

City of Avalon



Design/Build Contract for Conversion of Joe Machado Field to Synthetic Multi-Purpose Field

Contract No. _____

**City of Avalon
Parks and Recreation Department
410 Avalon Canyon Road
P.O. Box 707
Avalon, California 90704**

DESIGN-BUILD CONTRACT BETWEEN
CITY OF AVALON AND
_____ FOR THE
Conversion of Joe Machado Field to Synthetic Multi-Purpose Field

This Design-Build Contract (“Contract”) is made and entered into this _____ day of _____, 2016 (“Effective Date”), by and between the **CITY OF AVALON** (the “City”), and _____ (the “Design-Build Entity” or the “DBE”) for the purpose of designing, permitting and constructing the **Joe Machado Field to Synthetic Multi-Purpose Field** (the “Project”). The City and the DBE are herein collectively referred to as the “Parties.”

RECITALS

A. City desires to contract with a single entity for the turnkey design and construction of the Projects, as set forth in this Contract.

B. City conducted a Request for Proposals (“RFP”) process in accordance with Public Contract Code sections 22160, et seq. to solicit qualified Design-Build Entities for its energy efficiency project.

C. The DBE submitted a Proposal for the Project, which was selected, based on the representations set forth in the DBE’s Proposal, as providing the best-value to the City.

D. The City and DBE desire to enter into this Contract under which DBE shall design, permit, procure, construct and install the Project.

E. In consideration of the above recitals and the mutual covenants and conditions set forth herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby set forth their mutual covenants and understandings as follows:

TERMS

1. Incorporation of Documents.

This Contract includes and hereby incorporates in full by reference the following Contract Documents, including all exhibits, drawings, specifications and documents therein, and attachments and addenda thereto:

- (a) Contract, including the final Construction Documents
- (b) Attachment 1 to this Contract – Initial and Final Approved Scope
- (c) Attachment 1-2 to this Contract – DBE Prequalification Response
- (d) Attachment 1-3 to this Contract – DBE RFP Response

- (e) Attachment 1-4 to this Contract - Site Layouts
- (f) Attachment 2 to this Contract - General Conditions
- (g) Attachment 3 to this Contract – Performance Bond
- (h) Attachment 4 to this Contract – Payment Bond
- (i) Attachment 5 to this Contract – Rate Schedule
- (j) Attachment 6 to this Contract – Warranties
- (k) Attachment 7 to this Contract – Workers’ Compensation Certification
- (l) Attachment 8 to this Contract – Asbestos & Other Hazardous Materials Certification
- (m) Attachment 9 to this Contract – Iran Contracting Act Certification

2. Acknowledgement of Contract Documents.

The above documents constitute and may hereinafter be referred to as the “Contract Documents.” In addition to signing this Contract, the DBE shall review and execute where appropriate all the Attachments to this Contract described above. Also, the DBE shall initial this paragraph immediately below acknowledging that he or she has read, understood and agrees with all of the terms of the Contract Documents, including, but not limited to, provisions of the General Conditions relating to indemnification, insurance, standards of performance, termination, compensation and time of the essence performance. The DBE shall not disclaim knowledge of the meaning and effect of any term or provision of the Contract Documents, and agrees to strictly abide by their meaning and intent. **In the event that the DBE fails to initial below, the City shall have the right to declare the Contract unexecuted and to award the Contract to another DBE.**

DBE’s Initials

3. The DBE's Basic Obligations.

- (a) The DBE promises and agrees, at its own cost and expense, to furnish to the City all design and construction services, labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately complete the Project as described in the Contract Documents (hereinafter the “Scope of Work”), for a Price (“Price”) of _____ DOLLARS (\$_____). Unless otherwise stated in the Contract Documents, the Price, shall pay for all costs and expenses required to design and construct the Project.

4. Extra Work.

Extra Work shall have the meaning given to it in the General Conditions. Extra Work shall be initiated only upon written approval by the City as described in the General Conditions. Extra Work shall be compensated in accordance with Article 7 of Attachment 2 “General Conditions.”

5. Standard of Performance.

The DBE's performance shall be consistent with the standards set forth in the Contract and the General Conditions.

6. Period of Performance and Liquidated Damages.

- (a) The DBE guarantees that it shall perform and complete all work necessary for Completion by the Guaranteed Completion Date ("GCD").
- (b) The Guaranteed Completion Date shall be Oct 1st, 2016, or 60 days from issuance of the Notice to Proceed, whichever is later.
- (c) Liquidated Damages. The DBE agrees that it shall be liable to the City for liquidated damages in an amount of _____ dollar (\$) per day for each and every calendar day beyond the Guaranteed Completion Date that Completion of the Project has not been achieved at the Project Site. If not completed by the Guaranteed Completion Date, it is understood that the City will suffer damage, and that it is and will be difficult and/or impossible to ascertain and determine the actual damage which the City will sustain in the event of and by reason of the DBE's failure to complete the work, and therefore the DBE shall pay to the City the stipulated sum as fixed and liquidated damages and not as a penalty. Any money due or to become due the DBE may be retained to cover liquidated damages.

7. Liens.

DBE shall, upon request of the City, provide the City with a list of subcontractors which it reasonably believes may file pre-lien notices and will update such list from time to time as DBE deems reasonably necessary. DBE shall promptly pay its subcontractors any amounts due for work performed or material and equipment supplied to this Project and shall pay its subcontractors within ten (10) Business Days of the receipt of payment by DBE from the City. DBE shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', laborers' or materialmen liens), charge, security interest, encumbrance or claim of any nature ("Liens") on or with respect to the Site or any interest therein. If DBE breaches its obligations under this Section, it shall immediately notify the City in writing, shall promptly cause such Lien to be discharged and released of record without cost to the City, and shall defend and indemnify the City against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien. DBE shall submit conditional and unconditional lien releases, as applicable, for DBE and subcontractors with each Request for Payment (provided, however, that, in lieu of a lien waiver and release of a subcontractor, DBE shall be permitted to provide a bond or other form of security reasonably acceptable to the City for any subcontractor lien waiver and release that DBE is unable to obtain).

8. The City's Basic Obligation.

The City agrees to engage and does hereby engage the DBE as an independent contractor to furnish all materials and to perform all work described in the Scope of Work for the Project according to the terms and conditions herein contained for the Price set forth in the Contract Documents. Except as otherwise provided in the Contract, including any Change Order, the City shall pay to the DBE, as full consideration for the satisfactory performance by the DBE of the services and obligations required by this Contract, the above referenced compensation in accordance with compensation provisions set forth in the Contract.

9. City's Representative.

The City hereby designates the [REDACTED] or his or her designee, as the person to act as its representative for the performance of this Contract ("City's Representative"). The City's Representative shall be authorized to act as liaison between City and the DBE in the administration of this Contract and all work on the Project. The City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. City may designate new and/or different individuals to act as City's Representative from time to time upon written notice to the DBE.

10. DBE's Representative.

The DBE hereby designates [REDACTED], or his or her designee, to act as its representative for the performance of this Contract ("DBE's Representative"). DBE's Representative shall have full authority to represent and act on behalf of the DBE for all purposes under this Contract. The DBE's Representative shall supervise and direct all work on the Project, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the work pursuant to this Contract.

11. DBE's Licensing.

The DBE shall have only appropriately licensed contractors performing work on the Project as required by the Business and Professions Code. The DBE (**License No.** [REDACTED]) shall act as the licensed contractor for the Project. DBE shall perform all services required under the Contract Documents in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to perform such services in the same discipline in the State of California, and the DBE shall be fully responsible to the City for any damages and/or delays to the Project as specified in the Contract.

12. DBE's Design Professional.

The DBE shall name a specific person to act as the Design Professional as described in the General Conditions, subject to the approval of the City. The DBE hereby designates _____ (**License No.:** [REDACTED]) to act as the Design Professional for the Project. DBE's Design Professional shall perform all services required under the Contract Documents in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals qualified to perform such services in the same

discipline in the State of California, and the DBE shall be fully responsible to the City for any damages and/or delays to the Project as specified in the indemnification provisions of the Contract. Any change in the Design Professional shall be subject to the City's prior written approval, which approval shall not be unreasonably withheld. The new Design Professional shall be of at least equal competence as the prior Design Professional. In the event that City and DBE cannot agree as to the substitution of a new Design Professional, the City shall be entitled to terminate this Contract as described in the General Conditions.

13. DBE's Indemnification.

The DBE agrees to protect, save, defend and hold harmless, (with counsel of the DBE's choosing and subject to the City's consent, which may not be unreasonably be withheld) to the greatest extent provided by law, the City, its governing board and each member thereof, its officers, agents and employees ("Indemnified Parties") from any and all claims, liabilities, reasonable expenses or damages of any nature, actually incurred, including reasonable attorney's fees, for injury or death of any person, or damage to property, or arising out of the negligent acts, errors or omission, or willful misconduct by the DBE, the DBE's agents, officers, employees, sub-consultants, or independent consultants hired by the DBE to provide services pursuant to this Contract. The indemnity obligations under this Section 13 shall not apply where the claim, liability, expense or damage is attributable to the negligent, acts, errors or omissions or willful misconduct of the Indemnified Parties. This indemnity provision shall apply to all liability, as provided for above, regardless of whether any insurance policies are applicable. Insurance policy limits do not act as a limitation upon the amount of the indemnification to be provided by the DBE. Notwithstanding the foregoing, to the extent DBE's Scope of Work is subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the DBE.

In claims against any person or entity indemnified under this provision that are made by an employee of the DBE or any Subcontractor, a person indirectly employed by the DBE or any Subcontractor, or anyone for whose acts the DBE or any subcontractor may be liable, the indemnification obligation under this provision shall not be limited by any limitation on amount or type of damages, compensation, or benefits payable by or for DBE or any Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts or any other insurance limitations. The indemnification obligations under this provision shall not be limited by any assertion or finding that the person or entity indemnified is liable by reason of a non delegable duty.

In the event the DBE and one or more than one other party is connected with an accident or occurrence covered by this indemnification, then principles of comparative negligence shall apply.

14. Prevailing Wages.

The DBE shall comply with the prevailing wage provisions of the California Labor Code and the prevailing wage rate determinations of the Department of Industrial Relations. These rates are on file at the City offices and copies will be provided to the DBE on request. A copy of

these rates shall be posted at the job site. It shall be mandatory upon the DBE and all subcontractors to comply with all Labor Code provisions, which include but are not limited to prevailing wages, public works contractor registration, employment of apprentices, hours of labor, and debarment of the DBE's and subcontractor. This Contract is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

15. Successors.

The parties do for themselves, their heirs, executors, administrators, successors, and assigns agree to the full performance of all of the provisions contained in this Contract. The DBE may not either voluntarily or by action of law, assign any obligation assumed by the DBE hereunder without the prior written consent of the City.

16. Notices.

All notices hereunder and communications regarding interpretation of the terms of the Contract or changes thereto shall be provided by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

CITY

DBE

Any notice so given shall be considered received by the other party three (3) days after deposit in the U.S. Mail, first class postage prepaid, addressed to the party at the above address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

17. Attachments.

All Attachments referenced in this Contract are incorporated into the Contract by this reference.

18. Recitals.

The above referenced recitals are true and correct and are incorporated into this Contract by this reference.

