Work that is deficient or defective in any way, including workmanship, materials, parts or equipment. Workmanship, materials or equipment that do not conform to the requirements under the Contract Documents, as determined by City, will be considered defective and subject to rejection. DBE must also promptly correct, at Contractor's sole expense, any Work performed beyond the lines and grades authorized or approved by City, and any Extra Work performed without City's prior written approval. If DBE fails to correct or to take reasonable steps toward correcting defective Work within five days following notice from City, or within the time specified in City's notice to correct, City may elect to have the defective Work corrected by its own forces or by a third party, in which case the cost of correction will be deducted from the Contract Price. If City elects to correct defective Work due to DBE's failure or refusal to do so, City or its agents will have the right to take possession of and use any equipment, supplies, or materials available at the Project site or any Worksite on City property, in order to effectuate the correction, at no extra cost to City. DBE's warranty obligations under Section 11.2, Warranty, will not be waived nor limited by City's actions to correct defective Work under these circumstances. Alternatively, City may elect to retain defective Work, and deduct the difference in value, as determined by the Engineer, from payments otherwise due to DBE. This paragraph applies to any defective Work performed by Contractor during the one-year warranty period under Section 11.2.

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

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

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

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

(2) DBE must continue to maintain its Project records in an organized manner for a period of four years after City's acceptance of the Project or following termination, whichever occurs first. Subject to prior notice to DBE, City is entitled to inspect or audit any of DBE's Project records relating to the Project or to investigate DBE's plant or equipment during DBE's normal business hours.

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

(M) **Construction Records.** DBE will maintain up-to-date, thorough, legible, and dated daily job reports, which document all significant activity on the Project for each day that Work is performed on the Project. The daily report for each day must include the number of workers at the Project site; primary Work activities; major deliveries; problems encountered, including injuries, if any; weather and site conditions; and delays, if any. DBE will take date and time-stamped photographs to document general progress of the Project, including site conditions prior to construction activities, before and after photographs at offset trench laterals, existing improvements and utilities, damage and restoration. DBE will maintain copies of all subcontracts, Project-related correspondence with subcontractors, and records of meetings with Subcontractors. Upon request by the City, DBE will permit review of and/or provide copies of any of these construction records.

2.5 Subcontractors.

(A) **General.** All Work which is not performed by DBE with its own forces will be performed by its Subcontractors. Except for Subcontractors listed in the DBE's Proposal, DBE must award subcontracts with a value exceeding one half of one percent of the Contract Price for Construction Services in compliance with Public Contract Code § 22166(b), including public notice. All Subcontractors bidding on contracts for the Work must be afforded the protections contained in the Subletting and Subcontracting Fair Practices Act (Public Contract Code § 4100 et seq.). DBE must provide each Subcontractor with a complete set of the Construction Documents and any approved modifications thereto. City reserves the right to approve or reject any and all Subcontractors proposed to perform the Work.

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

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

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

hearing, and DBE is also solely responsible for any resulting increase in subcontracting costs.

2.6 Coordination of Work.

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

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

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

(A) **General.** DBE is responsible for ensuring that its submittals are complete, legible, accurate and conform to the Contract Documents. Incomplete or illegible submittals will be rejected and returned for resubmission. DBE must use the applicable forms provided or specified for use by the City, including the Project Forms provided with the Contract Documents, and forms provided by City at the Pre-Construction Conference.

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

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

(D) **Required Corrections.** If corrections are required, DBE must promptly make and submit any required corrections as specified in full conformance with the requirements of this Section, or other requirements that apply to that submittal. If a submittal remains non-compliant after being re-submitted for a second time, City may back-charge DBE for all further review time and additional administrative costs. For City employees the hourly amount charged will be 2.5 times the employee's direct hourly payroll cost to the City. For consultants, the amount charged will be 1.25 times the amount billed to the City for additional review and administrative time.

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

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

(G) **Excessive RFIs.** A Request for Information (RFI) will be considered excessive or unnecessary if City determines that the explanation or response to the RFI is clearly and unambiguously discernable from the Contract Documents. City's costs to review and respond to excessive or unnecessary RFIs may be deducted from payments otherwise due to DBE, on the same basis as excessive submittal review, under subsection (D) (Required Corrections).

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

(1) A request for substitution of an item or service must be submitted in writing to the Project Manager sufficiently in advance of the time needed to avoid delay of the Work, factoring in adequate time for testing, re-testing, or resubmittal. The request must be submitted on the City's Substitution Request Form.

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

(3) DBE has the burden of proving the equality of the proposed substitution at DBE's sole cost, including testing using methods acceptable to City. City has sole discretion to determine whether a proposed substitution is equal, and City's determination is final.

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

(5) City's approval of a proposed substitution will not relieve DBE from any of its obligations under the Contract Documents. In the event DBE makes an unauthorized substitution, DBE will be solely responsible for all resulting cost

impacts, including the cost of removal and replacement and the impact to other design elements.

- 2.8 Shop Drawings.** When Shop Drawings are required by the Specifications or requested by the Project Manager, they must be prepared according to best practices at DBE's expense. The Shop Drawings must be of a size and scale to clearly show all necessary details. Unless otherwise specified by City, Shop Drawings must be provided to the Project Manager for review and acceptance at least 30 days before the Work will be performed. If City requires changes, the corrected Shop Drawings must be resubmitted to the Project Manager for review within the time specified by the Project Manager. For all Project components requiring Shop Drawings, DBE will not furnish materials or perform any Work until the Shop Drawings for those components are accepted by City. DBE is responsible for any errors or omissions in the Shop Drawings, shop fits and field corrections, any deviations from the Contract Documents, and for the results obtained by the use of Shop Drawings. Acceptance of Shop Drawings by City does not relieve DBE DBE's responsibility.
- 2.9 Access to Work.** DBE must afford prompt and safe access to any Worksite by City and its employees, agents, or consultants authorized by City; and upon request by City, DBE must promptly arrange for City representatives to visit or inspect manufacturing sites or fabrication facilities for items to be incorporated into the Work.
- 2.10 Personnel.** DBE and its Subcontractors must employ only competent and skillful personnel to perform the Services. DBE and its Subcontractor's supervisors, security or safety personnel, and employees who have unescorted access to the Project site must possess proficiency in English sufficient to read, understand, receive, and implement oral or written communications or instructions relating to their respective job functions, including safety and security requirements. Upon written notification from the Engineer, DBE and its Subcontractors must immediately discharge any personnel who are incompetent, disorderly, disruptive, threatening, abusive, or profane, or otherwise refuse or fail to comply with the requirements of the Contract Documents or Laws, including Laws pertaining to health and safety. Any such discharged personnel may not be re-employed or permitted on the Project in any capacity without City's prior written consent.

Article 3 - Contract Documents

- 3.1 Contract Documents.** The Contract Documents are comprised of the following:
- (A) Duly authorized and executed Change Orders;
 - (B) The Contract;
 - (C) City's Notice to Proceed with Design Services;
 - (D) City's Notice to Proceed with Construction Services;
 - (E) The Special Conditions;
 - (F) The General Conditions;
 - (G) The Bridging Documents;
 - (H) The payment and performance bonds;
 - (I) The City-approved Construction Documents;

- (J) The Request for Proposals and all addenda thereto;
 - (K) The Proposal as amended by Proposal Amendment 1; and
 - (L) The City of Cupertino's Standard Details.
- 3.2 Order of Precedence.** Information included in one Contract Document but not in another will not be considered a conflict or inconsistency. In case of any conflict or inconsistency among the Contract Documents, the order of precedence will follow the order in which the Contract Documents are listed in Section 3.1, above, which are listed from highest to lowest. Any conflict or inconsistency will be resolved to ensure construction of the Project and ensure the City's intended use of the Project.
- 3.3 Bridging Documents.** The Bridging Documents are for general intent of the final Project design and are not considered to be a complete working package. DBE is responsible to hire and coordinate all associated Design Services, including architectural, structural, mechanical, electrical, plumbing, civil engineering, geotechnical, and landscape architecture for the structures and systems, whether shown or implied in the Bridging Documents or required for a complete Project built to current governing codes.
- 3.4 Caltrans Standard Specifications.** (Not used.)
- 3.5 For Reference Only.** DBE is responsible for the careful review of any document, study, or report provided by City or appended to the Contract Documents solely for informational purposes and identified as "For Reference Only." Nothing in any document, study, or report so appended and identified is intended to supplement, alter, or void any provision of the Contract Documents. DBE is advised that City or its representatives may be guided by information or recommendations included in such reference documents, particularly when making determinations as to the acceptability of proposed materials, methods, or changes in the Work. DBE must promptly notify City of any perceived or actual conflict between the Contract Documents and any document provided For Reference Only.
- 3.6 Current Versions.** Unless otherwise specified by City, any reference to standard specifications, technical specifications, or any City or state codes or regulations means the latest specification, code or regulation in effect at the time the Contract is signed.
- 3.6 Conformed Copies.** (Not used.)

Article 4 - Bonds, Indemnity, and Insurance

- 4.1 Payment and Performance Bonds.** No later than ten days following City's final approval of the Construction Documents, DBE must provide a payment bond and a performance bond, each in the penal sum of at least 100% of the estimated price for the Construction Services, using the bond forms included with the Contract Documents.
- (A) **Surety.** Each bond must be issued and executed by a surety admitted in California, and the surety must have a financial rating from A.M. Best Company of A-, class 7 or better, or as otherwise acceptable to the City. If an issuing surety cancels the bond or becomes insolvent, within seven days following written notice from City, DBE must substitute a surety acceptable to City. If DBE fails to substitute an acceptable surety within the specified time, City may, at its sole discretion, withhold payment from DBE until the surety is replaced to City's satisfaction, or terminate the Contract for default.
- (B) **Cost Estimate Updates.** If at any time DBE's updated construction cost estimate exceeds the estimated price for the Construction Services in Section 3 of the

Contract by 5%, DBE must replace the initial bonds with bonds based on 100% of the updated estimated price for Construction Services using the bond forms included with the Contract Documents.

4.2 Indemnity and Liability.

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

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

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

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

4.3 Insurance. DBE will procure and maintain for the duration of the Project, and for five years following the completion of the Project, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Services hereunder by DBE, its agents, representatives, employees, Subconsultants, or Subcontractors.

(A) *Minimum Scope and Limit of Insurance.* Coverage will be at least as broad as the minimum limits set forth below. If DBE maintains broader coverage and/or higher limits than the minimums shown below, City will be entitled to the broader coverage and/or higher limits maintained by DBE. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage will be available to the City. City reserves the right to modify these insurance requirements based on DBE's prior experience, insurer, coverage, and considering the nature of the risk involved in the Services and other circumstances. DBE should discuss these requirements with its insurer and the designated Public Works Agency representative.

(1) *Commercial General Liability (CGL).* Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, written on a comprehensive general liability form, and must include coverage for liability arising from DBE's or Subcontractor's acts or omissions, including DBE's protected coverage, blanket contractual, products and completed operations, with limits of at least \$8,000,000 per occurrence. The CGL policy must protect against any and all liability for personal injury, death, property damage or destruction, and personal and advertising injury. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this Project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be \$16,000,000, which is twice the required occurrence limit.

(i) It shall be a requirement under this Contract that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits will be made available to the Additional Insured and will be (1) the minimum coverage/limits specified in this Contract; or (2) the broader coverage and maximum limits of coverage of any insurance policy, whichever is greater.

(ii) Additional Insured coverage under DBE's policy shall be "primary and non-contributory," will not seek contribution from City's insurance/self-insurance and will be at least as broad as ISO CG 20 01 04 13.

(iii) The limits of insurance required may be satisfied by a combination of primary and umbrella or excess insurance, provided each policy complies with the requirements set forth in this Contract. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect City as a named insured.