19. Authority of Signatories.

The persons executing this Contract on behalf of their respective Parties represent and

warrant that they have the authority to do so under law and from their respective Parties.

[SIGNATURES CONTINUED ON NEXT PAGE]

DRAFT

Entered into as of the Effective Date first above written, the Parties hereby execute this Design-Build Contract, as follows:

ON BEHALF OF THE DESIGN-BUILD ENTITY: ON BEHALF OF THE CITY:

CITY OF AVALON

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Federal Tax ID No.: _____

DRAFT

**ATTACHMENT 1
INITIAL AND APPROVED FINAL SCOPE
[Construction Documents]**

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**ATTACHMENT 1-1
PREQUALIFICATION RESPONSE**

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**ATTACHMENT 1-2
DBE RFP RESPONSE**

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**ATTACHMENT 1-3
LOCATION AND SITE LAYOUTS**

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**ATTACHMENT 2
GENERAL CONDITIONS**

[Attached behind this cover page]

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**GENERAL CONDITIONS
DESIGN-BUILD CONTRACT BETWEEN
CITY OF AVALON
AND _____ FOR THE
_____ PROJECT**

ARTICLE 1. GENERAL PROVISIONS

1.1. BASIC DEFINITIONS

1.1.1. ACT OF GOD. The term "Act of God" shall include earthquakes in excess of a magnitude of 3.5 on the Richter Scale, tidal waves, floods, unusually severe weather, epidemic, or other severe natural disaster.

1.1.2. APPLICABLE CODE REQUIREMENTS. The term "Applicable Code Requirements" means all laws, statutes, the most recent building codes, ordinances, rules, regulations, and lawful orders of all public authorities having jurisdiction over the City, the DBE, any Subcontractor, the Project, the Project Site, or the prosecution of the work on the Project.

1.1.3. APPLICATION FOR PAYMENT. The term "Application For Payment" means the submittal from the DBE wherein payment for certain portions of the completed work on the Project is requested in accordance with Article 9.

1.1.4. CHANGE ORDER. The term "Change Order" means a Contract Document which authorizes, in accordance with Article 7, one or more of the change(s) stated in Section 7.2.1 and Section 7.2.2.

1.1.5. CHANGE ORDER REQUEST. The term "Change Order Request" means a proposal for a Change Order submitted by the DBE to the City, either at the request of the City, or at the DBE's own initiative.

1.1.6. CITY. The term "City" shall mean the **CITY OF AVALON**.

1.1.7. CITY'S REPRESENTATIVE. The term "The City's Representative" means the person or firm identified as the DBE's primary contact person as designated in the Contract.

1.1.8. CLAIM. See Section 4.3, Claims, of the General Conditions.

1.1.9. COMPLETION. The term "Completion" means the point at which the work on the Project has been fully completed in accordance with the Contract Documents as determined by the City's Representative pursuant to Section 9.6, Completion and Final Payment, of the General Conditions and the DBE has delivered to, and received approval from, the City regarding the punchlist, and the DBE has completed the punchlist items to the satisfaction of the City. Completion shall not occur until DBE has left that Project Site broom clean and ready for beneficial and exclusive use by the City.

1.1.10. CONSTRUCTION DOCUMENTS. The term "Construction Documents" shall mean the plans and specifications prepared by the DBE for the Project, approved by the City. The Construction Documents shall set forth in detail all items necessary to complete the construction (other than such details customarily provided by others during construction) of the Project in accordance with the Contract Documents (subject to their completion following commencement of the Construction Phase). All amendments and modifications to the Plans and Specifications must be approved by the City in writing.

1.1.11. CONSTRUCTION DOCUMENTS PHASE. The term "Construction Documents Phase" shall mean the second of three phases of the Scope of Work and will commence with the issuance of the approval of the Schematic Design Phase.

1.1.12. CONSTRUCTION PHASE. The term "Construction Phase" shall mean the third phase of the Scope of Work.

1.1.13. CONSTRUCTION WORK. The term "Construction Work" shall mean that portion of the work on the Project consisting of the provision of labor, materials, furnishings, equipment and services in connection with the construction of the Project as set forth in the Contract Documents.

1.1.14. CONTRACT. The term "Contract" means the written agreement between the DBE and the City set forth in the Contract Documents.

1.1.15. CONTRACT DOCUMENTS. The "Contract Documents" consist of the following:

1.1.15.1. Construction Documents, as defined herein

1.1.15.2. Contract

1.1.15.3. General Conditions

1.1.15.4. Criteria Documents

1.1.15.5. Performance Bond

1.1.15.6. Payment Bond

1.1.15.7. Required Certifications and Forms

1.1.16. CONTRACT SCHEDULE. The term "Contract Schedule" means the graphical representation of a practical plan, using computerized Critical Path Method scheduling, to complete the work on the Project within the Guaranteed Completion Date.

1.1.17. COST BREAKDOWN. See Section 9.1.1., A Cost Breakdown/Schedule of Values for each phase of work shall be submitted by the DBE as required by these General Conditions and are incorporated into the Contract Documents by reference.

1.1.18. CRITERIA DOCUMENTS. The term "Criteria Documents" means, but is not limited to, the portions of the Contract Documents which constitute an outline of design requirements, Scope of Work, Project Program, Performance Specifications and schematic drawings.

1.1.19. DAY. The term "day," shall mean calendar day, unless otherwise specifically provided.

1.1.20. DEFECTIVE WORK. The term "Defective Work" means work that is unsatisfactory, faulty, omitted, incomplete, deficient, or does not conform to the requirements of the Contract Documents, written directives of the City's Representative, or the requirements of any inspection, reference standard, test, or approval specified in the Contract Documents.

1.1.21. DBE. The term the "Design-Build Entity" or the "DBE" means the person or firm identified as such in the Contract and is referred to throughout the Contract Documents as if singular in number.

1.1.22. DESIGN-BUILD ENTITY REPRESENTATIVE. The DBE Representative shall mean the person or firm identified as the primary contact person and representative of the DBE as designated in the Contract.

1.1.23. DESIGN MATERIALS. The term "Design Materials" shall mean any and all documents, shop drawings, electronic information, including computer programs and computer generated materials, data, plans, drawings, sketches, illustrations, specifications, descriptions, models and other information developed, prepared, furnished, delivered or required to be delivered by, or for, the DBE: (1) to the City under the Contract Documents or; (2) developed or prepared by or for the DBE specifically to discharge its duties under the Contract Documents.

1.1.24. DESIGN PROFESSIONAL. The term "Design Professional" shall mean that person identified in the Contract Documents that is licensed in the State of California and is part of or retained by the DBE.

1.1.25. DESIGN WORK. The term "Design Work" shall mean the portion of the work on the Project consisting of the Design services and design deliverables required to be provided in connection with the Design of the Project as set forth in the Contract Documents.

1.1.26. DRAWINGS. The term "Drawings" means the graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the work to be done on the Project, generally including plans, elevations, sections, details, schedules, and diagrams prepared as part of the Design Materials. The Drawings are listed in the List of Drawings.

1.1.27. EQUIPMENT MANUFACTURER. The term "Equipment Manufacturer" shall mean any Separate Contractor that fabricates and/or supplies any of the City's provided equipment which is installed in the Project by the DBE.

1.1.28. EXCUSABLE DELAY. The term "Excusable Delay" means a delay that meets the requirements of Articles 7 and 8 of these General Conditions, and may entitle the DBE to an adjustment of the Guaranteed Completion Date and/or an adjustment to the Price, as specified in Articles 7 and 8 herein.

1.1.29. EXTRA WORK. The term "Extra Work" means work beyond or in addition to the work required by the Contract Documents, pursuant to Article 7 of the General Conditions.

1.1.30. FIELD ORDER. The term "Field Order" means a directive as described in Article 7 of the General Conditions.

1.1.31. GOVERNMENTAL APPROVALS. Term "Governmental Approvals" means those governmental (including agency) actions required to be obtained by the City and necessary for the completion of the Project.

1.1.32. GUARANTEE TO REPAIR PERIOD. See Section 12.2, Correction of Defective Work and Guarantee To Repair Period, of the General Conditions.

1.1.33. GUARANTEED COMPLETION DATE. The term "Guaranteed Completion Date" also referred to as "GCD" herein, shall mean the date by which the DBE guarantees that all work described in the Scope of Work shall be completed, as is set forth in Section 6 of the Contract.

1.1.34. HAZARDOUS MATERIALS. The term "Hazardous Materials" means any substance: the presence of which requires investigation or remediation under any federal, state or local law, statute, regulation, ordinance, order, action, policy, or common law; which is or becomes defined as a "hazardous waste," "hazardous substance," pollutant, or contaminant under any federal, state or local law, statute, regulation, rule or ordinance, or amendments thereto, including, without limitations, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. ("CERCLA"), as amended, or the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq. ("RCRA"); which is petroleum, including crude oil or any fraction thereof not otherwise designated as a "hazardous substance" under CERCLA including, without limitation, gasoline, diesel fuel, or other petroleum hydrocarbons; which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any regulatory agency or instrumentality of the United States; the presence of which on the Site causes or threatens to cause a nuisance upon the Site or to the adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Site; the presence of which on adjacent properties could constitute a trespass by the DBE or the City; or as defined in the California Health and Safety Code. For the purposes of this Contract, "Hazardous Materials" shall also include, but are not limited to, "Underground Storage Tanks." "Underground Storage Tank" shall have the definition assigned to that term by Section 9001 of RCRA, 42 U.S.C. Section 6991, and also shall include: any tank of one thousand one hundred (1,100) gallons or less capacity used for storing motor fuel; any tank used for storing heating oil for consumption on the premises where stored; any septic tank; and any pipes connected to the above items.

1.1.35. INEXCUSABLE DELAY. The term "Inexcusable Delay" means any delay other than an Excusable Delay, as described in Articles 7 and 8 of these General Conditions, that does not entitle the DBE to an adjustment of the Price and does not entitle the DBE to an adjustment of the Guaranteed Completion Date.

1.1.36. LIQUIDATED DAMAGES. The term "Liquidated Damages" shall mean the sum due by the DBE as set forth in Section 6 of the Design-Build Contract as damages for failure to obtain Completion by the Guaranteed Completion Date.

1.1.37. LOSSES. The term "Losses" means any and all losses, costs, liabilities, claims, damages, and expenses; provided, however, that Losses shall not mean special, indirect, consequential damages.

1.1.38. NOTICE TO PROCEED. The term "Notice to Proceed" shall mean the written notice given by the City to the DBE advising that the Site is available to the DBE and directing the DBE to commence work on the Project.

1.1.39. PRICE. The term "Price" shall mean the contract amount the City will pay for the completion of all work described in the Scope of Work as is set forth in Section 3 of the Contract.

1.1.40. PROJECT. The term "Project" means the design, permitting and construction of [INSERT BRIEF SCOPE]. The final Project description and design shall be as set forth in the final Construction Documents generated by DBE and approved by the City.

1.1.41. PROJECT SITE. The term "Project Site" means the Project sites identified in Attachment 1 to the Contract.

1.1.42. PROPOSAL. The term "Proposal" means the proposal submitted by the DBE in response to the Request for Proposal for this Project.

1.1.43. RATE SCHEDULE. The term "rate schedule" means the rates for Extra Work as set forth in Attachment 5 to the Contract.