(2) *Automobile Liability.* ISO Form CA 00 01 covering any auto (Code 1), or if DBE has no owned autos, then hired autos (Code 8) and non-owned autos (Code 9), with limit no less than \$8,000,000 per accident for bodily injury and property damage.

(3) *Workers' Compensation.* As required by the State of California, with statutory limits, and Employer's Liability Insurance of no less than \$1,000,000 per accident for bodily injury or disease, or as otherwise required by statute. If DBE is

self-insured, DBE must provide a Certificate of Permission to Self-Insure, duly authorized by the DIR.

(4) *Professional Liability*. Professional liability with limits no less than \$4,000,000 per occurrence or claim, and \$4,000,000 aggregate.

(5) *Builder's Risk*. Course of Construction insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the Project and no coinsurance penalty provisions.

(6) *Pollution and/or Asbestos Legal Liability*. DBEs' Pollution Legal Liability and/or Asbestos Legal Liability and/or Errors and Omissions with limits no less than \$2,000,000 per occurrence or claim, and \$4,000,000 policy aggregate.

(B) *Self-Insured Retentions*. Self-insured retentions must be declared to and approved by City. At City's option, either: (1) DBE will cause the insurer to reduce or eliminate self-insured retentions as respects City, its officers, officials, employees, and volunteers; or (2) DBE will provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigations, claim administration, and defense expenses. The policy language will provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or the City.

(C) *Other Insurance Provisions*. The insurance policies are to contain, or be endorsed to contain, the following provisions:

(1) *Additional Insured Status*. The City of Cupertino, its City Council, officers, officials, employees, agents, servants and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of the Services performed by or on behalf of DBE including materials, parts, or equipment furnished. Endorsement of CGL coverage must be at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used.

(2) *Primary Coverage*. For any claims related to this Project, DBE's insurance coverage must be "primary and non-contributory" and at least as broad as ISO CG 20 01 04 13 with respect to City, its officers, officials, employees and volunteers, and must not seek contribution from City's insurance. If the limits of insurance are satisfied in part by Umbrella/Excess Insurance, the Umbrella/Excess Insurance must contain or be endorsed to contain a provision that such coverage will also apply on a "primary and non-contributory" basis for the benefit of City.

(3) *Notice of Cancellation*. Each insurance policy required must provide that coverage will not be canceled, except with notice to the City. Each certificate of insurance must state that the coverage afforded by the policy is in force and will not be reduced, cancelled or allowed to expire without at least 30 days advance written notice to City, unless due to non-payment of premiums, in which case ten days advance written notice must be provided to City. Such notice must be sent to City via certified mail and addressed to the attention of the City Manager.

(4) *Builder's Risk*. DBE may submit Builder's Risk insurance in the form of Course of Construction coverage, which shall name the City as a loss payee, as its interest may appear. Policy limits must be per occurrence and for all-risk coverage on a 100% completed value basis on the insurable portion of the Project, with no coinsurance penalties, and for the benefit of City. If the Project does not involve new or major reconstruction, City may elect in its sole discretion to accept an Installation Floater policy instead of Builder's Risk. For such projects, the

Property Installation Floater shall include improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment, and shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City's site.

(5) *Waiver of Subrogation.* Each required policy must include an endorsement providing that the carrier agrees to waive any right of subrogation it may have against City. DBE agrees to waive rights of subrogation which any insurer of DBE may acquire from DBE by virtue of the payment of any loss. DBE agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy must be endorsed with a waiver of subrogation in favor of the City for all work performed by the DBE, its employees, agents and Subcontractors.

(6) *Acceptability of Insurers.* Insurance must be issued by insurers acceptable to City and licensed to do business in the State of California, and each insurer must have an A.M. Best's financial strength rating of "A-" or better and a financial size rating of "VII" or better.

(7) *Verification of Coverage.* DBE will furnish the City with original certificates and amendatory endorsements, or copies of the applicable insurance language, evidencing the coverage required by this Contract. All certificates and endorsements are to be received by the City no later than five days following City Council approval of the Contract. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

(8) *Subcontractors.* DBE will require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and DBE will ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage subcontractors will provide coverage with a form at least as broad as CG 20 38 04 13.

(9) *Claims Made Policies.* If any coverage required is written on a claims-made coverage form:

(i) The retroactive date must be shown, and this date must be before the execution date of the Contract or the beginning of the Services.

(ii) Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Services.

(iii) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Effective Date of the Contract, or start of Services, the DBE must purchase extended reporting period coverage for a minimum of five years after completion of the Services.

(iv) A copy of the claims reporting requirements must be submitted to the City for review.

(v) If the Services involve lead-based paint or asbestos identification/remediation, the DBE's Pollution Liability policy must not contain lead-based paint or asbestos exclusions. If the Services involve

mold identification/remediation, the DBE's Pollution Liability policy must not contain a mold exclusion, and the definition of "pollution" must include microbial matter, including mold.

Article 5 - Contract Time

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

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

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

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

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

(1) **Specialized Materials Ordering.** Within five calendar days following issuance of the Notice to Proceed with Construction Services, DBE must order any specialized material or equipment for the Work that is not readily available from material suppliers. DBE must also retain documentation of the purchase orders date(s).

(B) **City's Review of Schedules.** City will review and may note exceptions to the baseline schedule, and to the progress schedules submitted as required below, to assure completion of the Work within the Contract Time. DBE is solely responsible for resolving any exceptions noted in a schedule and, within seven days, must correct the schedule to

address the exceptions. City's review or acceptance of Contractor's schedules will not operate to waive or limit Contractor's duty to complete the Project within the Contract Time, nor to waive or limit City's right to assess liquidated damages for Contractor's unexcused failure to do so.

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

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

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

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

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

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

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

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

5.3 Delay and Extensions of Contract Time.

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

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

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

- (1) weather conditions which are normal for the location of the Project, as determined by reliable records, including monthly rainfall averages, for the preceding ten years;
- (2) DBE's failure to order equipment and materials sufficiently in advance of the time needed for completion of the Work within the Contract Time;
- (3) DBE's failure to provide adequate notification to utility companies or agencies for connections or services necessary for completion of the Work within the Contract Time;
- (4) Foreseeable conditions which DBE could have ascertained from reasonably diligent inspection of the Project site or review of the Contract Documents or other information provided or available to DBE;
- (5) DBE's failure, refusal, or financial inability to perform the Work within the Contract Time, including insufficient funds to pay its Subcontractors or suppliers;
- (6) performance or non-performance by DBE's Subcontractors or suppliers;
- (7) the time required to respond to excessive RFIs (see Section 2.7(G));

(8) delayed submission of required submittals, or the time required for correction and resubmission of defective submittals;

(9) time required for repair of, re-testing, or re-inspection of defective Work;

(10) enforcement of Laws by City, or outside agencies with jurisdiction over the Work; or

(11) City's exercise or enforcement of any of its rights or DBE's duties pursuant to the Contract Documents, including correction of defective Work, extra inspections or testing due to non-compliance with Contract requirements, safety compliance, environmental compliance, or rejection and return of defective or deficient submittals.

(D) **Compensable Delay.** Pursuant to Public Contract Code § 7102, in addition to entitlement to an extension of Contract Time, DBE is entitled to compensation for costs incurred due to delay caused solely by City, when that delay is unreasonable under the circumstances involved and not within the contemplation of the parties ("Compensable Delay"). DBE is not entitled to an extension of Contract Time or recovery of costs for Compensable Delay that is concurrent with Non-Excusable Delay. Delay due to causes that are beyond the control of either City or DBE, including Weather Delay Days, discovery of Historic or Archeological Items pursuant to Section 7.17, or the actions or inactions of third parties or other agencies, is not Compensable Delay, and will only entitle DBE to an extension of time commensurate with the time lost due to such delay.

(E) **Concurrent Delay.** DBE is not entitled to an extension of Contract Time or recovery of costs for any Compensable Delay that is concurrent with Non-Excusable Delay.

(F) **Weather Delay.** A "Weather Delay Day" is a Working Day during which DBE and its forces, including Subcontractors, are unable to perform more than 40% of the critical path Work scheduled for that day due to adverse weather conditions which impair the ability to safely or effectively perform the scheduled critical path Work that day. Adverse weather conditions may include rain, saturated soil, and Project site cleanup required due to adverse weather. Determination of what constitutes critical path Work scheduled for that day will be based on the most current, City-approved schedule.

(1) Based on historic records for the Project location from the Western Regional Climate Center, DBE's schedule should assume the following number of normal Weather Delay Days and precipitation for each month:

Month	# Normal Weather Delay Days	Precipitation
January	6	2.86
February	6	2.66
March	6	2.29
April	3	1.20
May	1	0.44
June	0	0.10
July	0	0.02
August	0	0.07
September	1	0.19
October	2	0.76
November	4	1.51
December	5	2.43
Total	34	14.53

(2) DBE will be entitled to a non-compensable extension of the Contract Time for each Weather Delay Day in excess of the normal Weather Delay Days within a given month, as set forth in Section 5.3(F)(1) above, subject to the following limitations:

- a. DBE must fully comply with the applicable procedures in Article 5 and 6 of these General Conditions regarding requests to modify the Contract Time.
- b. Normal Weather Delay Days which do not occur during a given month do not carry over to another month.
- c. DBE will not be entitled to an extension of time for a Weather Delay Day to the extent DBE is responsible for concurrent delay on that day.
- d. DBE must take reasonable steps to mitigate the consequences of Weather Delay Days, including prudent workforce management and protecting the Work, Project Site, materials, and equipment.

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

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

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

(2) **Delay Days and Costs.** The request must specify the number of days of Excusable Delay claimed, or provide a realistic estimate if the duration of the delay is not yet known. If DBE believes it is entitled to Recoverable Costs for Compensable Delay, the request must specify the amount and basis for the Recoverable Costs that are claimed, or provide a realistic estimate if the amount is not yet known. Any estimate of delay duration or cost must be updated in

writing and submitted with all required supporting documentation as soon as the actual time and cost is known. The maximum extension of Contract Time will be the number of calendar days, if any, by which an Excusable Delay or a Compensable Delay exceeds a concurrent Non-Excusable Delay. DBE is entitled to an extension of Contract Time, or compensation for Recoverable Costs, only if, and only to the extent that, such delay will unavoidably delay Final Completion.

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

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

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

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

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

5.4 Liquidated Damages. It is expressly understood that if Final Completion is not achieved within the Contract Time, City will suffer damages from the delay that are difficult to determine and accurately specify. Pursuant to Public Contract Code § 7203, if DBE fails to achieve Final Completion within the Contract Time, City will charge DBE in the amounts specified in the Contract for each day Final Completion is delayed beyond the Contract Time, as liquidated damages and not as a penalty.

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

(B) **Milestones/Deadlines.** Liquidated damages will also be separately assessed for failure to meet milestones or deadlines specified elsewhere in the Contract Documents.

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

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

(E) **No Limitation on Other Remedies.** City's right to liquidated damages under this Section applies only to damages arising from DBE's Non-Excusable Delay or failure to complete the Work within the Contract Time. City retains its right to pursue all other remedies under the Contract for other types of damage, including damage to property or persons, costs or diminution in value from defective materials or workmanship, costs to repair or complete the Work, or other liability caused by DBE.

Article 6 - Contract Modification

6.1 Contract Modification. Subject to the limited exception set forth in subsection (D) below, any change in the Work or the Contract Documents, including the Contract Price or Contract Time, will not be a valid and binding change to the Contract unless it is formalized in a Change Order, including a "no-cost" Change Order or a unilateral Change Order. Change in the Work pursuant to this Article 6 will not operate to release, limit, or abridge DBE's warranty obligations pursuant to Article 11 or any obligations of Contractor's bond sureties.

(A) **City-Directed Changes.** City may direct changes in the scope or sequence of Work or the requirements of the Contract Documents, without invalidating the Contract. Such changes may include Extra Work as set forth in subsection (C) below, deletion or modification of portions of the Work, or other modifications determined by City, acting in its sole discretion, to be in City's best interest. Pursuant to section 3.23.170 of the Cupertino Municipal Code, City reserves the right to delete up to 25% of the Work. Any change in the Work, whether directed by City or pursuant to DBE's request for a Change Order under Section 6.2 below, will not be a valid and binding change to the Contract unless it is formalized in a Change Order, which may include commensurate changes in the Contract Price or Contract Time as applicable. DBE must promptly comply with City-directed changes in the Work in accordance with the original Contract Documents, even if DBE and City have not yet reached agreement as to adjustments to the Contract Price or Contract Time for the change in the Work or for the Extra Work. DBE is not entitled to extra compensation for cost savings resulting from "value engineering" pursuant to Public Contract Code section 7101 except to the extent authorized in advance by City in writing, and subject to any applicable procedural requirements for submitting a proposal for value engineering cost savings.

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

performed by others. Alternatively, City may elect to terminate the Contract for convenience or for cause. DBE's sole recourse for an unresolved dispute related to changes in the Work or performance of any Extra Work is to comply with the dispute resolution provisions set forth in Article 12, below.

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

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

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

6.2 DBE Change Order Requests. DBE must submit a request or proposal for a change in the approved Construction Documents or a change in the Contract Price or Contract Time, based on unforeseen circumstances or change in scope, as a written Change Order request or proposal.

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

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

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

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

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

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

6.3 Adjustments to Contract Price. The amount of any increase or decrease in the Contract Price will be determined based on one of the following methods, listed below in the order listed with unit pricing taking precedence over the other methods. Markup applies only to City-authorized time and material Work, and does not apply to any other payments to DBE.

(A) **Unit Pricing.** Amounts previously provided by DBE in the form of unit prices, either in the Proposal or in a schedule of values, will apply if such unit pricing has previously been provided for the affected Work and accepted by City. No additional markup for overhead or profit will be added to the calculation.

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

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

- (1) All direct labor costs provided by DBE or its general contractor, excluding superintendence, plus 15% for overhead and profit;
- (2) All direct material costs provided by DBE or its general contractor, including sales tax, plus 15% for overhead and profit;
- (3) All direct plant and equipment rental costs provided by DBE or its general contractor, plus 15% for overhead and profit;
- (4) All direct subcontract costs plus 10% markup for overhead and profit for Work performed by Subcontractors; and
- (5) Increased bond or insurance premium costs computed at 1.5% of total of the previous four sums.

6.4 Unilateral Change Order. If the parties dispute the terms of a proposed Change Order, including disputes over the amount of compensation or extension of time that DBE has

requested, the value of deleted or changed Work, or quantities used, City may elect to issue a unilateral Change Order, directing performance of the Work, and authorizing a change in the Contract Price or Contract Time for the amount of compensation or added time that the City believes is merited. DBE's sole recourse to dispute the terms of a unilateral Change Order is to submit a timely Claim pursuant to Article 12, below.

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

Article 7 - General Construction Provisions

7.1 Permits, Fees, Business License, and Taxes.

(A) **Permits, Fees, and City Business License.** DBE must obtain and pay for all permits, fees, or licenses required to perform the Work, unless otherwise indicated in the Contract Documents. DBE must cooperate with and provide notifications to government agencies with jurisdiction over the Project, as may be required. DBE must provide City with copies of all records of permits and permit applications, payments of required fees, and any licenses, required for the Work. DBE, members of the DB Team, and Subcontractor(s) must obtain a City Business License before beginning Work on the Project, unless its sole business contract within the City is the sale of goods or services to the City itself.

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

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

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

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

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

- 7.3 Noninterference and Site-Management.** DBE must avoid interfering with City's use of its property at or adjacent to the Project site, including use of roadways, entrances, parking areas, walkways, and structures. DBE must also minimize disruption of access to private property in the Project vicinity. DBE must coordinate with affected property

owners, tenants, and businesses, and maintain some vehicle and pedestrian access to their residences or properties at all times. Temporary access ramps, fencing or other measures must be provided as needed. Before blocking access to a private driveway or parking lot, DBE must provide effective notice to the affected parties at least 2 working days in advance of the pending closure and allow them to remove vehicles. Private driveways, residences and parking lots must have access to a roadway during non-Work hours.

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

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

(C) **Traffic Management.** DBE must provide traffic management and traffic controls as specified in the Contract Documents, as required by Laws, and as otherwise required to ensure the public and worker safety, and to avoid interference with public or private operations or the normal flow of vehicular, bicycle, or pedestrian traffic. Any traffic management plans required to be submitted, must be prepared by a California License Professional including Registration Stamp and reviewed and accepted by the City prior to installation of any traffic management controls.

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

7.5 Project Site and Nearby Property Protections.

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

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

(2) Cupertino Sanitary District and the City of Sunnyvale own and operate wastewater systems within City and they may not be interrupted. If the Work disrupts existing sewer facilities, DBE must immediately notify City to determine who owns the system and establish a plan, subject to the systems owner's approval, to convey the sewage in closed conduits back into the sanitary sewer

system. Sewage must not be permitted to flow in trenches or be covered by backfill.

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

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

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

(B) **Securing Project Site.** After completion of Work each day, DBE must secure the Project site and, to the extent feasible, make the area reasonably accessible to the public unless City approves otherwise. All excess materials and equipment not protected by approved traffic control devices must be relocated to the staging area or demobilized. Trench spoils must be hauled off the Project site daily and open excavations must be protected with steel plates. DBE and Subcontractor personnel may not occupy or use the Project site for any purpose during non-Work hours, except as may be provided in the Contract Documents or pursuant to prior written authorization from City.

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

(D) **Support; Adjacent Properties.** DBE must provide, install, and maintain all shoring, bracing, and underpinning necessary to provide support to City's property and adjacent properties and improvements thereon. DBE must provide notifications to adjacent property owners as may be required by Laws. See also, Section 7.14, Trenching of Five Feet or More.

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

7.6 Materials and Equipment.

(A) **General.** Unless otherwise specified, all materials and equipment required for the Work must be new, free from defects, and of the best grade for the intended purpose,

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

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

(C) **Existing City Equipment.** DBE will carefully remove all existing equipment from the Worksite. If the City specifies or indicates that equipment is to be salvaged and reused or to remain the property of City then the DBE will reuse or return the equipment to the City. DBE will store and protect salvaged equipment specified to be reused in the Work. DBE will deliver to the City in good condition the equipment that is to remain City property but not be reused in the Work.

(1) If an item specified to be salvaged is damaged during its removal, storage, or handling through carelessness or improper procedures, then DBE will replace that equipment in kind or with a new item. For those items specified to be salvaged DBE may choose to instead furnish and install new equipment, in which case the original, removed items will become DBE's property. Existing materials and equipment removed by DBE will only be reused in the Work if so specified or indicated by the City.

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

(E) **Certificate of Compliance.** When a Certificate of Compliance is specified, or for any material or item ("material") produced or assembled outside of the United States, DBE must submit a Certificate of Compliance before incorporating that material into the Project. A Certificate of Compliance must be submitted for each lot of material delivered to the Project site, and in a form acceptable to the Engineer, identifying the material, its source, and the lot. Each Certificate of Compliance must be signed by the material producer stating that the material fully complies with the applicable requirements of the Specifications. Submission of a Certificate of Compliance will not limit DBE's continuing obligation to use only materials that conform with the requirements of the Contract Documents. Any materials furnished pursuant to a Certificate of Compliance may be inspected or tested at any time by City, subject to the inspection and testing provisions of

Article 7, and defective or non-conforming material may be rejected at any time, even if already installed.

(F) **Site Materials.** Except as otherwise specified, City retains full ownership of and all rights to use any water, soil, stone, gravel, sand, minerals or other materials ("Site Materials") on City property, including the Project site, and including any site materials that have been extracted, excavated, or otherwise affected or made accessible by performance of the Work. However, City, acting in its sole discretion, may provide written authorization in the Special Conditions or in the Specifications or in a Change Order for DBE to make use of or incorporate specified Site Materials in the Work.

(G) **Mined Materials.** Pursuant to the Surface Mining and Reclamation Act of 1975, Public Resources Code § 2710 et seq., any purchase of mined materials, such as construction aggregate, sand, gravel, crushed stone, road base, fill materials, and any other mineral materials must originate from a surface mining operation included on the AB 3098 List, which is available online at:
<ftp://ftp.consrv.ca.gov/pub/omr/AB3098%20List/AB3908List.pdf>.

7.7 Inspection and Testing.

(A) **General.** All materials, equipment, and workmanship used in the Work are subject to inspection and testing by City at all times and locations during construction and/or fabrication and at any Worksite, including at shops and yards as well as at the Project site, or at the plant of a manufacturer of materials or items to be incorporated into the Work. All manufacturers' application or installation instructions must be provided to the Inspector at least ten days prior to the first such application or installation. DBE must, at all times, make the Work available for testing or inspection. Neither City's inspection or testing of Work, nor its failure to do so, operate to waive or limit DBE's duty to complete the Work in accordance with the Contract Documents.

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

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

- (1) DBE will be responsible for the costs of any subsequent inspections and/or tests which are required to substantiate compliance with the Contract Documents, and any associated remediation costs.
- (2) DBE will be responsible for inspection and testing costs, at the rate charged by the consultant retained by the City to provide inspection and testing services, and for inspection and testing time lost because the Work is not ready or DBE fails to appear for a scheduled inspection.

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

(4) DBE is responsible for properly shoring all compaction test sites deeper than five feet below grade, as required under Section 7.14 below.

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

(6) DBE will be responsible for all specialty inspections that may be required specific to the trades (e.g.: seismic bracing of equipment, electrical systems testing and other specific trade testing requirements), but not including the following: geotechnical inspections at all building foundation systems, utility trenches and other compaction-related items; structural steel field welding inspections, shop fabrication inspections, reinforcing steel inspections and other related structural steel inspection requirements by the City; and concrete testing and inspection services for placement of all structural concrete, FF/FL verifications and compression testing as required by the City.

(D) **DBE's Obligations.** All Work and materials must conform to the lines, grades, typical cross sections, dimensions, material requirements, and tolerances shown or described by the Construction Documents. City, acting in its sole discretion, will determine whether Work or materials conform to the Construction Documents, including allowable deviations. City's determination as to conformity or allowable deviations is final. DBE is solely responsible for any delay occasioned by remediation of defective or noncompliant Work or material. Inspection of the Work does not in any way relieve DBE of its obligations to perform the Work as specified in the Construction Documents. Any Work done without the required inspection(s) will also be subject to rejection by City. Any Work that fails to comply with the requirements of the Contract Documents must be promptly repaired, replaced, or corrected by DBE, at DBE's sole expense, even if that Work was previously inspected or included in a progress payment. DBE is solely responsible for any delay occasioned by remediation of noncompliant Work. Inspection of the Work does not in any way relieve DBE of its obligations to perform the Work as specified.

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

(F) **Plant Inspection.** If specified in the Contract Documents, or upon written request by City, DBE must use its best efforts to facilitate and arrange for City's inspection, sampling or testing of materials or items required for the Work at the plant or facility from which the materials or items are to be obtained. DBE's best efforts must include contacting the producer or manufacturer on a timely basis to schedule inspection by City's selected representative, including appropriate access and any safety equipment, all at no cost to City. The inspection must be scheduled sufficiently in advance of the planned shipping or production date to allow for alternative arrangements if the City determined that the materials or items do not meet the requirements of the Specifications. Nothing in this provision obligates City to inspect materials or items at the source plant or facility.

(G) **Final Inspection.** The provisions of this Section 7.7 also apply to final inspection under Article 11, Completion and Warranty Provisions.