1.1.44. REQUEST FOR PROPOSAL. The term "Request for Proposal" or "RFP" herein, means the request for proposal issued by the City for the Project and includes all documents, exhibits, attachments, and addenda thereto.

1.1.45. SCHEMATIC DESIGN PHASE. The term "Schematic Design Phase" shall mean the first of three phases of the Scope of Work.

1.1.46. SCOPE OF WORK. The term "Scope of Work" shall mean all labor, materials, and services required to be performed or provided by the DBE pursuant to the Contract Documents necessary to design, construct, and complete the Project. The Scope of Work shall include those geotechnical studies that are required for the Project.

1.1.47. SEPARATE CONTRACTOR. The term "Separate Contractor" means a person, or firm, under separate contract with the City performing other work at the Project Site which may affect the work performed under the Contract Documents.

1.1.48. SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES. See Section 3.14.2, Shop Drawings, Product Data, and Samples, of the General Conditions.

1.1.49. SPECIFICATIONS. The term "Specifications" means that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the work on the Project, and performance of related services.

1.1.50. SUBCONTRACTOR. The term "Subcontractor" means any person or firm that has a contract with the DBE or with a subcontractor of the DBE to perform a portion of the work on the Project. Unless otherwise specifically provided, the term Subcontractor includes Subcontractors of all tiers.

1.1.51. SUPERINTENDENT. The term "Superintendent" means the person designated by the DBE to represent the DBE at the Project Site, in accordance with Article 3.

1.2. OWNERSHIP AND USE OF CONSTRUCTION DOCUMENTS

1.2.1. The Construction Documents, and all copies thereof, furnished to, or provided by, the DBE are the property of the City. The City and the DBE explicitly agree that all materials and documents developed in the performance of this Contract are the property of the DBE. The City shall have, for the benefit of the City and for use in connection with the Project, a perpetual, royalty-free, non-exclusive license to all drawings, designs, specifications, notes and any other documentation and other work developed in the performance of this Contract for the Project. The DBE agrees to, and hereby does, grant to the City a non-exclusive, royalty-free license to all such data related to the Project that the DBE may cover by copyright and to all designs in connection with the Project as to which the DBE may assert any right or establish any claim to under the patent or copyright law. The DBE, for a period up to five (5) years from the Date of Completion of the Project, agrees to furnish and to provide access to the originals or copies of all such materials immediately upon the written request of the City. DBE shall not be responsible or liable for any revisions to the Construction Documents made by any party other than the DBE, a party for which the DBE is legally responsible or liable, or anyone approved by the DBE.

1.3. INTERPRETATION OF DOCUMENTS AND ORDER OF PRECEDENCE

1.3.1. The intent of the Contract Documents is to include all necessary criteria to establish the scope and quality for completion of the work on the Project by the DBE. The Contract Documents are complementary and what is required by one shall be as binding as if required by all. Performance by the DBE shall be required to the extent consistent with, and reasonably inferable from, the Contract Documents.

1.3.2. In the case of conflict or inconsistency, the following order of precedence shall apply, in decreasing order of precedence:

1.3.2.1. Change Orders/Modifications

1.3.2.2. Addenda

1.3.2.3. Contract

1.3.2.4. General Conditions

1.3.2.5. Criteria Documents

1.3.3. The City and the DBE acknowledge that the Contract Documents may differ in some respect(s) from the other documents included in the Contract. Prior to the commencement of construction on the Project, the parties shall confirm, in writing, the final form of the Contract Documents that are to be utilized.

1.3.4. Organization of the Specifications into various subdivisions and the arrangement of the Drawings shall not control the DBE in dividing portions of the work necessary for the Project among Subcontractors or in establishing the extent of work to be performed by any trade.

1.3.5. Unless otherwise stated in the Contract Documents, technical words and abbreviations contained in the Contract Documents are used in accordance with commonly understood design professional and construction industry meanings; non technical words and abbreviations are used in accordance with their commonly understood meanings.

1.3.6. The Contract Documents may omit modifying words such as "all" and "any," and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. The use of the word "including," when following any general statement, shall not be construed to limit such statement to specific items or matters set forth immediately following such word or to similar items or matters, whether or not non limiting language (such as "without limitation," "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement.

1.3.7. Whenever the context so requires, the use of the singular number shall be deemed to include the plural and vice versa. Each gender shall be deemed to include any other gender, and each shall include corporation, partnership, trust, or other legal entity, whenever the context so requires. The captions and headings of the various subdivisions of the Contract Documents are intended only for reference and convenience and in no way define, limit, or prescribe the scope or intent of the Contract Documents or any subdivision thereof.

1.3.8. Each and every provision of law required by law to be inserted in the Contract Documents shall be deemed to be inserted herein, and the Contract Documents shall be

read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party the Contract shall be amended in writing to make such insertion or correction.

1.3.9. Before commencing any work on the Project, the DBE shall check and review the plans and specifications and Contract Documents for such portion for conformance and compliance with all laws, ordinances, codes, rules and regulations of all governmental authorities and public utilities affecting the construction and operation of the Project, all quasi-governmental and other regulations affecting the construction and operation of the Project, and other special requirements, if any, designated in the Contract. In the event the DBE observes any violation of any law, ordinance, code, rule or regulation, or inconsistency with any such restrictions or special requirements of the Contract, the DBE shall immediately notify the City's Representative in writing of same and shall cause to be corrected any such violation or inconsistency in the manner provided hereunder. The DBE shall be solely liable for any such violation, inconsistency or special requirement, if DBE fails to conduct such review or notification to the City.

1.3.10. Before commencing any work on the Project, the DBE shall carefully examine all Specifications, Contract, Contract Documents and other information given to the DBE as to Project requirements. The DBE shall immediately notify the City's Representative of any perceived or alleged error, inconsistency, ambiguity, or lack of detail or explanation in such documents in writing. Neither the DBE nor any Subcontractor shall take advantage of any apparent error or omission which may be found in the Specifications, the Contract, Contract Documents or other information given to DBE. If the DBE or its Subcontractors, material or equipment suppliers, or any of their officers, agents, and employees performs, permits, or causes the performance of any work under the Contract, which it knows or should have known to be in error, inconsistent, or ambiguous, or not sufficiently detailed or explained, the DBE shall bear any and all direct costs arising there from including, without limitation, the cost of correction thereof without increase or adjustment to the Price or the Guaranteed Completion Date. In no case shall any Subcontractor proceed with work if uncertain without the DBE's written direction and/or approval.

ARTICLE 2. CITY

2.1. FEE AND PERMIT REQUIREMENTS

2.1.1. The City will pay for and obtain the following permits and fees:

2.1.1.1. Materials testing fees (excluding the geotechnical or soils tests)

2.1.1.2. City plan check fees

2.1.2. Except as otherwise provided in the Contract Documents, and this Section 2.1.1, the DBE will identify, prepare and submit on behalf of the City the applications for the necessary permits, easements, fees and/or other government approvals in connection with the work on the Project.

2.2. ACCESS TO PROJECT SITE

2.2.1. The City will provide, as reasonably required by the work on the Project, but in no event later than the date designated in the Notice to Proceed, access to the lands and facilities upon which the Construction Work is to be performed, including such access to other lands and facilities designated in the Contract Documents for use by the DBE, subject to the hours of work specified herein and as may be otherwise be specified by the City.

2.3. THE CITY'S RIGHT TO STOP WORK ON THE PROJECT

2.3.1. If the DBE fails to correct Defective Work as required by Section 12.2 or fails to perform the Work in accordance with the Contract Documents, the City or the City's Representative may direct the DBE to stop work on the Project, or any portion thereof, until the cause for such order has been eliminated by the DBE. The DBE shall not be entitled to any adjustment of Guaranteed Completion Date or the Price as a result of any such order. The City and the City's Representative have no duty or responsibility to the DBE or any other party to exercise the right to stop work on the Project.

2.4. THE CITY'S RIGHT TO CARRY OUT WORK ON THE PROJECT

2.4.1. If the DBE fails to carry out the Scope of Work in accordance with the Contract Documents, fails to provide sufficient labor, materials, equipment, tools, and services, with respect to either the Schematic Design or Construction phases, to maintain the Contract Schedule, or otherwise fails to comply with any material term of the Contract Documents, and fails within five (5) days after receipt of notice from the City to promptly commence and thereafter diligently continue to completion, the correction of such failure, the City may, without prejudice to other remedies the City may have, correct such failure at the DBE's expense. Any of the Scope of Work that is not performed by the DBE pursuant to this Section may limit or invalidate the warranties provided under the Contract Documents. In such case, the City will be entitled to deduct from payments then or thereafter due the DBE the cost of correcting such failure, including reasonable compensation for the additional services and expenses of the City's Representative and the City's consultants made reasonably necessary thereby. If payments then or thereafter due the DBE are not sufficient to cover such amounts, the DBE shall pay the additional amount to the City.

2.5. THE CITY'S RIGHT TO REPLACE THE CITY'S REPRESENTATIVE

2.5.1. The City may at any time and from time to time, without prior notice to or approval of the DBE, replace the City's Representative with a new the City's Representative. Upon receipt of notice from the City informing the DBE of such replacement and identifying the new the City's Representative, the DBE shall recognize such person or firm as the City's Representative for all purposes under the Contract Documents.

ARTICLE 3. DESIGN-BUILD ENTITY

3.1. DESIGN-BUILD ENTITY RESPONSIBILITY; INDEPENDENT CONTRACTOR

3.1.1. The DBE shall be responsible to the City for acts and omissions of the DBE's employees, Subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of work on the Project under direct or indirect contract with the DBE or any of its Subcontractors. The City retains the DBE on an independent contractor basis. The DBE is not an employee, agent or representative of the City. The DBE represents that it is fully experienced and properly qualified to perform the class of work provided for in this Contract and that it is properly licensed, equipped, organized, and financed to perform work on the Project. The DBE shall maintain complete control over its employees and its subcontractors and shall pay all wages, salaries and other amounts due such personnel in connection with their performance as required by law. The DBE shall be responsible for all reports and obligations respecting such personnel, including but not limited to, social security taxes, income tax withholdings, unemployment insurance, and workers' compensation insurance.

3.2. REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY THE DESIGN-BUILD ENTITY; SINGLE POINT RESPONSIBILITY OF THE DESIGN-BUILD ENTITY

3.2.1. In addition to the examination and reviews performed, and obligations assumed, incident to making the representations as set forth in Article 10 of the Contract, the DBE shall carefully study and compare each of the Contract Documents provided by the City with the others and with information furnished by the City, and shall promptly report in writing to the City's Representative any errors, inconsistencies, or omissions in the Contract Documents provided by the City or inconsistencies with Applicable Code Requirements observed by the DBE. The DBE shall be solely responsible for any errors, inconsistencies or omissions in the Contract Documents if the DBE fails to perform such review and examination or fails to report such errors, inconsistencies or omissions to the City in writing.

3.2.2. The DBE is responsible for the design and construction of the Project and shall use the highest design and engineering standards of care applicable to projects, buildings or work of similar size, complexity, quality and scope in performing work on the Project. The DBE shall be solely responsible for any and all design errors including, but without limitation, errors, inconsistencies or omissions in the Construction Documents. The DBE shall take field measurements, verify field conditions, and carefully compare with the Contract Documents such field measurements, conditions, and other information known to the DBE before commencing work on the Project. Errors, inconsistencies, or omissions discovered at any time shall be promptly reported in writing to the City's Representative.