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

(A) **Protection of Existing Property, Structures, and Utilities.** If the Specifications indicate existing above-grade and below-grade structures, drainage lines, storm drains, sewers, water, gas, electrical, phone and data cable, and other similar items or utilities known to the City, then DBE will locate these known existing installations before proceeding with trenching or other operations which may cause damage, will maintain them in service where appropriate, and will repair any damage caused to them by the Work, at no increase in the Contract Price.

(1) DBE may temporarily mark or paint the ground, pavement, sidewalk, or any other improvements, but must not do so in a public right-of-way or on the Project site more than 30 days prior to the commencement of excavation work performed in connection with an installation. Any mark or paint must be removed from all surfaces, including any decorative work, within 30 days of the completion of the excavation work. DBE is responsible for any expense associated with damages caused by the DBE's mark or paint, including the removal thereof.

(2) DBE will record the location and existence of pavement markers and striping prior to construction, and will provide such records to the Engineer. DBE will replace in kind any permanent paving marker or striping that it removes or damages, or as marked in the Specifications, at its expense.

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

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

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

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

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

(E) **Disposal.** DBE must dispose of all Project debris and waste materials in a safe and legal manner. DBE may not burn or bury waste materials on the Project site. DBE will not allow any dirt, refuse, excavated material, surplus concrete or mortar, or any associated washings, to be disposed of onto streets, into manholes or into the storm drain system.

(F) **Completion.** At the completion of the Work, DBE must remove from the Project site all of its equipment, tools, surplus materials, waste materials and debris, presenting a clean and neat appearance. Before demobilizing from the Project site, DBE must ensure that all surfaces are cleaned, sealed, waxed, or finished as applicable, and that all marks, stains, paint splatters, and the like have been properly removed from the completed Work and the surrounding areas. DBE must ensure that all parts of the construction are properly joined with the previously existing and adjacent improvements and conditions. DBE must provide all cutting, fitting and patching needed to accomplish that requirement. DBE must also repair or replace all existing improvements that are damaged or removed during the Work, both on and off the Project site, including curbs, sidewalks, driveways, fences, signs, utilities, street surfaces and structures. Repairs and replacements must be at least equal to the previously existing improvements, and the condition, finish and dimensions must match the previously existing improvements. DBE must restore to original condition all property or items that are not designated for alteration under the Contract Documents and leave each Worksite clean and ready for occupancy or use by City.

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

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

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

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

7.10 As-built Drawings. DBE and its Subcontractors must maintain on the Worksite a separate complete set of the final City-approved Construction Documents, including drawings to be used solely for the purpose of recording changes made in any portion of the Work in order to create accurate record drawings at the end of the Project.

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

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

7.11 Existing Utilities.

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

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

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

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

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

(1) Material that DBE believes may be a hazardous waste, as defined in § 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing Laws;

(2) Subsurface or latent physical conditions at the Project site differing from those indicated by information about the Project site made available to DBE prior to the deadline for submitting Proposals; or

(3) Unknown physical conditions at the Project site of any unusual nature, materially different from those ordinarily encountered and generally recognized as inherent in work of the character required by the Contract Documents.

(B) **City Investigation.** City will promptly investigate the conditions and if City finds that the conditions do materially differ or do involve hazardous waste, and cause a decrease or increase in DBE's cost of, or the time required for, performance of any part of the Work, City will issue a Change Order.

(C) **Disputes.** In the event that a dispute arises between City and DBE regarding any of the conditions specified in subsection (A) above, DBE will not be excused from any scheduled completion date provided for in the Contract Documents, but must proceed with all Work to be performed under the Contract. DBE will retain any and all rights provided either by the Contract or by Laws which pertain to the resolution of disputes between DBE and City.

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

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

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

7.17 Historic or Archeological Items.

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

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

7.18 Recycling and Waste Disposal.

(A) **Approved Recycling Facility.** DBE must dispose of all recyclable materials at a recycling facility approved by the Engineer.

(B) **Inert Solids and Plant Materials.** DBE must remove all asphalt concrete, Portland cement concrete, aggregate base material, inert solids and any plant material from the Project site and deposit at an approved recycling facility. DBE must conform the above material to an acceptable size and composition for recycling.

(C) **Recyclable Materials.** DBE must recycle at least 65% of all materials at an approved recycling facility.

(D) **Waste Management Plan and Disposal Report.** If the California Green Building Standards Code applies to the Project, DBE must submit to the City a waste management plan prior to starting work. A disposal report is required upon completion of the Project, for materials that are hauled by DBE or by the City's franchised hauler. If a waste management plan is required it must be available throughout the duration of the Project for examination by the City. Electronic submittals are acceptable. The waste management plan must include the following:

- (1) Project title and number;
- (2) identify the construction methods that will be employed to reduce waste;
- (3) Type of material(s) to be recycled, salvaged or landfilled;
- (4) Specify if the waste will be sorted onsite or bulk-mixed; and
- (5) Name and address of recycling facility(ies) and landfill(s) to be used;

The disposal report must include the following:

- (1) Project title;
- (2) Date and time of disposal;
- (3) Truck number;

- (4) Type of material recycled, salvaged, or landfilled;
- (5) Weight of material recycled, salvaged, or landfilled;
- (6) Name and address of recycling facility or landfill;
- (7) Certification or weight tags from facility;
- (8) Weight tags for all material landfilled; and
- (9) If the recycling goal is not met, provide an explanation, to be approved by City, for why it was not met.

(E) **Collection of Waste and Debris.** Collection of garbage, mixed non-organic recyclables, organic waste, and any construction or demolition materials in debris boxes, compactors, or bin-by-the-day services that are not City franchisees or otherwise agents of the City is prohibited. Notwithstanding the above, DBE must dispose of debris from the Project in one of the following:

- (1) Franchised hauler bin;
- (2) A bin owned by DBE or a demolition Subcontractor provided that it is hauled by an employee of the DBE or the demolition Subcontractor and by a vehicle owned and registered to the DBE or the demolition Subcontractor; or
- (3) Private truck with a bed.

(F) **Recycling Containers.** The disposal of garbage in containers designated for compostable waste recycling is prohibited.

7.19 Storm Water Pollution Control. DBE must not pollute the storm drainage system or any waterways or tributaries with waste materials, pollutants, or other harmful materials. DBE and its Subcontractors must at all times in the performance of the Work comply with all applicable Laws concerning pollution of waterways.

(A) **Best Management Practices.** DBE must remove any waste found or generated at the Project site using the appropriate Best Management Practices ("BMPs"), and must properly dispose of the waste or pollutants off-site. If solid or liquid waste materials or pollutants from the Project enter the storm drain system, DBE must immediately notify the City's Environmental Services Division, and thoroughly clean up the affected catch basins, storm sewer, and storm manholes to the satisfaction of the Engineer. If DBE fails to meet the requirements of this Section, the City may issue a stop-work notice and take necessary action to require DBE to set up preventive measures or clean up the storm drainage system. DBE will bear all costs related to the stop-work action and corrective work, and will not be entitled to an extension of the Contract Time for any resulting delay.

(B) **Stormwater Permit.** DBE must comply with all applicable conditions of the State Water Resources Control Board National Pollutant Discharge Elimination System ("NPDES") General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities ("Stormwater Permit"). If required for the Work, a copy of the Stormwater Permit is on file in City's principal administrative offices, and DBE must comply with the same without adjustment of the Contract Price or the Contract Time. DBE must timely and completely submit required reports and monitoring information required by the conditions of the Stormwater Permit. DBE also must comply with all other applicable Laws governing discharge of stormwater, including applicable municipal stormwater management programs.

(C) ***Failure to Comply with Stormwater Permit.*** DBE must pay all costs and liabilities imposed by Laws as a result of DBE's failure to comply with the provisions set forth in the Contract Documents. Such costs and liabilities include, but are not limited to, fines, penalties, and damages, whether assessed against the City or DBE, including those levied under the Federal Clean Water Act and the State Porter Cologne Water Quality Act.

(D) ***Storm Water Pollution Prevention Plan Preparation.*** DBE must incorporate the following BMPs, as applicable, into a site-specific Storm Water Pollution Prevention Plan ("SWPPP"), if required for the Project. The SWPPP must be approved by the Engineer prior to construction.

(1) ***Non-Hazardous Material/Waste Management.***

- a. DBE must designate areas of the Project site suitable for material delivery, storage, and waste collection that, to the maximum extent practicable, are near construction entrances and away from catch basins, gutters, drainage courses, and creeks.
- b. DBE must store granular material at least 10 feet away from catch basin and curb returns.
- c. DBE must prevent granular material to enter the storm drains or creeks.
- d. During wet weather and when rain is forecast in the next 24 hours, DBE must cover granular material with a tarpaulin and surround the material with sandbags or other weights to ensure that tarpaulin does not expose the material during wind and rain.
- e. DBE will use minimal amounts of water to control dust on a daily basis or as directed by the Engineer.
- f. At the end of each working day or as directed by the City, DBE must clean and sweep roadways and on-site paved areas of all materials on or adjacent to the Worksite.
- g. Throughout the working day and at the end of each working day, or as directed by the City, DBE must pick up litter, trash, scrap, waste material, and debris from the Project site and any adjacent sidewalk, curb, and gutter area. DBE must keep the site and perimeter free from cigarette butts and other litter.
- h. DBE must ensure that lids for trash receptacles are kept closed and that trash receptacles are maintained in a manner that prevents overflows.
- i. DBE must maintain a clean and litter-free area around all trash receptacles on the site.
- j. DBE will not use water to flush down streets in place of street sweeping or other dry methods of spill cleanup such as applying absorbent, sweeping up material and disposing it in a waste bin.

- k. In addition to DBE's obligation to recycle materials pursuant to Section 7.18 of the General Conditions, DBE must, to the maximum extent practicable, reuse or recycle any useful construction materials generated during the Project.
- l. DBE must inspect any waste and recycling receptacles for leaks, and must contact the City's trash hauling franchisee to immediately replace or repair any leaking receptacles.
- m. DBE will not discharge water on-site as a result of cleaning recycling or trash receptacles.
- n. DBE must arrange for regular waste collection before receptacles overflow, and must adjust the frequency of service or the receptacle size as needed to ensure that overflows do not occur.

(2) *Hazardous Material/Waste Management.*

- a. DBE must label and store all hazardous materials including but not limited to pesticides, paints, thinners, solvents, and fuels; and all hazardous wastes, including but not limited to waste oil and antifreeze; in accordance with the City's Hazardous Materials Storage Ordinance and all applicable Laws.
- b. DBE must keep an accurate, up-to-date inventory, including Materials Safety Data Sheets ("MSDSs"), of hazardous materials and hazardous wastes stored on-site.
- c. When rain is forecast within 24 hours or during wet weather, the DBE must not apply chemicals such as pesticides and cleaners, or any materials that may potentially enter the storm drain system, in outside areas.
- d. DBE must not over-apply pesticides or fertilizers and must follow materials manufacturer's instructions regarding uses, protective equipment, ventilation, flammability, and mixing of chemicals. Over-application of a pesticide constitutes a "label violation" subject to an enforcement action by the Santa Clara County Agriculture Department.
- e. DBE must arrange for regular hazardous waste collection to comply with all applicable time limits on storage of hazardous wastes.
- f. DBE must dispose of hazardous waste only at authorized and permitted treatment, storage and disposal facilities, and must use only licensed hazardous waste haulers to remove the waste off-site, unless quantities to be transported are below applicable threshold limits for transportation specified in state and federal regulations.
- g. If DBE's business office is located in Santa Clara County, DBE may dispose of this waste through the Countywide Hazardous Waste Program. Businesses generating less than 27 gallons or 220 pounds of hazardous waste per month are legally classified as conditionally exempt small quantity generators ("CESQGs"). Information on the CESQG program may be requested by calling the County at (408) 299-7300.