3.2.3. If the DBE performs any design and/or construction activity which it knows, or reasonably should have known, involves an error, inconsistency, or omission referred to in Sections 3.2.1 and 3.2.2, without notifying and obtaining the written consent of the City's

Representative, the DBE shall be responsible for the resultant Losses, including, without limitation, the costs of correcting Defective Work.

3.2.4. The City does not assume any obligation to employ the DBE's services or pay the DBE royalties of any type as to future programs that may result from work performed under this Contract.

3.2.5. The DBE shall be responsible for all plotting, printing, copying and distribution costs of any and all documents required in connection with work on the Project.

3.2.6. The DBE agrees that it has single point responsibility for the Design and construction of this Project, and agrees to utilize the highest standard of excellent design, engineering and construction practices. The DBE agrees that, in light of the high degree of confidence and trust that the City has reposed in the DBE, the DBE shall act in the City's best interests at all times throughout the course and performance of this Contract.

3.3. DESIGN, SUPERVISION AND CONSTRUCTION PROCEDURES

3.3.1. The DBE shall supervise, coordinate, and direct all work on the Project using the DBE's best skill and attention. The DBE shall be solely responsible for, and have control over, the entire design effort, construction means, methods, techniques, sequences, procedures, and the coordination of all portions of work on the Project, including, but without limitation, landscape and site work, utilities, and building systems.

3.3.2. The DBE shall be responsible to the City for acts and omissions of the DBE, its agents, employees, and Subcontractors, and their respective agents and employees.

3.3.3. The DBE shall not be relieved of its obligation to perform all work on the Project in accordance with the Contract Documents either by acts or omissions of the City or the City's Representative in the administration of the Contract, or by tests, inspections, or approvals required, or performed, by persons or firms other than the DBE.

3.3.4. The DBE shall be responsible for inspection of all portions of work on the Project, including those portions already performed under this Contract, to determine that such portions conform to the requirements of the Contract Documents and are ready to receive subsequent work.

3.3.5. The DBE shall perform all geotechnical services required for the Scope of Work. In the performance of the geotechnical services required under this Contract, the DBE shall utilize appropriately licensed professionals.

3.3.6. The DBE is not required to produce the entire Construction Documents package in the local office; however, the DBE shall provide the appropriate management and design staff to provide the City with the current status of, and the capability to properly update, the Design documents.

3.3.7. The DBE is required to deliver to the City, if requested, any and all design materials including, but not limited to, calculations, preliminary drawings, construction drawings, shop drawings, electronic media data, tenant improvement documents, sketches, illustrations, specifications, descriptions, models, mock ups, and other information developed, prepared, furnished, or delivered in the prosecution of the Design Work.

3.3.8. The DBE shall at all times participate in, implement, and comply with the CEQA documentation prepared for the Project and provided to the DBE.

3.3.9. The DBE is responsible for preparation of the Construction Documents for the entire Project.

3.3.10. The DBE is responsible for construction of the entire Project as required by the Contract Documents.

3.3.11. The DBE shall at all times maintain good discipline and order among its employees and subcontractors. The DBE shall provide competent, fully qualified personnel to perform all work on the Project.

3.4. LABOR AND MATERIALS

3.4.1. Unless otherwise provided in the Contract Documents, the DBE shall provide and pay for all professional services, services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Scope of Work on the Project, whether temporary or permanent and whether or not incorporated or to be incorporated in work on the Project.

3.5. [Reserved]

3.6. TAXES

3.6.1. The DBE shall pay all sales, consumer, use, income, payroll and similar taxes for the work or portions thereof provided by the DBE.

3.7. PERMITS, FEES, AND NOTICES

3.7.1. Except for the permits and approvals which are the responsibility of the City as set forth in Section 2.1, the DBE shall identify, prepare, submit and pay for, on behalf of the City, all applications, permits, approvals, government fees, licenses, and inspections necessary for the proper execution and performance of work on the Project. The DBE shall deliver to the City all original licenses, permits, and approvals obtained by the DBE in connection with work on the Project prior to the final payment or upon termination of the Contract, whichever is earlier. DBE shall provide City copies of all Governmental Approvals required to be obtained by DBE pursuant to this Contract, which Governmental Approvals shall be in full force and effect and shall not be (i) subject to any legal proceeding or any unsatisfied condition that could reasonably be expected to result in material modification or revocation to any such

Governmental Approval, (ii) under appeal or (iii) subject to any appeal period available under Applicable Law.

3.8. APPLICABLE CODE REQUIREMENTS

3.8.1. The DBE shall perform all work on the Project in accordance with the following Applicable Code Requirements and all code requirements listed in the Scope of Work:

3.8.1.1. All laws, statutes, the most recent building codes, ordinances, rules, regulations, and lawful orders of all public authorities having jurisdiction over the City, the DBE, any Subcontractor, the Project, the Project Site, the work on the Project, or the prosecution of the work on the Project.

3.8.1.2. All requirements of any insurance company issuing insurance required hereunder.

3.8.1.3. Applicable sections in the State of California Labor Code.

3.8.1.4. All Applicable Code Requirements relating to nondiscrimination, payment of prevailing wages, payroll records, apprentices, and work day.

3.8.2. All products and components outlined herein must conform to all applicable codes, standards, and rating methodologies, including but not limited to, the following:

3.8.2.1. UL certification.

3.8.2.2. National Electrical Code - most current version.

3.8.2.3. Wind uplift requirements per the American Society of Civil Engineers Standard for Minimum Design Loads for Buildings and Other Structures (ASCE 7), and must be able to withstand design wind speeds for that location (at least 85 mph or 105 mph, as applicable (3-second gusts)).

3.8.2.4. All outdoor enclosures should be at minimum rated NEMA 3R.

3.8.2.5. All Occupational Health and Safety Administration (OSHA) directives.

3.8.2.6. All applicable Building Codes and Fire Codes.

3.8.3. The DBE shall comply with and give notices required by all Applicable Code Requirements, including all environmental laws and all notice requirements. The DBE shall promptly notify the City's Representative in writing if the DBE becomes aware during the performance of work on the Project that the Contract Documents are at variance with Applicable Code Requirements.

3.8.4. If the DBE performs work which it knows or should have reasonably known is contrary to Applicable Code Requirements, without prior notice to the City and the City's Representative, the DBE shall be responsible for such work and any directly-resulting damages including, without limitation, the costs of correcting Defective Work.

3.9. SUPERINTENDENT

3.9.1. The DBE shall employ a competent Superintendent satisfactory to the City who shall be in attendance at the Project Site at all times during the performance of the Construction Work. Superintendent shall represent the DBE and communications given to, and received from, Superintendent shall be binding on the DBE. Failure to maintain a Superintendent on the Project Site at all times work on the Project is in progress shall be considered a material breach of this Contract, entitling the City to terminate the Contract or, alternatively, issue a stop work order until the Superintendent is on the Project Site. If, by virtue of issuance of said stop work order, the DBE fails to complete the Contract on time, the DBE may be assessed Liquidated Damages in accordance with the Contract.

3.9.2. Any changes to the assignment of the Superintendent shall receive prior written approval from the City. The Superintendent may not perform the work of any trade, pick up materials, or perform any work not directly related to the supervision and coordination of the Construction Work at the Project Site when work is in progress. In addition, the DBE will provide all key personnel identified in the Contract for the time periods stipulated.

3.10. PROJECT STAFFING

3.10.1. The DBE and each Subcontractor shall: furnish a competent and adequate staff as necessary for the proper administration, coordination, supervision, and superintendence of its portion of the work on the Project; organize the procurement of all materials and equipment so that the materials and equipment will be available at the time they are needed for the work; and keep an adequate force of skilled and fit workers on the job to complete all work on the Project in accordance with all requirements of the Contract.

3.10.2. The City shall have the right, but not the obligation, to require the removal from the Project of the DBE's Representative, or any other superintendent, staff member, agent, or employee of any contractor, Subcontractor, material or equipment supplier, or any other entity working on the Project. Removal may be required for any reason designated by the City, including but not limited to, failure or refusal to perform work on the Project in a manner acceptable to the City, uncooperative or incompetent performance on the Project, threatening the adequate or timely completion of the Project, or threatening the safety of persons or property.

3.11. UNFORESEEN SITE CONDITIONS

3.11.1. The DBE is responsible for unforeseen site conditions, but only to the extent described in the Contract Documents and/or that could be reasonably inferred by the DBE based on its experience and expertise on similar projects.

3.12. HAZARDOUS MATERIALS

3.12.1. The DBE shall have no responsibility for detection, abatement, remediation, removal or disposal of any Hazardous Material, except Hazardous Materials introduced onto the Project Site by the DBE, its employees, subcontractors, agents, or other parties acting on behalf of the DBE. In the event that the DBE becomes aware of the presence of, or exposure of persons to, any Hazardous Material at the Project Site, the DBE shall inform City by notice as soon as practicable. Notwithstanding anything to the contrary herein, the DBE shall not be responsible for, and the City shall bear full responsibility and remediation costs relating to any Hazardous Materials uncovered, removed or disturbed by the DBE on the Project Site resulting from the DBE's performance of the work hereunder, except Hazardous Materials introduced onto the Project Site by the DBE, its employees, subcontractors, agents, or other parties acting on behalf of the DBE. The City shall not be responsible for, and the DBE shall bear full responsibility and remediation costs relating to any Hazardous Materials introduced onto the Project Site by the DBE, its employees, subcontractors, agents, or other parties acting on behalf of the DBE.

3.12.2. The DBE hereby specifically agrees to indemnify, defend and hold the City, its present and future directors, officers, employees, agents, representatives, successors and assigns harmless from and against any and all losses, liabilities, claims, demands, damages, causes of action, fines, penalties, costs and expenses (including, but not limited to, all reasonable consulting, engineering, attorneys' or other professional fees), that they may incur or suffer by reason of: (a) the existence, uncovering or unveiling, or any release by the City or DBE of, a Hazardous Material introduced onto the Project Site by the DBE, its employees, subcontractors, agents, or other parties acting on behalf of the DBE; (b) any enforcement or compliance proceeding commenced by or in the name of any governmental authority because of the presence on the Project Site of Hazardous Materials introduced onto the Project Site by the DBE, its employees, subcontractors, agents, or other parties acting on behalf of the DBE; and (c) any action reasonably necessary to abate, remediate or prevent a violation or threatened violation of any Hazardous Material laws by the DBE.

3.13. COMPLIANCE WITH STATE STORMWATER PERMIT FOR CONSTRUCTION

3.13.1. The DBE shall be required to comply with all conditions of the State Water Resources Control Board National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Stormwater Runoff Associated with Construction Activity ("Permit") for all construction activity which results in the disturbance of in excess of one acre of total land area or which is part of a larger common area of development or sale. The DBE shall be responsible for filing the Notice of Intent and for obtaining the Permit. If applicable, the DBE shall be solely responsible for preparing and implementing a Stormwater Pollution Prevention Plan ("SWPPP") prior to initiating work on the Project. It shall be the DBE's responsibility to evaluate the cost of procuring the Permit and preparing the SWPPP as well as complying with the SWPPP and any necessary revision to the SWPPP to address Stormwater impacts. The DBE shall comply with all requirements of the State Water Resources

Control Board. The DBE shall include all costs of compliance with specified requirements in the Price.