(3) *Spill Prevention and Control.*

- a. DBE must keep a stockpile of spill cleanup materials, such as rags or absorbents, readily accessible on-site.
- b. DBE must immediately contain and prevent leaks and spills from entering storm drains, and properly clean up and dispose of the waste and cleanup materials, using dry methods to the extent feasible. If the waste is hazardous, DBE must handle the waste as described in subsection (2) above.
- c. DBE will not wash any spilled material into streets, gutters, storm drains, or creeks and will not bury spilled hazardous materials.
- d. DBE must report any hazardous materials spill by calling 911 and must notify the City's Public Works Environmental Division at 408-777-3354.

(4) *Vehicle/Equipment Cleaning.*

- a. DBE will not perform vehicle or equipment cleaning on-site or in the street using soaps, solvents, degreasers, steam cleaning equipment, or equivalent methods.
- b. DBE must perform vehicle or equipment cleaning, with water only, in a designated, bermed, pervious area that will not allow rinse water to run offsite or into streets, gutters, storm drains, or creeks.

(5) *Vehicle/Equipment Maintenance and Fueling.*

- a. DBE will not perform maintenance and fueling of vehicles onsite.
- b. DBE must perform maintenance and fueling of equipment only when necessary, and in a designated, bermed area or over a drip pan that will not allow run-on of storm water or runoff of spills.
- c. DBE must use secondary containment, such as a drip pan, to catch leaks or spills any time that equipment fluids are dispensed, changed, or poured.
- d. DBE must keep a stockpile of spill cleanup materials, such as rags or absorbents, readily accessible on-site to clean up drips and spills.
- e. DBE must clean up leaks and spills of vehicle or equipment fluids immediately and dispose of the waste and cleanup materials as hazardous waste, as described above.
- f. DBE will not wash any spilled material into streets, gutters, storm drains, or creeks and shall not bury spilled hazardous materials.
- g. DBE must report any hazardous materials spill by calling 911. After the emergency has been reported, DBE must notify the City's Public Works Environmental Division.
- h. DBE must inspect vehicles and equipment arriving on-site for leaking fluids and shall promptly repair leaking vehicles and equipment.

Drip pans must be used to catch leaks until repairs are made. Shut-off valves on equipment must be working properly.

- i. DBE must comply with all applicable Laws for above-ground storage tanks.

(6) *DBE Training and Awareness.*

- a. DBE must train all employees and Subcontractors on the SWPPP requirements contained in these General Conditions.
- b. DBE must include appropriate provisions in its subcontracts to ensure that these SWPPP requirements are met.
- c. DBE must post warning signs in areas treated with chemicals.
- d. DBE must paint City-approved stencil or, preferably, apply steel medallions to, any new catch basins with the "No Dumping, Flows to Creek" stencil or medallion markers available from the City's Public Works Environmental Division.

(7) *Activity-Specific Requirements.* The following requirements apply if the Project includes the listed activities.

- a. Dewatering or Pumping Operations.
 - (i) DBE must not discharge water to the storm drain system. Water discharges must be directed to a pervious, landscaped, or bioretention area where water will be infiltrated without causing runoff, or routed to the sanitary sewer system after obtaining a permit from Cupertino Sanitary District or Sunnyvale Sanitary, depending on which has jurisdictional authority, or contained using a Baker tank or other means to collect the water for re-use or safe and legal disposal. DBE may contact the City's Environmental Division for more information on these control measures.
 - (ii) DBE must obtain approval of the Engineer for any control measure in advance.
 - (iii) DBE must reuse water for other needs, including but not limited to dust control or irrigation, to the maximum extent practicable.
- b. Paving Operations.
 - (i) When rain is forecast within 24 hours or during wet weather, the Engineer may require that paving be delayed for more suitable conditions.
 - (ii) The Engineer may direct DBE to protect drainage courses by using control measures, including but not limited to, earth dike, straw bale, and sandbag, to divert runoff or trap and filter sediment. DBE must refer to California Storm Water Best Management Practice Handbook for these control measures.

- (iii) DBE must place drip pans or absorbent material under paving equipment when not in use.
- (iv) DBE must securely cover catch basins and manholes when paving or applying seal coat, tack coat, slurry seal, or fog seal.
- (v) DBE must remove, clean and reapply or replace catch basin covers as often as needed to ensure protection of the storm drain system from any material other than rain.
- (vi) Before Final Completion, DBE must remove and dispose of all catch basin covers and material trapped by the covers. If DBE fails to remove and dispose of the covers and materials trapped, City reserves the right to delay final inspection and/or deduct monies from payments due DBE to compensate the City for its additional costs for removal and disposal of catch basin protection.
- (vii) If the paving operation includes an on-site mixing plant, DBE must comply with Santa Clara County General Industrial Activities Storm Water Permit requirements.
- (viii) DBE must preheat, transfer or load hot bituminous material away from drainage systems or watercourses.
- (ix) DBE will not sweep or wash down excess sand (placed as part of a sand seal or to absorb excess oil) into streets, gutters, storm drains, or creeks. DBE must either collect the sand and return it to the stockpile, or dispose of it in a trash container. DBE will not use water to wash down fresh asphalt concrete pavement.

c. Saw Cutting.

- (i) DBE must use as little water as possible during saw cutting and grinding operations.
- (ii) DBE must cover or barricade catch basins using control measures, including but not limited to as filter fabric, straw bales, sandbags, and fine gravel dams, to keep slurry out of the storm drain system. When protecting a catch basin, DBE must ensure that the entire opening is covered. DBE must refer to California Storm Water Best Management Practice Handbook for these control measures.
- (iii) DBE must remove, clean and reapply or replace catch basin covers.
- (iv) Before Final Completion, DBE must remove and dispose of all catch basin covers.
- (v) DBE must shovel, absorb or vacuum saw cut slurry and pick up the waste prior to moving to the next location or at the end of each working day, whichever is sooner.

- (vi) If saw cut slurry enters catch basins, DBE must remove the slurry from the storm drain system immediately.
- d. Traffic Detector Loop Installation and Repair.
 - (i) DBE must protect nearby storm drain inlets prior to cutting or flushing slot for traffic detector loops. DBE must block or berm around nearby storm drain inlets using sandbags or an equivalent barrier or use absorbent materials such as pads, pillows and socks to contain slurry.
 - (ii) Before Final Completion, DBE must remove all sandbags and equivalent barriers and absorbent materials from the site and sweep the area clean and away from the storm drain inlet.
 - (iii) DBE must clean up residues by sweeping up as much material as possible and must dispose of material properly.
- e. Concrete, Grout and Mortar Waste Management.
 - (i) DBE must avoid mixing excess amounts of fresh concrete or cement mortar on-site.
 - (ii) DBE must store concrete, grout and mortar away from drainage areas and ensure that these materials do not enter the storm drain system.
 - (iii) DBE will not wash out concrete trucks or equipment into streets, gutters, storm drains, or creeks.
 - (iv) DBE must perform washout of concrete trucks or equipment off-site or in a designated area on-site where the water will flow onto dirt or into a temporary pit in a dirt area. DBE must let the water percolate into the soil and dispose of the hardened concrete in a trash container. If a suitable dirt area is not available, DBE must collect the wash water and remove it off-site.
 - (v) DBE will prevent creating runoff by draining water from washing of exposed aggregate concrete to a dirt area. If a suitable dirt area is not available, DBE must collect the wash water and remove it off-site.
 - (vi) Before Final Completion, DBE must remove all protective measures and treatment materials and sweep the site clean.
 - (vii) DBE must collect and return sweepings from exposed aggregate concrete to a stockpile or dispose of the waste in a trash container.
- f. Painting.

- (i) DBE must conduct cleaning of painting equipment and tools in a designated area that will not allow run-on of storm water or runoff of spills.
- (ii) DBE will not allow wash water from cleaning of painting equipment and tools into streets, gutters, storm drains or creeks.
- (iii) DBE will remove as much excess paint as possible from brushes, rollers and equipment before starting cleanup.
- (iv) To the maximum extent practicable and with permission from Cupertino Sanitary District, DBE will dispose of wash water from aqueous cleaning of equipment and tools to the sanitary sewer.
- (v) If DBE cannot dispose of wash water to the sanitary sewer, DBE must direct wash water onto dirt area and spade in.
- (vi) To the maximum extent practicable, DBE will filter paint thinner and solvents for reuse.
- (vii) DBE must dispose of thinners, solvents, oil and water-based paint, and sludge from cleaning of equipment and tools as hazardous waste, as described in these General Conditions.
- (viii) DBE must store paint, solvents, chemicals, and waste materials in compliance with the City of Cupertino Hazardous Materials Storage Ordinance and all applicable state and federal regulations. DBE must store these materials in a designated area that will not allow run-on of storm water or runoff of spills.
- (ix) DBE must dispose of dry or empty paint cans and buckets, old brushes, rollers, rags, and drop cloths in the trash.

g. Earthwork.

- (i) DBE must use the BMPs for erosion and sedimentation in either the California Storm Water Best Management Practice Handbook - Construction Activity or the ABAG Manual of Standards for Erosion and Sediment Control Measures.

h. Thermoplastic.

- (i) DBE must transfer and load hot thermoplastic away from drainage systems or watercourses.
- (ii) DBE must sweep thermoplastic grindings into plastic bags. Yellow thermoplastic grindings may require special handling as they may contain paint.

i. Pesticide Usage and Pest Management.

- (i) DBE must follow all federal, state, and local policies (including the City's Integrated Pest Management Policy), laws, and regulations governing the use, storage, and disposal of pesticides and training of pest control advisors and applicators.

- (ii) DBE must submit pest management control methods to Engineer for approval. Such control methods may include, but are not limited to: no controls; physical or mechanical methods; environmental controls (mulching, pest-resistant vegetation); biological controls (predators, parasites, etc.); less toxic controls (soaps, oils, etc.); and hot water.
- (iii) DBE must notify and receive permission from the Engineer and the Public Works Environmental Division before applying any pesticides.
- (iv) If permitted to use pesticides, DBE must use the least toxic pesticides available and the use and type of such pesticides must be approved by the City. The City will consider the LD50, overall risk to the applicator, and impact to the environment when approving the use of pesticides.
- (v) DBE must apply pesticides at the appropriate time to maximize their effectiveness and minimize the likelihood of discharging non-degraded pesticides in stormwater runoff. DBE will not apply pesticides if rain is expected.
- (vi) DBE must mix and apply only as much material as is necessary for treatment. DBE must calibrate application equipment prior to and during use to ensure desired application rate.
- (vii) DBE will not mix or load pesticides in application equipment adjacent to a storm drain inlet culvert or watercourse.
- (viii) DBE will not use Clopyralid, Diazinon, Chlorpyrifos, Chloradane, DDT, Dieldrin or other organophosphates. Fipronil and pyrethroids including, but not limited to Deltamethrin and Bifenthrin, will not be applied on City property.
- (ix) DBE must submit monthly summaries of pesticide use to the Public Works Environmental Division on appropriate City form. Information provided must include, at a minimum, the product used, the method of application, date applied, the area to which it is applied, and the amount applied.

7.20 Traffic Control and Public Safety.

- (A) **Fences and Barriers.** DBE must furnish, erect, and maintain fences, barriers, lights, and signs, and must provide flagging and guards as necessary to give adequate warning to the public of the construction and of any dangerous condition at DBE's sole cost and expense. City must approve all signs as to size, wording, and location. City, in its sole discretion, may direct DBE to implement additional measures. DBE may be required to cover certain signs which regulate or direct public traffic to roadways that are not open to traffic. The Engineer will determine which signs must be covered.
- (B) **Manual on Uniform Traffic Control Devices (MUTCD).** Notwithstanding the requirements of this Section 7.20, all fences, barriers, signs, lights, flags, and other warning and safety devices and their use must conform to the requirements of Part 6 of

the United States Department of Transportation MUTCD and the MUTCD California Supplement.

(C) **Sign Conflicts.** Signs and other protective devices furnished and erected by DBE will not obscure the visibility of, nor conflict in intent, meaning, and function of, existing signs, lights, and traffic control devices or any construction area signs and traffic control devices

(D) **Public Access.** DBE must conduct operations in the manner that offers the least possible obstruction and inconvenience to the public. DBE must complete the Work in a manner that allows for access to public rights-of-way. Unless otherwise provided in the Contract Documents, all public traffic must be permitted to pass through the Work with as little inconvenience and delay as possible. Where possible, public traffic must be routed on new or existing paved surfaces.

(E) **Public Spills.** Spillage resulting from hauling operations along or across any public right-of-way must be removed immediately by DBE at DBE's sole cost and expense.

(F) **Existing Traffic Signals.** Existing traffic signals and highway lighting must be kept in operation and available for routine maintenance during construction.

(G) **Abutting Properties.** Construction operations must be conducted in such a manner as to cause as little inconvenience as possible to abutting property owners. DBE must maintain convenient access to driveways, houses, and buildings, and temporary approaches to crossings or intersecting highways must be provided and kept in good condition. When an abutting property owner's access across the right-of-way line is to be eliminated or replaced by other access facilities, the existing access will not be closed until the replacement access facilities are usable.

(H) **Lane Closures.** Lane closures are not permitted before 7:00 A.M. or after 5:00 P.M. from Monday through Friday or as otherwise specified in the Special Conditions or Specifications. City may, at its sole discretion, approve lane closures during this time upon written request from DBE. DBE must maintain a minimum of two travel lanes for traffic use (one in each direction) at all times.

(I) **Costs.** DBE is solely responsible for all costs for all required traffic control and public safety measures.

7.21 Noise Control. DBE must comply with all applicable noise control laws, ordinances, regulations and rules. Noise control requirements apply to all equipment used for the Work or related to the Work, including trucks, transit mixers or transient equipment that may or may not be owned by DBE.

7.22 Fire Protection Plan. If a fire protection plan is required for this Project, within 21 days after the date of issuance of the Notice to Proceed with Construction Services, DBE must submit to the Engineer a fire protection plan that has been reviewed and approved by the Santa Clara County Fire Department. In addition to any specified requirements for the fire protection plan, the plan should address all of the following:

- (A) Equipment spark arresters;
- (B) Fire-extinguishing equipment at the Worksite(s);
- (C) Fire response procedures;

- (D) Notification to authorities of any fire;
- (E) Fire equipment access during performance of the Work and after hours;
- (F) Educating and training workers to comply with the fire protection plan
- (G) Safe storage and transport of flammable materials; and
- (H) Equipment for ventilation and illumination.

Article 8 - Payment

8.1 Payment. For all Services performed in compliance with the Contract Documents, City will compensate DBE in an amount not to exceed the Contract Price, as adjusted by approved Change Orders, if any, as further specified below.

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

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

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

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

(A) **Application for Payment.**

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

(2) Each application for payment for Construction Services must be itemized to include labor, materials, and equipment incorporated into the Work, and materials and equipment delivered to the Project site, as well as authorized and approved Change Orders. Each application for payment for Construction Services must be supported by DBE's schedule of values and any other

substantiating data required by the Contract Documents. If requested by the Project Manager, each application for payment for Construction Services must also be accompanied by an executed Conditional Waiver and Release Upon Progress Payment, using the form specified in Civil Code § 8132 for each Subcontractor that performed Work during the period covered by that application. The application for payment for Construction Services must also include the monthly report documenting compliance with the Skilled and Trained Workforce requirements pursuant to Public Contract Code § 2602, and as specified in Section 9.6, below.

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

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

(2) If required by the Project Manager, within 45 days after receipt of each payment from City for Construction Services, DBE must submit an executed Unconditional Waiver and Release Upon Progress Payment, using the form specified in Civil Code § 8134, from each Subcontractor that has received a progress payment from DBE following DBE's receipt of payment from City.

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

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

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

(C) DBE's failure to pay its Subcontractors and suppliers when payment is due, City may withhold an amount equal to the total of past due payments and may opt to pay that amount separately via joint check pursuant to Section 8.6(B), Joint Checks.

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

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

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

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

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

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

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

(K) For failure to release claims as to undisputed amounts pursuant to Section 8.10, below

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

8.6 Retention. City will retain five percent of the amount due on each progress payment (i.e., the amount due before any withholding or deductions pursuant to Section 8.4, Adjustment to Payment Application), or the percentage stated in the RFP, whichever is greater, as retention to ensure full and satisfactory performance of the Services. DBE is not entitled to any reduction in the rate of withholding at any time, nor to release of any retention before 35 days following City's acceptance of the Project.

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

(B) **Release of Undisputed Retention.** All undisputed retention, less any amounts that may be assessed as liquidated damages, retained for stop notices, or otherwise withheld pursuant to Section 8.4 or 8.7, will be released as Final Payment to DBE no sooner than 35 days following recordation of the notice of completion, and no later than 60 days following acceptance of the Project by City's governing body or authorized designee pursuant to Section 11.1(C) Acceptance, or, if the Project has not been accepted, no later than 60 days after the Project is otherwise considered complete pursuant to Public Contract Code § 7107(c), as determined by City based on its records.

- 8.7 Setoff.** City is entitled to set off any amounts due from DBE against any payments due to DBE. City's entitlement to setoff includes progress payments as well as Final Payment and release of retention.
- 8.8 Payment to Subcontractors and Suppliers.** Each month, DBE must promptly pay each Subcontractor and supplier the value of the portion of labor, materials, and equipment incorporated into the Work or delivered to the Project site by the Subcontractor or supplier during the preceding month. Such payments must be made in accordance with the requirements of Laws pertaining to such payments, and those of the Contract Documents and applicable subcontract or supplier contract.
- (A) **Withholding for Stop Notice.** City will withhold 125% of the amount claimed by an unreleased stop notice, a portion of which may be retained by City for the costs incurred in handling the stop notice claim, including attorneys' fees and costs, as authorized by law.
- (B) **Joint Checks.** City reserves the right, acting in its sole discretion, to issue joint checks made payable to DBE and its Subconsultants, Subcontractors or suppliers, if City determines this is necessary to ensure fair and timely payment for a Subcontractor or supplier who has provided services or goods for the Project. As a condition to release of payment by a joint check, the joint check payees may be required to execute a joint check agreement in a form provided or approved by the City Attorney's Office. The joint check payees will be jointly and severally responsible for the allocation and disbursement of funds paid by joint check. Payment by joint check will not be construed to create a contractual relationship between City and a Subcontractor or supplier of any tier beyond the scope of the joint check agreement.
- 8.9 Final Payment.** DBE's application for Final Payment must comply with the requirements for submitting an application for a progress payment as stated in Section 8.3, above. Corrections to previous progress payments, including adjustments to estimated quantities for unit priced items, may be included in the Final Payment. If DBE fails to submit a timely application for Final Payment, City reserves the right to unilaterally process and issue Final Payment without an application from DBE in order to close out the Project. For the purposes of determining the deadline for Claim submission pursuant to Article 12, the date of Final Payment is deemed to be the date that City acts to release undisputed retention as final payment to DBE, or otherwise provides written notice to DBE of Final Payment or that no undisputed funds remain available for Final Payment due to offsetting withholdings or deductions pursuant to Section 8.4, Adjustment of Payment Application. If the amount due from DBE to City exceeds the amount of Final Payment, City retains the right to recover the balance from DBE or its sureties.
- 8.10 Release of Claims.** City may, at any time, require that payment of the undisputed portion of any progress payment or Final Payment (excepting undisputed retention subject to release under Public Contract Code § 7107) be contingent upon DBE furnishing City with a written waiver and release of all claims against City arising from or related to the portion of Work covered by those undisputed amounts subject to the limits of Public Contract Code § 7100. The waiver and release of claims must be submitted using the City's Release of Claims form. Any disputed amounts may be specifically excluded from the release.
- 8.11 Warranty of Title.** DBE warrants that title to all work, materials, or equipment incorporated into the Work or delivered to a Project site, and included in a request for payment will pass over to City free of any claims, liens, or encumbrances upon any payment to DBE.

Article 9 - Labor Provisions

9.1 Discrimination Prohibited. Discrimination against any prospective or present employee engaged in the Work on grounds of race, color, ancestry, national origin, ethnicity, religion, sex, sexual orientation, age, disability, or marital status is strictly prohibited. DBE and its Subcontractors are required to comply with all applicable Laws prohibiting discrimination, including the California Fair Employment and Housing Act (Government Code § 12900 et seq.), Government Code § 11135, and Labor Code §§ 17735, 1777.5, 1777.6, and 3077.5.

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

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

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

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

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

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

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

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

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

(A) **DBE and Subcontractor Obligations.** DBE and each Subcontractor must keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the

actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in connection with the Work. Each payroll record must contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

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

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

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

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

9.5 Labor Compliance. Pursuant to Labor Code § 1771.4, Services subject to this Article are subject to compliance monitoring and enforcement by the DIR.

9.6 Skilled and Trained Workforce. DBE and its Subcontractors of every tier must use a Skilled and Trained Workforce, to perform all Work on the Project that falls within an apprenticeable occupation in the building and construction trades. DBE will submit a report each month to the City demonstrating compliance with this requirement during the previous calendar month. The monthly report on compliance with Skilled and Trained Workforce compliance during the previous calendar month, must be submitted with DBE's monthly application for progress payments.

Article 10 - Safety Provisions

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

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

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

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

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

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

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

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

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

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

10.5 Emergencies. In an emergency affecting the safety or protection of persons, Work, or property at or adjacent to any Worksite, DBE must take reasonable and prompt actions to

prevent damage, injury, or loss, without prior authorization from the City if, under the circumstances, there is inadequate time to seek prior authorization from the City.

Article 11 - Completion and Warranty Provisions

11.1 Final Completion.

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

(B) ***Requirements for Final Completion.*** Final Completion will be achieved upon completion or correction of all punch list items, as verified by City's further inspection, and upon satisfaction of all other Contract requirements, including any commissioning required under the Contract Documents and submission of all final submittals, instructions and manuals as required under Section 7.9, and as-built drawings as required under Section 7.10, all to City's satisfaction.

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

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

11.2 Warranty.

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

be free from material defects not intrinsic in the design or materials required in the Contract Documents. Contractor warrants that materials or items incorporated into the Work comply with the requirements and standards in the Contract Documents, including compliance with Laws, and that any Hazardous Materials encountered or used were handled as required by Laws. At City's request, DBE must furnish satisfactory evidence of the quality and type of materials and equipment furnished. DBE's warranty does not extend to damage caused by normal wear and tear, or improper use or maintenance.

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

(C) **Warranty Documents.** As a condition precedent to Final Completion, DBE must supply City with all warranty and guarantee documents relevant to equipment and materials incorporated into the Work and guaranteed by their suppliers or manufacturers.

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

(E) **DBE's Obligations.** Upon written notice from City to DBE of any defect in the Work discovered during the Warranty Period, DBE or its responsible Subcontractor must promptly correct the defective Work at its own cost. DBE's obligation to correct defects discovered during the Warranty Period will continue past the expiration of the Warranty Period as to any defects in Work for which DBE was notified prior to expiration of the Warranty Period. Work performed during the Warranty Period ("Warranty Work") will be subject to the warranty provisions in this Section 11.2 for a one-year period that begins upon completion of such Warranty Work to City's satisfaction.