3.13.2. The DBE shall be responsible for procuring, implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, monitoring and reporting requirements as required by the Permit. The DBE shall provide copies of all reports and monitoring information to the City's Representative.

3.13.3. The DBE shall comply with the lawful requirements of any applicable municipality, the County, drainage City, and other local agencies regarding discharges of Stormwater to separate storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal Stormwater management programs.

3.14. CONSTRUCTION DOCUMENTS

3.14.1. Construction Documents

3.14.1.1. Upon receipt of the Notice to Proceed, the DBE shall instruct the Design Professional to commence the design and the preparation of the Construction Documents utilizing the Criteria Documents to assist in scoping the Project, though responsibility for the Construction Documents shall rest solely with the DBE. The Construction Documents shall provide information customarily necessary in documents for projects of similar size, complexity, and quality. The Construction Documents shall include all information required by the building trades to complete the construction of the Project, other than such details customarily developed by others during construction. The City's review of the Construction Documents shall be conducted in accordance with the approved Contract Schedule with procedures set forth in Article 3 relating to Schedule. Such review shall not relieve the DBE from its responsibilities under the Contract. Such review shall not be deemed an approval or waiver by the City of any deviation from, or of the DBE's failure to comply with, any provision or requirement of the Contract Documents, unless such deviation or failure has been identified as such in writing in the Document submitted by the DBE and approved by the City.

3.14.1.2. Prior to proceeding with any construction, the DBE shall submit to the City for approval the proposed Construction Documents at 100% completion. The Contract Schedule shall indicate the time for the City to review the proposed Construction Documents and shall provide a reasonable time for review of same, not less than ___ days. DBE shall not be entitled to an extension of time for any changes that the City requires to the proposed Construction Documents, unless the change is unreasonable under the circumstances. City-required changes to the proposed Construction Documents at 100% will only be considered unreasonable if all of the following are true: (1) the design element at issue was apparent in earlier design documents formally submitted to the City and the City did not request the change, (2) the change is not necessary to comply with the specifications set forth in the Request for Proposal, and (3) the change is only aesthetic and is not the result of a defective design or a failure to adhere to the standard of care. The City Engineer shall be authorized to approve the Construction Documents and any amendments or changes to the design.

3.14.1.3. DBE may, at its option, submit any or all of the following for the City's review and comment: schematic design, proposed Construction Documents at 50% or proposed Construction Documents at 90%. If DBE elects to submit any design documents prior to 100% completion, DBE shall not be entitled to any adjustment to the Guaranteed Completion Date as a result of such submittals or any responses or comments from City. Except as authorized herein or as otherwise allowed by the City, DBE shall not submit any other design documents to the City for review or approval.

3.14.1.4. The Construction Documents for hazardous and/or toxic abatement efforts and demolition activity shall be of sufficient clarity and shall be fully detailed when submitted to the City for review.

3.14.2. Shop Drawings, Product Data, Samples, Materials, and Equipment

3.14.2.1. Shop drawings means drawings, submitted to the DBE by subcontractors, manufacturers, supplier or distributors, showing in detail the proposed fabrication and assembly of building elements and the installation (e.g., form, fit, and attachment details) of materials or equipment.

3.14.2.2. The DBE shall coordinate all submittals and review them for accuracy, completeness, and compliance with the requirements of the Contract Documents and the DBE's Construction Documents and shall indicate its approval thereon as evidence of such coordination and review.

3.14.2.3. Materials and equipment incorporated in the work on the Project shall match the approved samples within tolerances appropriate to the items, and as may be described in the Contract Documents.

3.14.2.4. The DBE shall submit shop drawings approved by the Design Professional and samples of submittals that relate to finish materials and products.

3.14.2.5. Wherever the name or brand of manufacturer or an article is listed in the Contract Documents, it is to be used in work on the Project as the standard. Any variation in quality must be approved by the City.

3.14.3. Geotechnical and Survey

3.14.3.1. The Design Work shall be consistent with the findings and recommendations of the geotechnical report, legal description and project survey. DBE assumes the geotechnical reports provided by the City are adequate for review and approval of all carport structures.

3.14.3.2. The DBE shall verify the location and depth (elevation) of all existing utilities and services before performing any excavation work.

3.14.3.3. Any additional tests, borings, etc. necessary to support the Construction Documents shall be the responsibility of the DBE.

3.15. MONTHLY REPORT

3.15.1. The DBE shall prepare and submit to the City, during both the Construction Documents Phase and the Construction Phase, monthly reports on the work accomplished during the prior monthly period. Such reports shall be prepared in a manner and in a format approved by the City. Reports shall be furnished at the time of submission of each monthly application for payment. The monthly report shall also set forth the DBE's projected progress for the forthcoming month.

3.16. OTHER REPORTS

3.16.1. If applicable, the DBE will cooperate with the City in preparing, or causing to be prepared, all or part of, periodic project reports required by state or federal agencies.

3.17. GUARANTEE

3.17.1. The DBE unconditionally guarantees all work on the Project will be completed in accordance with the requirements of the Contract Documents, and will remain free of defects in workmanship and materials for a period of one (1) year from the date of Final Completion. The DBE shall repair or replace any and all work, together with any adjacent work that may have been damaged or displaced, which was not in accordance with the requirements of the Contract Documents, or that may be defective in its workmanship or material within the guarantee period specified in the Contract Documents, without any expense whatsoever to the City; ordinary wear and tear and abuse excepted.

3.17.2. The DBE further agrees, within fourteen (14) days, or as such shorter period as may be designated for emergency repairs, after being notified in writing by the City, of any work not in accordance with the requirements of the Contract Documents or any defects in the work on the Project, that the DBE shall commence and execute, with due diligence, all work necessary to fulfill the terms of the guarantee. If the City finds that the DBE fails to perform any of the work under the guarantee, the City may elect to have the work completed at the DBE's expense and the DBE will pay costs of the work upon demand. Any of the Scope of Work that is not performed by the DBE pursuant to this Section may limit or invalidate the warranties provided under the Contract Documents. The City will be entitled to all costs, including reasonable attorneys' fees and consultants' expenses necessarily incurred upon the DBE's refusal to pay the above costs.

3.17.3. Notwithstanding the foregoing Section, in the event of an emergency constituting an immediate hazard to health or safety of the City employees, property, or licensees, the City may undertake, at the DBE's expense and without prior notice, all work necessary to correct such condition(s) when it is caused by work of the DBE not being in accordance with the requirements of the Contract Documents.

3.18. WARRANTY

3.18.1. The DBE warrants to the City that all Design Work will be performed in accordance with the highest professional standards and degree of care applicable to those design professionals who specialize in designing and providing services for projects of the type, scope, quality and complexity of the Project utilizing the Design-Build contracting model. The DBE warrants to the City that all labor, materials, equipment and furnishings used in, or incorporated into, the Construction Work will be of good quality, new (unless otherwise required or permitted by the Contract Documents), and all work will be free of liens, claims and security interests of third parties; that the work will be of the highest quality and free from defects and that all work will conform with the requirements of the Contract Documents. If required by the City's Representative, the DBE shall furnish satisfactory evidence of compliance with this warranty. Further, the type, quality and quantum of such evidence shall be within the sole discretion of the City's Representative.

3.18.1.1. At or prior to the Contract execution, the DBE shall provide the applicable warranties for all Project equipment to the City for review. Upon completion of the Project, DBE shall provide City with all warranty documentation and shall assist the City in completing any warranty or submittal forms which are required in order to effectuate coverage of the warranties required herein and all that may otherwise be available to the City.

3.18.1.2. All work performed by DBE must not render void, violate, or otherwise jeopardize any preexisting City facility or building warranties.

3.19. SCHEDULES REQUIRED OF THE DESIGN-BUILD ENTITY

3.19.1. Within ten (10) days of execution of the Contract, and prior to performing any work, DBE shall prepare a Contract Schedule using computerized Critical Path Method (CPM) scheduling and shall submit it for the City's review. The receipt or review of any schedules by the City shall not in any way relieve the DBE of its obligations under the Contract Documents, nor shall it modify the Guaranteed Completion Date. The DBE is fully responsible to determine and provide for any and all staffing and resources at levels which allow for the required quality and timely completion of the Project. DBE's failure to incorporate all elements of the Project or any inaccuracy in the Contract Schedule shall not excuse the DBE from timely performing all of the required work. If the initial Contract Schedule is not received by the time the first payment under the Contract is due, DBE shall not be paid until the Contract Schedule is received, reviewed and accepted by the City.

3.19.2. The Contract Schedule shall allow enough time for inclement weather. The Contract Schedule shall indicate the beginning and completion dates of all phases of design and construction; critical path for all critical, sequential time related activities; and "float time" for all "slack" or "gaps" in the non-critical activities. The Contract Schedule shall clearly state the number of staff to be used on each daily segment of the Work. Schedules indicating early or late completion shall not modify or have any effect on the Guaranteed Completion Date, regardless of whether the schedules are reviewed and/or accepted by the City. For purposes of determining damages for delay, the Guaranteed Completion Date shall control and may only be altered by a duly authorized Change Order.

3.19.3. The DBE shall continuously update the Contract Schedule. The DBE shall submit an updated and accurate Contract Schedule to the City whenever requested to do so by City and with each progress payment request. The City may withhold progress payments or other amounts due under the Contract Documents if DBE fails to submit an updated and accurate construction schedule. Upon the City's request, DBE shall submit any schedules or updates to the City in the native electronic format of the software used to create the schedule.

3.19.4. The DBE shall plan, develop, supervise, control, and coordinate the performance of the work on the Project so that its progress and the sequence and timing of Work activities achieve completion by the GCD. The DBE shall continuously obtain from Subcontractors information and data about the planning for, and progress of, the work on the Project and the delivery of equipment. The DBE shall coordinate and integrate such information and data into updated Contract Schedules, and shall monitor the progress of the work on the Project and the delivery of equipment. The DBE shall act as the expeditor of potential and actual delays, interruptions, hindrances, or disruptions for its own forces and those forces of Subcontractors, regardless of tier. The DBE shall cooperate with the City's Representative in the development of all Contract Schedules and updated Contract Schedules.

3.19.5. Failure of the City's Representative to discover errors or omissions in schedules that it has reviewed, or to inform the DBE that the DBE, Subcontractors, or others are behind schedule, or to direct or enforce procedures for complying with the Contract Schedule shall not relieve the DBE from its sole responsibility to perform and complete all work on the Project within the Guaranteed Completion Date and shall not be a cause for an adjustment of the Guaranteed Completion Date or the Price.

3.19.6. The DBE shall perform all work on the Project in accordance with the current accepted Contract Schedule.

3.20. AS-BUILT DOCUMENTS

3.20.1. The DBE shall maintain one (1) set of As-Built drawings and specifications, which shall be kept up to date during the work of the Contract. All changes which are incorporated into the work on the Project which differ from the Documents as drawn and written and approved shall be noted on the As-Built set. Notations shall reflect the actual materials, equipment and installation methods used for the work on the Project and each revision shall be initialed and dated by Superintendent. Prior to filing of the Notice of Completion, each drawing and the specification cover shall be signed by the DBE and dated, attesting to the completeness of the information noted therein. As-Built Documents shall be turned over to the City's Representative and shall become part of the Record Documents as required by the Scope of Work.