(F) **City's Remedies.** If DBE and/or its responsible Subcontractor fails to correct defective Work within ten days following notice by City, or sooner if required by the circumstances, DBE expressly agrees that City may correct the defects to conform with the Contract Documents at DBE's sole expense, and DBE agrees to reimburse City for its costs within 30 days following City's submission of a demand(s) for payment pursuant to this provision. If City is required to initiate legal action to compel DBE's compliance with this provision, and City is the prevailing party in such action, DBE is solely responsible for all of City's attorney's fees and legal costs expended to enforce DBE's warranty obligations herein in addition to any and all costs City incurs to correct the defective Work.

(G) **Emergency Repairs.** In cases of emergency where any delay in correcting defective Work could cause harm, loss or damage, DBE expressly agrees that City may immediately correct the defects to conform with the Contract Documents at DBE's sole expense, and DBE agrees to reimburse City for its costs within 30 days following City's submission of a demand(s) for payment pursuant to this provision. If City is required to initiate legal action to compel DBE's compliance with this provision, and City is the prevailing party in such action, DBE and its surety are solely responsible for all of City's attorney's fees and legal costs expended to enforce DBE's warranty obligations herein in addition to any and all costs City incurs to immediately correct the defective Work, including any associated overtime expenses.

11.3 Use Prior to Final Completion. City reserves the right to occupy or make use of the Project, or any portions of the Project, prior to Final Completion if City has determined

that the Project or portion of it is in a condition suitable for the proposed occupation or use, and that it is in its best interest to occupy or make use of the Project, or any portions of it, prior to Final Completion. City will notify DBE in writing of its intent to occupy or make use of the Project or any portions of the Project, pursuant to this provision.

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

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

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

Article 12 - Dispute Resolution

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. A chronology of relevant events; and

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

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

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

"The undersigned DBE certifies under penalty of perjury that its statements and representations in this Claim submittal are true and correct. DBE warrants that this Claim submittal is comprehensive and complete as to the matters in dispute, and agrees that any costs, expenses, or delay claim not included herein are deemed waived. DBE understands that submission of a Claim which has no basis in fact or which DBE knows to be false may violate the False Claims Act (Government Code § 12650 et seq.)."

(C) **Submission Deadlines.**

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

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

(3) A Claim disputing the amount of Final Payment must be submitted within 15 days of the effective date of Final Payment, under Section 8.9, Final Payment.

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

12.3 City's Response. City will respond within 45 days of receipt of the Claim with a written statement identifying which portion(s) of the Claim are disputed, unless the 45-day period is extended by mutual agreement of City and DBE or as otherwise allowed under Public Contract Code § 9204. However, if City determines that the Claim is not adequately substantiated pursuant to Section 12.2(A), Substantiation, City may first request in writing, within 30 days of receipt of the Claim, any additional documentation supporting the Claim or relating to defenses to the Claim that City may have against the Claim. If DBE fails to submit the additional documentation to City within 15 days of receipt of City's request, the Claim will be deemed waived.

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

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

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

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

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

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

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

12.5 Mediation and Government Code Claims.

(A) ***Mediation.*** Within ten working days after the City issues the written statement identifying any portion(s) of the Claim remaining in dispute following the meet and confer, City and DBE will mutually agree to a mediator, as provided under Public Contract Code § 9204. Mediation will be scheduled to ensure the mutual availability of the selected mediator and all of the individuals that each party requires to represent its interests. If there are multiple Claims in dispute, the parties may agree to schedule the mediation to address all outstanding Claims at the same time. The parties will share the costs of the mediator and mediation fees equally, but each party is otherwise solely and separately responsible for its own cost to prepare for and participate in the mediation, including costs for its legal counsel or any other consultants.

(B) ***Government Code Claims.***

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

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

- 12.6 Tort Claims.** This Article does not apply to tort claims and nothing in this Article is intended nor will be construed to change the time periods for filing tort-based Government Code Claims.
- 12.7 Arbitration.** It is expressly agreed, under Code of Civil Procedure § 1296, that in any arbitration to resolve a dispute relating to this Contract, the arbitrator's award must be supported by law and substantial evidence.
- 12.8 Burden of Proof and Limitations.** DBE bears the burden of proving entitlement to and the amount of any claimed damages. DBE is not entitled to damages calculated on a total cost basis, but must prove actual damages. DBE is not entitled to speculative, special, or consequential damages, including home office overhead or any form of overhead not directly incurred at the Project site or any other Worksite; lost profits; loss of productivity; lost opportunity to work on other projects; diminished bonding capacity; increased cost of financing for the Project; extended capital costs; non-availability of labor, material or equipment due to delays; or any other indirect loss arising from the Contract. The Eichleay Formula or similar formula will not be used for any recovery under the Contract. The City will not be directly liable to any Subcontractor or supplier.
- 12.9 Legal Proceedings.** In any legal proceeding that involves enforcement of any requirements of the Contract Documents, the finder of fact will receive detailed instructions on the meaning and operation of the Contract Documents, including conditions, limitations of liability, remedies, claim procedures, and other provisions bearing on the defenses and theories of liability. Detailed findings of fact will be requested to verify enforcement of the Contract Documents. All of the City's remedies under the Contract Documents will be construed as cumulative, and not exclusive, and the City reserves all rights to all remedies available under law or equity as to any dispute arising from or relating to the Contract Documents or performance of the Work.
- 12.10 Other Disputes.** The procedures in this Article 12 will apply to any and all disputes or legal actions, in addition to Claims, arising from or related to this Contract, including disputes regarding suspension or early termination of the Contract, unless and only to the extent that compliance with a procedural requirement is expressly and specifically waived by City. Nothing in this Article is intended to delay suspension or termination under Article 13.

Article 13 - Suspension and Termination

- 13.1 Suspension for Cause.** In addition to all other remedies available to City, if DBE fails to perform or correct Work in accordance with the Contract Documents, including non-compliance with applicable environmental or health and safety Laws, City may immediately order the Work, or any portion of it, suspended until the circumstances giving rise to the suspension have been eliminated to City's satisfaction.
- (A) **Failure to Comply.** DBE will not be entitled to an increase in the Contract Time or Contract Price for a suspension occasioned by DBE's failure to comply with the Contract Documents.
- (B) **No Duty to Suspend.** City's right to suspend the Work will not give rise to a duty to suspend the Work, and City's failure to suspend the Work will not constitute a defense to DBE's failure to comply with the requirements of the Contract Documents.
- 13.2 Suspension for Convenience.** City reserves the right to suspend, delay, or interrupt the performance of the Work in whole or in part, for a period of time determined to be appropriate for City's convenience. Upon notice by City pursuant to this provision, DBE

must immediately suspend, delay, or interrupt the Work and secure the Project site as directed by City except for taking measures to protect completed or in progress Work as directed in the suspension notice. The Contract Price and the Contract Time will be equitably adjusted by Change Order pursuant to the terms of Article 5 and 6 to reflect the cost and delay impact occasioned by such suspension for convenience, except to the extent that any such impacts were caused by DBE's failure to comply with the Contract Documents or the terms of suspension notice. However, the time for completing the Project will only be extended if the suspension causes or will cause delay in Final Completion. If DBE disputes the terms of a Change Order issued for such equitable adjustment due to suspension, its sole recourse is to comply with the Claim procedures in Article 12.

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

(A) **Default.** Events giving rise to a declaration of default include DBE's refusal or failure to supply sufficient skilled workers, proper materials, or equipment to perform the Work within the Contract Time; DBE's refusal or failure to make prompt payment to its employees, Subcontractors, or suppliers or to correct defective Work or damage; DBE's failure to comply with Laws, or orders of any public agency with jurisdiction over the Project; evidence of DBE's bankruptcy, insolvency, or lack of financial capacity to complete the Work as required within the Contract Time; suspension, revocation, or expiration and nonrenewal of Contractor's license or DIR registration; dissolution, liquidation, reorganization, or other major change in DBE's organization, ownership, structure, or existence as a business entity; unauthorized assignment of DBE's rights or duties under the Contract; or any material breach of the Contract requirements.

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

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

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

(E) **Compensation.** Within 30 days of receipt of updated as-builts, all warranties, manuals, instructions, or other required documents for Work installed to date, and delivery to City of all equipment and materials for the Project for which DBE has already

been compensated, DBE will be compensated for the Work satisfactorily performed in compliance with the Contract Documents up to the effective date of the termination pursuant to the terms of Article 8, Payment, subject to City's rights to withhold or deduct sums from payment otherwise due pursuant to Section 8.4, and excluding any costs DBE incurs as a result of the termination, including any cancellation or restocking charges or fees due to third parties. If DBE disputes the amount of compensation determined by City, its sole recourse is to comply with the Claim Procedures in Article 12, by submitting a Claim no later than 30 days following notice from City of the total compensation to be paid by City.

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

13.4 Termination for Convenience. City reserves the right to terminate all or part of the Contract for convenience upon written notice to DBE.

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

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

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

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

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

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

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

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

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

- (1) Immediately stop the Work, except for any Work that must be completed pursuant to the notice of termination and comply with City's instructions for cessation of labor and securing the Project and any other Worksite(s).
- (2) Comply with City's instructions to protect the completed Work and materials, using best efforts to minimize further costs.
- (3) DBE must not place further orders or enter into new subcontracts for materials, equipment, services or facilities, except as may be necessary to complete any portion of the Work that is not terminated.
- (4) As directed in the notice, DBE must assign to City or cancel existing subcontracts that relate to performance of the terminated Work, subject to any prior rights, if any, of the surety for DBE's performance bond, and settle all outstanding liabilities and claims, subject to City's approval.
- (5) As directed in the notice, DBE must use its best efforts to sell any materials, supplies, or equipment intended solely for the terminated Work in a manner and at market rate prices acceptable to City.

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

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

Article 14 - Miscellaneous Provisions

14.1 Assignment of Unfair Business Practice Claims. Under Public Contract Code § 7103.5, DBE and its Subcontractors agree to assign to City all rights, title, and interest in and to all causes of action it may have under § 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 (commencing with § 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or any subcontract. This assignment will be effective

at the time City tenders Final Payment to DBE, without further acknowledgement by the parties.

- 14.2 Provisions Deemed Inserted.** Every provision of law required to be inserted in the Contract Documents is deemed to be inserted, and the Contract Documents will be construed and enforced as though such provision has been included. If it is discovered that through mistake or otherwise that any required provision was not inserted, or not correctly inserted, the Contract Documents will be deemed amended accordingly.
- 14.3 Waiver.** City's waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of the Contract Documents will not be effective unless it is in writing and signed by City. City's waiver of any breach, failure, right, or remedy will not be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor will any waiver constitute a continuing waiver unless specified in writing by City.
- 14.4 Titles, Headings, and Groupings.** The titles and headings used and the groupings of provisions in the Contract Documents are for convenience only and may not be used in the construction or interpretation of the Contract Documents or relied upon for any other purpose.
- 14.5 Statutory and Regulatory References.** With respect to any amendments to any statutes or regulations referenced in these Contract Documents, the reference is deemed to be the version in effect on the date that that bids were due.
- 14.6 Survival.** The provisions that survive termination or expiration of this Contract include Contract Section 9, Notice, and subsections 10.1, 10.2, 10.3, 10.4, 10.5, and 10.6, of Section 10, General Provisions; and the following provisions in these General Conditions: Section 2.4(J), DBE's Records, Section 2.3(D), Ownership of Documents, Section 2.5(C), Termination, Section 4.2, Indemnity and Liability, Article 12, Dispute Resolution, and Section 11.2, Warranty.