3.21. DOCUMENTS AND SAMPLES AT PROJECT SITE

3.21.1. The DBE shall maintain the following at the Project Site:

3.21.1.1. One current copy of the Contract Documents (including Construction Documents), in good order and marked to record current changes and selections made during construction.

3.21.1.2. One copy of the prevailing wage rates applicable to the Project.

3.21.1.3. The current accepted Contract Schedule.

3.21.1.4. Shop Drawings, Product Data, and Samples.

3.21.1.5. One current copy of all documents required by 3.20.1 (As built documents.)

3.21.1.6. All other required submittals.

3.21.2. These shall be available to the City's Representative and shall be delivered to the City's Representative for submittal to the City upon the earlier of Final Completion or termination of the Contract.

3.22. SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

3.22.1. Definitions:

3.22.1.1. Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Project by the DBE or a Subcontractor to illustrate some portion of the work on the Project.

3.22.1.2. Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the DBE to illustrate or describe materials or equipment for some portion of work on the Project.

3.22.1.3. Samples are physical examples that illustrate materials, equipment, or workmanship and establish standards by which the work on the Project will be judged.

3.22.2. Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate, for those portions of work on the Project for which submittals are required, how the DBE proposes to conform to the information given and the Design concept expressed in the Contract Documents.

3.22.3. The DBE shall review, approve, and submit to the City's Representative Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the work on the Project or in the activities of the City or of Separate Contractors. Submittals made by the DBE that are not required by the Contract Documents may be returned without action by the City's Representative.

3.22.4. The DBE shall perform no portion of the work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been reviewed by the City's Representative and no exceptions have been taken by the City's Representative. Such work shall be in accordance with approved submittals and the Contract Documents. The City shall provide review and respond to all such submittals within ten (10) working days.

3.22.5. By approving and submitting Shop Drawings, Product Data, Samples, and similar submittals, the DBE represents that it has determined or verified materials and field measurements and conditions related thereto, and that it has checked and coordinated the information contained within such submittals with the requirements of the Contract Documents and Shop Drawings for related work.

3.22.6. If the DBE discovers any conflicts, omissions, or errors in Shop Drawings or other submittals, the DBE shall notify the City's Representative and receive instruction before proceeding with the affected work. The DBE shall be responsible to correct to the satisfaction of the City, any conflicts, omissions, or errors in Shop Drawings or other submittals.

3.22.7. The DBE shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the City's Representative's review of Shop Drawings, Product Data, Samples, or similar submittals, unless the DBE has specifically informed the City's Representative in writing of such deviation at the time of submittal and the City's Representative has given written approval of the specific deviation. The DBE shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the City's Representative's review, acceptance, comment, or approval thereof.

3.22.8. The DBE shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the City's Representative on previous submittals.

3.22.9. The City will review first resubmittal of Shop Drawing at its cost. The City reserves the right to reduce the Price by Change Order for its cost for any subsequent reviews of Shop Drawing resubmittals.

3.23. USE OF SITE AND CLEAN UP

3.23.1. The DBE shall confine operations at the Project Site to areas permitted by law, ordinances, permits, and the Contract Documents. The DBE shall not unreasonably encumber the Project Site with materials or equipment.

3.23.2. The DBE shall, during performance of work on the Project, keep the Project Site and surrounding area free from the accumulation of excess dirt, waste materials, and rubbish caused by the DBE. The DBE shall remove all excess dirt, waste material, and rubbish caused by the DBE; tools; equipment; machinery; and surplus materials from the Project Site and surrounding area at the completion of the Project.

3.23.3. Personnel of the DBE and Subcontractors shall not occupy, live upon, or otherwise make use of the Project Site during any time that work is not being performed at the Project Site, except as otherwise provided in the Contract Documents.

3.24. CUTTING, FITTING, AND PATCHING

3.24.1. The DBE shall do all cutting, fitting, or patching work required to make all parts of the Project come together properly and to allow the Project to receive or be received by the work of Separate Contractors shown upon, or reasonably implied by, the Contract Documents.

3.24.2. The DBE shall not endanger the Project, or adjacent property by cutting, digging, or otherwise. The DBE shall not cut or alter the work of any Separate Contractor without the prior consent of the City's Representative.

3.25. ACCESS TO WORK

3.25.1. The City, the City's Representative, their consultants, and other persons authorized by the City will at all times have access to the work on the Project wherever it is in preparation or progress. The DBE shall provide safe and proper facilities for such access and for inspection.

3.26. ROYALTIES AND PATENTS

3.26.1. The DBE shall pay all royalties and license fees required for the performance of work on the Project. The DBE shall defend suits or claims resulting from the DBE's or any Subcontractor's infringement of patent rights and shall Indemnify the City and the City's Representative from Losses on account thereof.

3.27. CONCEALED OR UNKNOWN CONDITIONS

3.27.1. Except and only to the extent provided otherwise in Article 7 and 8 of the General Conditions, by signing the Contract, the DBE agrees:

3.27.1.1. To bear the risk of concealed or unknown conditions, if any, which may be encountered in performing the Contract, as described in these Contract Documents, and/or can reasonably be inferred by the DBE based on its experience and expertise; and

3.27.1.2. That the DBE's Price for the Contract was made with full knowledge of this risk.

3.27.2. In agreeing to bear the risk of concealed or unknown conditions, The DBE understands that, except and only to the extent provided otherwise in Articles 7 and 8, concealed and/or unknown conditions shall not excuse The DBE from its obligation to achieve full completion of the Project within the Guaranteed Completion Date, and shall not entitle the DBE to an adjustment of the Price.

3.27.3. If concealed or unknown conditions are encountered which require, in the opinion of the City's Representative, design details which differ from those details shown in the Criteria Documents and the City's Representative finds that such revised design details will cause an increase or decrease in the cost of, or the time required for performance of the Contract, and if the City agrees with the City's Representative's determinations, the City may terminate this Contract without any liability to the DBE, except for work completed at the time of termination or issue a Change Order modifying the Contract Terms to provide for the change in design details and to provide for an adjustment in the Price and/or Guaranteed Completion Date pursuant to Articles 7 and 8.

3.27.4. If the DBE encounters concealed or unknown conditions that differ materially from those anticipated or expected, the DBE shall notify the City's Representative within 48 hours in writing of such conditions so that the City's Representative can determine if such conditions require design details which differ from those design details shown in the Criteria Documents. The DBE shall be liable to the City for any extra costs incurred as the result of the DBE's failure to give such notice.

3.28. LIABILITY FOR AND REPAIR OF DAMAGED WORK

3.28.1. Except as otherwise provided in the Contract Documents, the DBE shall be liable for any and all damages and losses to the Project (whether by fire, theft, vandalism, earthquake, flood or otherwise) prior to the City's acceptance of the Project as fully completed. Notwithstanding the preceding, the DBE shall not be liable for damages and losses to the Project caused by the City's negligence or willful misconduct.

ARTICLE 4. ADMINISTRATION OF THE CONTRACT

4.1. ADMINISTRATION OF THE CONTRACT BY THE CITY'S REPRESENTATIVE

4.1.1. The City's Representative will have authority to act on behalf of the City only to the extent provided in the Contract Documents.

4.1.2. The City shall designate in the Contract one or more representatives authorized to act on the City's behalf with respect to the Project, together with the scope of his/her respective authority. If the City's Representative(s) changes, the City shall notify the DBE in writing as provided in the Contract. Functions for which this Contract Documents provide will be performed by the City may be delegated by the City only by written notice to the DBE from the City. The DBE shall not be entitled to rely on directions (nor shall it be required to follow the Directions) from anyone outside the scope of that person's authority as set forth in written authorization pursuant to this Design-Build Contract. Directions and decisions made by the City Representatives of the City shall be binding on the City.

4.1.3. During the term of this Design-Build Contract, the City's Representative shall have the right to review the Design Professionals' work at such intervals as deemed appropriate by the City's Representative. However, no actions taken during such review or site visit by the City's Representative, shall relieve the DBE of any of its obligations of single point

responsibility for the Design and construction of this Project, nor form the basis for a Claim, if such actions extend beyond the Guaranteed Completion Date.

4.1.4. The City's Representative will not have control over, will not be in charge of, and will not be responsible for design or construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the work on the Project, since these are solely the DBE's responsibility.

4.1.5. Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, the City and the DBE shall communicate through the City's Representative. Communications by the DBE with the City's consultants and the City's Representative's consultants shall be through the City's Representative. Communications by the City and the City's Representative with Subcontractors will be through the DBE. Communications by the DBE and Subcontractors with Separate Contractors shall be through the City's Representative. The DBE shall not rely on oral or other non written communications.

4.1.6. Based on the City's Representative's Project Site visits, review of Design Work, and evaluations of the DBE's Applications For Payment, the City's Representative will recommend amounts, if any, due the DBE and will issue Certificates For Payment in such amounts.

4.1.7. The City's Representative will have the authority to reject work on the Project, or any portion thereof, which does not conform to the Contract Documents. The City's Representative will have the authority to stop work on the Project, or any portion thereof. Whenever the City's Representative considers it necessary, or advisable, for implementation of the intent of the Contract Documents, the City's Representative will have the authority to require additional inspection or testing of the work on the Project in accordance with the Contract Documents, whether or not such work is fabricated, installed, or completed. However, no authority of the City's Representative conferred by the Contract Documents nor any decision made in good faith either to exercise, or to not exercise such authority, will give rise to a duty or responsibility of the City or the City's Representative to the DBE, or any person or entity claiming under, or through, the DBE.

4.1.8. The City's Representative will have the authority to conduct inspections and to determine Completion; will receive for review and approval any records, written warranties, and related documents required by the Contract Documents and assembled by the DBE; and will issue a final Application For Payment upon the DBE's compliance with the requirements of the Contract Documents.

4.1.9. The City's Representative will be, in the first instance, the interpreter of the requirements of the Contract Documents and the judge of performance thereunder by the DBE. Should the DBE discover any conflicts, omissions, or errors in the Construction Documents or the Contract Documents; have any questions about the interpretation or clarification of the Contract Documents; question whether work is within the scope of the Contract Documents; then, before proceeding with the work affected, the DBE shall notify the City's Representative in writing and request interpretation, or clarification. The City's

Representative's response to questions and requests for interpretations, clarifications, instructions, or decisions will be made with reasonable promptness. Should the DBE proceed with the work affected before receipt of a response from the City's Representative, any portion of the work on the Project which is not done in accordance with the City's Representative's interpretations, clarifications, instructions, or decisions shall be removed or replaced and the DBE shall be responsible for all resultant losses.

4.2. THE DESIGN-BUILD ENTITY CHANGE ORDER REQUESTS

4.2.1. The DBE may request changes to the Price and/or Guaranteed Completion Date for Extra Work or Excusable Delays to completion of the Project caused by the acts, errors, or omissions of the City, the City's Representative, their agents or employees, or caused by unforeseen conditions if, and only if, the DBE follows the procedures specified in this Section. As used in this Section, such acts, errors, or omissions shall include, but not be limited to, the provision of instructions, or interpretations that involve an increase or decrease in Project Scope, Extra Work or delay completion of the Project.