END OF GENERAL CONDITIONS

Special Conditions

1. **Work Days and Hours.** Work hours and noise pose a special concern for projects in residential neighborhoods. The City is very concerned for its residents and will diligently enforce the restrictions below.
 - 1.1 **Work Hours.** 7:00 a.m.-5:00 p.m. local time, weekdays, 9:00 a.m. – 5:00 p.m. on Saturdays, 9:00 – 4:00 p.m. Sundays.
 - 1.2 **Equipment and Material Delivery and Off-Haul Hours.** No equipment or material may be delivered or off-hauled except between the hours of 7:00 a.m. and 5:00 p.m. No equipment that has a safety back up beeper may be operated before 7:00 a.m. on any day.
 - 1.3 **Work Days Only.** Work will only be performed on Work Days, as defined in the General Conditions, unless DBE requests otherwise from City in writing at least 2 working days in advance, and City approves the request in its sole discretion.
 - 1.4 **Connections to Existing Facilities.** Unless otherwise specified or indicated, DBE will make all necessary connections to existing facilities, including structures, drain lines, and utilities such as water, sewer, gas, telephone, and electric. In each case, DBE will receive permission from City or the owning utility prior to undertaking connections and coordinate as needed to accommodate the facilities operations. DBE will protect facilities against deleterious substances and damage.
 - 1.5 **Road Shutdown.** DBE will execute the Work while roads are in operation except for the periods of permitted shutdown. For shutdown periods, DBE will prepare and submit a detailed plan that includes shutdown schedule, planned sequence of work, milestones and projected times of completions of activities, any anticipated problems, DBE's supervisory personnel, actions desired of City and staff, and contingency plans. DBE will allow sufficient time for review and re-submittal of the shutdown plan until acceptable to City. DBE will employ sufficient labor, superintendence, and equipment on a 24-hour, 7 days a week basis during shutdown and other operational disruptions to complete Work within the specified periods at no additional cost to the City. Once initiated, Work may proceed on extra shift or around-the-clock basis as necessary. When required to minimize treatment process interruptions while complying with specified sequencing constraints, DBE will provide power, lighting, controls, instrumentation, and safety devices.
 - 1.6 **Noise Limitation.** No non-construction noise will be allowed, this includes amplified music, radio or other noise not due to construction activities.
 - 1.7 **Noisy Work.** No noisy work will be permitted in the library after 12:00 PM unless circumstances demand such—in which case, a request to complete this work will be submitted to City no less than five (5) calendar days prior to commencing such work. This request will state the type of work, date, time and duration of the work along with an explanation of why it is unable to be completed prior to 12:00 PM. "Noisy work" is defined as anything generating sound at or above 100 decibels, as measured at a distance of 10' from the point of sound-generation.
2. **Lines and Grades Verification.** All Work must be done to the lines, grades, and elevations indicated on the Plans and Specifications, and in accordance with all applicable Laws. DBE is required to verify forms and other work comply with lines, grades and elevations. Prior to pouring or placing any concrete or asphalt, DBE must have a

California licensed land surveyor or civil engineer field verify lines, grades and elevations prior to proceeding with the placement of concrete or asphalt. The land surveyor or civil engineer must have at least five years of relevant experience, and must be acceptable to the City. DBE must provide City verification of the licensing and experience for each proposed land surveyor or civil engineer. DBE must provide City with inspection results for form and grade work. DBE must remedy any non-compliant Work at no additional cost to City.

3. **Parking Restrictions.** DBE and Subcontractors will direct their respective workers to park in the locations identified for Contractor parking in the Bridging Documents or other appropriate off-site locations, including public parking facilities or public streets adjacent to or near the Project site, in compliance with applicable parking restrictions and requirements, and without blocking driveways and access.
4. **Pre-Construction Conference.** City will designate a date and time for a pre-construction conference with DBE following City's approval of the final Construction Documents. Project administration procedures and coordination between City and DBE will be discussed, and DBE must present City with the following information or documents at the meeting for City's review and acceptance before the Work commences:
 - 4.1 Name, 24-hour contact information, and qualifications of the proposed on-site superintendent;
 - 4.2 List of all key Project personnel and their complete contact information, including email addresses and telephone numbers during regular hours and after hours;
 - 4.3 Staging plans that identify the sequence of the Work, including any phases and alternative sequences or phases, with the goal of minimizing the impacts on residents, businesses and other operations in the Project vicinity;
 - 4.4 If required, traffic control plans associated with the staging plans that are signed and stamped by a licensed traffic engineer;
 - 4.5 Draft baseline schedule for the Work as required under Section 5.2 of the General Conditions, to be finalized within 10 days after City's approval of the final Construction Documents;
 - 4.6 Breakdown of lump sum bid items, to be used for determining the value of Work completed for future progress payments to DBE;
 - 4.7 Schedule with list of Project submittals that require City review, and list of the proposed material suppliers;
 - 4.8 Plan for coordination with affected utility owner(s) and compliance with any related permit requirements;
 - 4.9 Videotape and photographs recording the conditions throughout the pre-construction Project site, showing the existing improvements and current condition of the curbs, gutters, sidewalks, signs, landscaping, streetlights, structures near the Project such as building faces, canopies, shades and fences, and any other features within the Project area limits;
 - 4.10 If requested by City, DBE's cash flow projections; and
 - 4.11 Any other documents specified in the Special Conditions or Notice of Award.

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

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

City of Cupertino
Michael Zimmerman – Project Manager
Public Works
MichaelZ@cupertino.org
(408) 777.3248

With a copy to the Assistant Project Manager
Alex Acenas
Public Works
AlexA@cupertino.org
(408) 777.3232

- 5.2 **On-Site Management and Communication Procedures.** The Construction Manager will provide and maintain a management team on the Project site to provide contract administration as an agent of City and will establish and implement coordination and communication procedures among City, the Design Professional, DBE, and others.
- 5.3 **Contract Administration Procedures.** The Construction Manager will establish and implement procedures for reviewing and processing requests for clarifications and interpretations of the Contract Documents, Shop Drawings, samples, other submittals, schedule adjustments, Change Order proposals, written proposals for substitutions, payment applications, and maintenance of logs.
- 5.4 **Pre-Construction Conference.** DBE will attend the pre-construction conference, during which the Construction Manager will review the Contract administration procedures and Project requirements.
- 5.5 **DBE's Construction Schedule.** The Construction Manager will review DBE's construction schedules and will verify that each schedule is prepared in accordance with the requirements of the Contract Documents.

6. **Notification of Residents, Schools and Businesses.** DBE will notify, in writing, residents, businesses and schools within a 300 foot radius of Project limits at a minimum of two times prior to start of construction. The first notice shall be given to all residents, businesses and schools within the Project area **five working days** prior to any construction operation. The second notice shall be given to residents, businesses and schools **two working days** prior to any construction operation. Both notices shall be in writing and submitted to the Engineer for review and approval. Sample notice is below.

Notices shall include the Project name, describe the nature and duration of the DBE's operations, and provide a telephone number at which a DBE representative may be contacted **24 hour per day** for problems or emergencies encountered by residents

and/or businesses. Answering machines and voice mail shall not be permitted. The notice will also contain the City's Construction Management contact information.

A separate notice shall be given at least **two working days** prior to any anticipated service/utility disruption or temporary closure of access to any driveway. The notice shall indicate the duration of the disruption. DBE shall submit a written request to the Engineer regarding the temporary closure of access to any driveway. No driveway access shall be closed by the DBE at any time without prior written authorization from the Engineer.

If construction operations are delayed for any reason beyond the duration stipulated in the notices, DBE shall re-issue written notices that explain the delay and provide a revised schedule.

All written notices to residents, schools, businesses, agencies, etc. shall be submitted to the City for review and approval. Provide the City with a schedule of the notification deliveries so that the City can confirm that the notification was completed.

Payment for compliance with this section shall be deemed included in the various other items of work, and no additional compensation will be allowed therefore.

SAMPLE NOTICE:

NOTICE TO RESIDENTS / BUSINESS OWNERS

Date: [MONTH] [DAY], [YEAR]

Subject: [NAME OF PROJECT] – [One Week OR Two Day] Notice

This notice is to inform you that the City of Cupertino, Department of Public Works, has contracted with [DBE NAME] to [SCOPE OF WORK] along [STREET NAME] from [ADJACENT CROSS STREET] to [ADJACENT CROSS STREET].

This [SCOPE OF WORK] will mainly occur on [WEEKDAYS, SEE "SCHEDULE OFWORKING DAYS/HOURS"] from [START TIME] to [END TIME] and is scheduled to start in your area **APPROXIMATELY seven days from the date of this notice and will continue from [START DATE] until [END DATE]**. Please be aware that there may be construction activities that cause traffic delays.

[DBE NAME] will make every effort to maintain normal traffic access and minimize disruption in your neighborhood. No Parking / Tow-Away signs will be posted in affected areas two working days in advance of enforcement. Access to driveways will be maintained at ALL times during the construction.

Prior to activities in your immediate area, you will be sent a notification **TWO WORKING DAYS** before work begins. [DBE NAME] and the City of Cupertino, Department of Public Works, apologize for any inconvenience due to these activities. If you have any questions or need assistance as these activities progress, please call the number(s) listed below:

[DBE NAME]
[NAME OF PROJECT MANAGER, DBE]
Project Manager
(XXX) XXX-XXXX (24-hour number)

City of Cupertino
(NAME OF CONSTRUCTION MANAGEMENT FIRM IF ONE)

(PERSON'S NAME FROM CONSTRUCTION MANAGEMENT FIRM)
(XXX) XXX-XXXX (24-hour number)

City Office: (408)777-3354 Department of Public Works

Thank you for your patience and cooperation,
[NAME OF PROJECT MANAGER, DBE], Project Manager
[NAME OF CONSTRUCTION FIRM]

7. **Pandemic Health Laws.** DBE's duty to comply with Laws includes compliance by the DBE team, including all Subconsultants and Subcontractors, with all local, state, or federal Laws that have been or may be enacted in response to the Covid-19 pandemic (collectively, "Health Laws"), which include the County of Santa Clara Health Order dated May 18, 2020 (and updated on June 5, 2020) and Appendix B-___, including any subsequent amendments thereto (the "Health Order"). Failure to fully comply with the Health Laws constitutes a material default, subject to all available remedies including suspension or termination.
8. **LEED Silver.** DBE to provide all Services necessary for the Project to meet all LEED Silver standards applicable to a comparable project of equivalent size and type.
- 8.1 LEED Silver certification will not be required of the Project.
9. **Bird-Safe Glass.** DBE must provide all Services necessary to implement bird-safe glass on all exterior window glazing installed as a part of the Work of the Project.
- 9.1 The Total Contract Price on the Price Proposal must include the total sum of DBE costs for Services necessary to implement bird-safe glass (as specified in the Bridging Documents) on 100% of all exterior window glazing.
- 9.2 In order to obtain City approval of the bird-safe glass design, DBE shall deliver a mockup of the glass design during the design development phase, as specified in Section 2.3 of the General Conditions of the Contract Documents.
10. **Contract Price Adjustments.** During the course of discussions and negotiations following submission of the Proposal, City and DBE discussed and negotiated certain potential additional modifications to the Project requirements and pricing associated with those modifications, which may be made, at the City's election, following award and execution of the Contract. It is agreed that the City may elect during the Design Phase for items 1-4 and during the Construction Phase for item 5 to make the following adjustments to the Contract Documents by issuing a Change Order, and that the Contract Price will be adjusted by the amount stated for each such item:

	Potential Modification	Adjustment to Contract Price (+/-)
1	MC cabling for all branch power and lighting. Conduit homeruns to panelboards to remain	- \$25,000
2	VE Lighting Package. Similar outputs and style, just lower quality fixtures	-\$18,000
3	Fire Alarm System. Install FA Rated MC cable in lieu of EMT conduit	-\$7,000

4	Aluminum panelboard bussing and feeders in lieu of copper	-\$5,000
5	Monthly savings if works proceeds with the library building open to the public (other than online) during Construction Phase	-\$3,600/month

END OF SPECIAL CONDITIONS











Revision 2 -200812_Library_Contract-Final Rev. 2

Final Audit Report

2020-08-13

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