4.2.2. If the DBE asserts that the DBE is entitled to an adjustment of the Price and/or Guaranteed Completion Date as the result of an act, error, or omission of the City, the City's Representative, their agents or employees, or as the result of unforeseen conditions, then the DBE may submit a Change Order Request in a form acceptable to the City, to the City's Representative.

4.2.3. A Change Order Request must state that it is a Change Order Request, state and justify the reason for the request, and specify the amount of any requested adjustment to the Price and/or Guaranteed Completion Date. Upon request of the City's Representative, the DBE shall submit such additional information as may be requested by the City's Representative for the purpose of evaluating the Change Order Request. Such additional information may include a Cost Proposal meeting the requirements of Article 7 and written documentation demonstrating the DBE's entitlement to a time extension under Section 8.4. If the Change Order Request seeks an adjustment of the Price for an Excusable Delay, upon request of the City's Representative, the DBE shall submit written documentation demonstrating the DBE's entitlement to such an adjustment under Section 7.3.9.

4.2.4. A condition precedent to obtaining an adjustment of the Price and/or Guaranteed Completion Date as the result of an act, error, or omission of the City, the City's Representative, their agents or employees, or as the result of an unforeseen condition, is timely submission of a Change Order Request that meets the requirements set forth in Sections 4.2.2 and 4.2.3. A Change Order Request based upon such acts, errors or omissions will be deemed timely submitted if, and only if, it is submitted within seven (7) calendar days of the date the DBE discovers, or reasonably should discover, that an act, error, or omission of the City, the City's Representative, their agents or employees, has occurred that may entitle the DBE to an adjustment of the Price and/or Guaranteed Completion Date (even if the DBE has not been damaged, delayed, or incurred extra cost when the DBE discovers, or reasonably should discover, the act, error or omission giving rise to the Change Order Request). A Change Order Request based upon an unforeseen condition will be deemed timely submitted if, and only if, it is submitted within seven (7) calendar days of the Date the DBE discovers, or reasonably should

discover, the existence of an unforeseen condition that may entitle the DBE to an adjustment of the Price and/or Guaranteed Completion Date (even if the DBE has not been damaged, delayed, or incurred extra cost when the DBE discovers, or reasonably should discover, the unforeseen condition giving rise to the Change Order Request). All Change Order Requests shall be made prior to altering any unforeseen or other conditions that are the subject of the Change Order Request.

4.2.5. If the City's Representative issues a final decision on all or part of a Change Order Request, the DBE may contest the decision by filing a timely Claim under the procedures specified in Section 4.3. A final decision is any decision on a Change Order Request which states that it is final.

4.2.6. No dispute, disagreement or failure of the parties to reach agreement on the terms of a Change Order shall relieve the DBE from the obligation to proceed with performance of the changed work, including extra work, promptly and expeditiously.

4.3. CLAIMS

4.3.1. The term "Claim" means a written demand or assertion by the DBE seeking an adjustment or interpretation of the Contract Documents, payment of money, extension of time, or other relief with respect to the Contract Documents, including a determination of disputes or matters in question between the City and the DBE arising out of or related to the Contract Documents or the performance of work on the Project, and claims alleging an unforeseen condition or an act, error or omission by the City, the City's Representative, their agents or employees. However, the term "Claim" shall not include, and the Claims procedures provided under this Article 4 shall not apply to the following:

4.3.1.1. Claims respecting penalties for forfeitures prescribed by statute or regulation that a government agency is specifically authorized to administer, settle, or determine.

4.3.1.2. Claims respecting personal injury, death, reimbursement, or other compensation arising out of or resulting from liability for personal injury or death.

4.3.1.3. Claims respecting a latent defect, breach of warranty, or guarantee to repair.

4.3.1.4. Claims respecting Stop Payment Notices.

4.3.2. If a Claim is subject to the procedures specified in Section 4.2, the Claim arises upon the issuance of a written final decision denying in whole or in part the DBE's Change Order Request. If a Claim is not subject to the procedures specified in Section 4.2, the Claim arises when the DBE discovers, or reasonably should discover, the condition or event giving rise to the Claim (even if the DBE has not been damaged, delayed, or incurred extra cost when the DBE discovers, or reasonably should discover, the condition or event giving rise to the Claim).

4.3.3. A Claim not subject to the procedures specified in Section 4.2 may be asserted if, and only if, the DBE gives a valid written notice of intent to file the Claim within ten (10) calendar days of the Date the Claim arises under Section 4.3.2. A written notice of intent to file a claim will be deemed valid, if and only, if it identifies the event or condition giving rise to the Claim and states its probable effect, if any, with respect to the DBE's entitlement to an adjustment of the Price and/or the Guaranteed Completion Date.

4.3.4. A Claim must include the following:

4.3.4.1. A statement that it is a Claim and a request for a decision pursuant to Section 4.5.

4.3.4.2. A detailed description of the act, error, omission, unforeseen condition, event or other condition giving rise to the Claim.

4.3.4.3. If the Claim is subject to the procedures specified in Section 4.2, a statement demonstrating that a Change Order Request was timely submitted as required by Section 4.2.4. If the Claim is not subject to the procedures specified in Section 4.2, a statement demonstrating that a valid notice of intent to file the Claim was timely submitted as required by Section 4.3.3.

4.3.4.4. A detailed justification for any remedy or relief sought by the Claim, including to the extent applicable, the following:

4.3.4.4.1. If the Claim involves Extra Work, a detailed cost breakdown of the amounts claimed, including the items specified in Section 7.3.2. The breakdown must be provided even if the costs claimed have not been incurred when the Claim is submitted. To the extent costs have been incurred when the Claim is submitted, the Claim must include actual cost records (including without limitation, payroll records, material and rental invoices and the like) demonstrating that costs claimed have actually been incurred. To the extent costs have not yet been incurred at the time the Claim is submitted, actual cost records must be submitted on a current basis not less than once a week during any periods costs are incurred. A cost record will be considered current if submitted within 7 days of the Date the cost reflected in the record is incurred. At the request of the City's Representative, claimed extra costs may be subject to further verification procedures (such as having an inspector verify the performance of alleged extra work on a daily basis).

4.3.4.4.2. If the Claim involves an extension of the Guaranteed Completion Date, written documentation demonstrating the DBE's entitlement to a time extension under Section 8.4.

4.3.4.4.3. If the Claim involves an adjustment of the Price for an Excusable delay, written documentation demonstrating the DBE's entitlement to such an adjustment under Section 7.3.9.

4.4. ASSERTION OF CLAIMS

4.4.1. Claims by the DBE shall be first submitted to the City's Representative for decision.

4.4.2. Notwithstanding the making of any Claim or the existence of any dispute regarding any Claim, unless otherwise directed by the City's Representative, the DBE shall not cause any delay, cessation, or termination in or of the DBE's performance of work on the Project, but shall diligently proceed with performance of the work in accordance with the Contract Documents. The City will continue to make payments in accordance with the Contract Documents.

4.4.3. The DBE shall submit a Claim in writing, together with the supporting data specified in Section 4.3.4, to the City's Representative as soon as possible but not later than thirty (30) days after the Date the claim arises under Section 4.3.2.

4.4.4. The DBE agrees that strict compliance with the requirements of Sections 4.2.4, 4.3.3, and 4.4.3 is an express condition precedent to the DBE's right to arbitrate or litigate a Claim. The DBE specifically agrees to assert no Claims in arbitration or litigation unless there has been strict compliance with Sections 4.2.4, 4.3.3, and 4.4.3.

4.5. DECISION OF THE CITY'S REPRESENTATIVE ON CLAIMS

4.5.1. The City's Representative will timely review Claims submitted by the DBE. If the City's Representative determines that additional supporting data are necessary to fully evaluate a Claim, the City's Representative will request such additional supporting data in writing.

4.6. ALTERNATE DISPUTE RESOLUTION OF CLAIMS

4.6.1. In accordance with Public Contract Code Sections 20104 et seq. and other applicable law, public works claims of \$375,000 or less which arise between the DBE and the City shall be resolved under the following the statutory procedure unless the City has elected to resolve the dispute pursuant to Public Contract Code Section 10240 et seq.

4.6.2. All Claims: All claims shall be submitted in writing and accompanied by substantiating documentation. Claims must be filed on or before the date of final payment unless other notice requirements are provided in the contract. "Claim" means a separate demand by the claimant for (1) a time extension, (2) payment of money or damages arising from work done by or on behalf of the claimant and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled, or (3) an amount the payment of which is disputed by the City.

4.6.3. Claims Under \$50,000: The City shall respond in writing to the claim within forty-five (45) days of receipt of the claim, or, the City may request, in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims the City may have. If additional information is needed thereafter, it shall be provided upon mutual agreement of the City and the claimant. The City's written

response shall be submitted fifteen (15) days after receiving the additional documentation, or within the same period of time taken by the claimant to produce the additional information, whichever is greater.

4.6.4. Claims over \$50,000: The City shall respond in writing within sixty (60) days of receipt, or, may request in writing within thirty (30) days of receipt of the claim, any additional documents supporting the claim or relating to defenses or claims the City may have against the claimant. If additional information is needed thereafter, it shall be provided pursuant to mutual agreement between the City and the claimant. The City's response shall be submitted within thirty (30) days after receipt of the further documents, or within the same period of time taken by the claimant to produce the additional information or documents, whichever is greater. The DBE shall make these records and documents available at all reasonable times, without any direct charge.

4.6.5. The DBE shall submit the claim justification in the following format:

4.6.5.1. Summary of claim merit and price, and Contract clause pursuant to which the claim is made.

4.6.5.2. List of documents relating to claim including, but not limited to:

4.6.5.3. Specifications

4.6.5.4. Drawings

4.6.5.5. Clarifications (Requests for Information)

4.6.5.6. Schedules

4.6.5.7. Chronology of events and correspondence

4.6.5.8. Analysis of claim merit

4.6.5.9. Analysis of claim cost

4.6.5.10. Analysis of time impact analysis in CPM format

4.6.5.11. Cover letter and certification of validity of the claim

4.6.6. If the claimant disputes the City's response, or if the City fails to respond within the statutory time period(s), the claimant may so notify the City within fifteen (15) days of the receipt of the response or the failure to respond, and demand an informal conference to meet and confer for settlement. Upon such demand, the City shall schedule a meet and confer conference within thirty (30) Days.

4.6.7. If following the meet and confer conference, the claim or any portion thereof remains in dispute, the claimant shall file a claim pursuant to Government Code 900 et seq. and Government Code 910 et seq. For purposes of those provisions, the time within which a

claim must be filed shall be tolled from the time the claimant submits the written claim until the time the claim is denied, including any time utilized for the meet and confer conference.

4.6.8. Submission of a claim, properly certified, with all required supporting documentation, and written rejection or denial of all or part of the claim by City, is an express condition precedent to any action, proceeding, litigation, suit, general conditions claim, or demand for arbitration by DBE.

4.7. WAIVER

4.7.1. A waiver of, or failure by, the City or the City's Representative to enforce any requirement in this Article 4, including, without limitation, the requirements in Sections 4.2.4, 4.3.3, 4.4.3, 4.4.4 and 4.5.4 in connection with any Claim shall not constitute a waiver of, and shall not preclude the City or the City's Representative from enforcing such requirements in connection with any other Claims.

4.7.2. The DBE agrees and understands that no oral approval, either express or implied, of any Claim shall be binding upon the City unless and until such approval is ratified by execution of a written Change Order.

ARTICLE 5. SUBCONTRACTORS

5.1. SUBCONTRACTUAL RELATIONS

5.1.1. Any part of the work on the Project performed for the DBE by a Subcontractor shall be pursuant to a written subcontract. Each such subcontract shall require the Subcontractor, to the extent of the work to be performed by the Subcontractor, to be bound to the DBE by the terms of the Contract Documents, to assume toward the DBE all the obligations and responsibilities which the DBE assumes towards the City by the Contract Documents, and to perform such portion of the work on the Project in accordance with the Contract Documents. Each such subcontract shall preserve and protect the rights of the City under the Contract Documents, with respect to the work to be performed by Subcontractor, so that subcontracting thereof will not prejudice such rights.

ARTICLE 6. CONSTRUCTION BY THE CITY OR BY SEPARATE CONTRACTORS

6.1. THE CITY'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

6.1.1. The City reserve the right to award separate contracts for, or to perform with its own forces, construction or operations related to the work or other construction or operations at or affecting the Project Site, including portions of work on the Project which have been deleted by Change Order. The DBE shall cooperate with the City's forces and Separate Contractors. Any of the Scope of Work that is not performed by the DBE pursuant to this Section may limit or invalidate the warranties provided under the Contract Documents.

6.1.2. The City will provide coordination of the activities of the City's forces and of each Separate Contractor with the work of the DBE. The DBE shall participate with the City and Separate Contractors in joint review of construction schedules and Project requirements when directed to do so. The DBE shall make necessary revisions to the Contract Schedule after such joint review.

6.2. MUTUAL RESPONSIBILITY

6.2.1. The DBE shall afford the City and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities. The DBE shall connect, schedule, and coordinate its construction and operations with the construction and operations of the City and Separate Contractors as required by the Contract Documents.

6.2.2. If a portion of the work on the Project is dependent upon the proper execution or results of other construction or operations by the City or Separate Contractors, the DBE shall inspect such other design or construction or operations before proceeding with that portion of the work on the Project. The DBE shall promptly report to the City's Representative apparent discrepancies or defects which render the other design, construction or operations unsuitable to receive the work on the Project. Unless otherwise directed by the City's Representative, the DBE shall not proceed with the portion of the work on the Project affected until apparent discrepancies or defects have been corrected. Failure of the DBE to so report within a reasonable time after discovering such discrepancies or defects shall constitute an acknowledgment that the other construction or operations by the City or Separate Contractors is suitable to receive the work on the Project, except as to defects not then reasonably discoverable.

6.3. THE CITY'S RIGHT TO CLEAN UP

6.3.1. If a dispute arises between the DBE and Separate Contractors as to the responsibility under their respective contracts for maintaining the Project Site and surrounding areas free from waste materials and rubbish, the City may clean up and allocate the cost between those firms the City deem to be responsible.

ARTICLE 7. CHANGES IN THE SCOPE OF WORK

7.1. CHANGES

7.1.1. The City may, from time to time, order or authorize additions, deletions, and other changes in the Scope of Work by Change Order or Field Order without invalidating the Contract and without notice to sureties. Absence of such notice shall not relieve such sureties of any of their obligations to the City.

7.1.2. The DBE may request a Change Order under the procedures specified in Section 4.2.

7.1.3. A Field Order, as defined below, may be issued by the City; and shall be valid with or without the signature of the DBE.

7.1.4. The DBE shall proceed promptly with any changes in the Scope of Work, unless otherwise provided in the relevant Change Order, City Directed Change Order or Field Order.

7.2. DEFINITIONS

7.2.1. A Change Order becomes a Contract Document when, (i) it is a City Directed Change Order as described in Section 7.2.2; or (ii) after it has been signed by both the City and the DBE, and states their agreement upon all of the following:

7.2.1.1. A change in the Scope of Work, if any.

7.2.1.2. The amount of an adjustment of the Price, billed as Extra Work pursuant to Attachment 2 to the Contract, if any.

7.2.1.3. The amount of an adjustment of the Guaranteed Completion Date, if any.

7.2.2. A City Directed Change Order is a type of Change Order which may be issued by the City and incorporated into the Contract Documents without the DBE's signature, where the City determines that it is in the City's best interest to adjust the Price and/or Guaranteed Completion Date as the City believes necessary, even though no agreement has been reached between the City and the DBE.

7.2.3. A Field Order is a preliminary to a Change Order that describes a change in the Scope of the Work, the estimated adjustments of the Price and/or the Guaranteed Completion Date, if any, and orders a change in the Scope of Work before all of the terms of the change are fully agreed upon by the City and the DBE. A Field Order must eventually be memorialized as a Change Order or a City Directed Change Order and incorporated into the Contract Documents.

7.3. CHANGE ORDER PROCEDURES

7.3.1. When requested by the City's Representative, the DBE shall provide promptly, but in no event longer than seven (7) days from the date of the request, a Cost Proposal setting forth the DBE's proposed adjustments of the Price and/or the Guaranteed Completion Date, if any, for performing the proposed change in the Scope of Work. Adjustments of the Price resulting from Extra Work and/or deductive work shall be determined using one of the methods described in Article 7. Adjustments of the Guaranteed Completion Date shall be subject to the provisions in Article 8.

7.3.2. The term "Cost of Extra Work" as used in this Article shall mean actual costs incurred by the DBE and each Subcontractor regardless of tier involved, and shall be limited to the following (to the extent the DBE demonstrates that they were actually incurred):

7.3.2.1. Overhead and Profit not to exceed 15% of the Cost of the Extra Work (not more than 10% Overhead and 5% Profit) and straight time wages or salaries for

employees employed at the Project Site, or at fabrication sites off the Project Site, in the direct performance of the Extra Work.

7.3.2.2. Fringe Benefits and Payroll Taxes for employees employed at the Project Site, or at fabrication sites off the Project Site, in the direct performance of the Extra Work.

7.3.2.3. Overtime wages or salaries, specifically authorized in writing by the City's Representative, for employees employed at the Project Site, or at fabrication sites off the Project Site, in the direct performance of the Extra Work.

7.3.2.4. Fringe Benefits and Payroll Taxes for overtime Work specifically authorized in writing by the City's Representative, for employees employed at the Project Site, or at fabrication sites off the Project Site, in the direct performance of the Extra Work.

7.3.2.5. Costs of materials and consumable items which are furnished and incorporated into the Extra Work, as approved by the City's Representative. Such costs shall be charged at the lowest price available to the DBE but in no event shall such costs exceed competitive costs obtainable from other subcontractors, suppliers, manufacturers, and distributors in the area of the Project Site. All discounts, rebates, and refunds and all returns from sale of surplus materials and consumable items shall accrue to the City and the DBE shall make provisions so that they may be obtained.

7.3.2.6. Sales taxes on the costs of materials and consumable items which are incorporated into and used in the performance of the Extra Work pursuant to Section 7.3.2.5 above.

7.3.2.7. Rental charges for necessary machinery and equipment, whether owned or hired, as authorized in writing by the City's Representative, exclusive of hand tools, used directly in the performance of the Extra Work. Such rental charges shall not exceed the current U.S. Army Corp. of Engineers scheduled charges for the area in which the work is performed. The DBE shall attach a copy of said schedule to the Cost Proposal. The charges for any machinery and equipment shall cease when the use thereof is no longer necessary for the Extra Work.

7.3.2.8. Additional costs of royalties and permits due to the performance of the Extra Work.

7.3.2.9. Cost for revisions in the Schematic Design Documents or Construction Documents, when such revisions are inconsistent with approvals or instructions previously given by the City. Revisions made necessary by adjustments in the City's program or project budget such costs to be computed as set forth herein.

7.3.2.10. The cost for Insurance and Bonds shall not exceed 1 % of items 1. through 9. above.

7.3.3. Cost of Extra Work shall not include any of the following:

7.3.3.1. Superintendent(s).

7.3.3.2. Assistant Superintendent(s).

7.3.3.3. Project Engineer(s), except for outside engineering subcontractors retained for engineering services required after 50% design documents.

7.3.3.4. Project Manager(s).

7.3.3.5. Scheduler(s).

7.3.3.6. Estimator(s).

7.3.3.7. Incidental Drafting or Detailing.

7.3.3.8. Small tools (Replacement value does not exceed \$300).

7.3.3.9. Office expenses including staff, materials and supplies.

7.3.3.10. On site or off site trailer and storage rental and expenses.

7.3.3.11. Site fencing.

7.3.3.12. Utilities including gas, electric, sewer, water, telephone, facsimile, copier equipment.

7.3.3.13. Data processing personnel and equipment.

7.3.3.14. Federal, state, or local business income and franchise taxes.

7.3.3.15. Overhead and Profit in excess 15% of the Cost of the Extra Work, of the 15% not more than 10% shall consist of Overhead and 5% of Profit.

7.3.3.16. Costs and expenses of any kind or item not specifically and expressly included in Section 7.3.2.

7.3.4. Compensation for Extra Work as an adjustment to the Price, authorized by Change Order shall be computed as specified herein.

7.3.5. As a condition to the DBE's right to an adjustment of the Price, pursuant to Section 7.3.4, the DBE must keep daily detailed and accurate records itemizing each element of cost and shall provide substantiating records and documentation, including time cards and invoices. Such records and documentation shall be submitted to and approved by the City's Representative on a daily basis.

7.3.6. For work to be deleted by Change Order, the reduction of the Price shall be computed on the basis of one or more of the following:

7.3.6.1. Unit prices stated in the Contract or an Attachment thereto.

7.3.6.2. Unit prices agreed upon by the City and the DBE.

7.3.6.3. A lump sum agreed upon by the City and the DBE, based upon the actual costs which would have been incurred in performing the Deleted portions of the work on the Project as calculated in accordance with Sections 7.3.2 and 7.3.3.

7.3.7. If any one Change Order involves both Extra Work and deleted work in the same portion of the work on the Project, the Price shall not be increased if the deductive cost exceeds the additive cost. If the additive cost exceeds the deductive cost, an increase in the Price will be allowed only on the difference between the two amounts.

7.3.8. The Price will be adjusted for a delay if, and only if, the DBE demonstrates that all of the following four conditions are met:

7.3.8.1. Condition Number One: The delay results in an extension of the Guaranteed Completion Date pursuant to Section 8.4.1.

7.3.8.2. Condition Number Two: The delay is caused solely by one, or more of the following:

7.3.8.2.1. An error or omission in the Contract Documents caused by the City and not as a result of the DBE's failure to conform to criteria documents, performance standards, Construction Documents, or Contract Documents; or

7.3.8.2.2. The City's decision to change the Scope of the Work, where such decision is not the result of any default or misconduct of the DBE; or

7.3.8.2.3. The City's decision to suspend work on the Project, where such decision is not the result of any default or misconduct of the DBE; or

7.3.8.2.4. The failure of the City or the City's Representative to timely perform any contract obligation where the failure to so perform is not the result of any default or misconduct of the DBE.

7.3.8.3. Condition Number Three: The delay is not concurrent with a delay that is:

7.3.8.3.1. Critical under Section 8.4.1.2; and

7.3.8.3.2. Caused by an event not listed in Section 7.3.8.2.

7.3.8.4. Condition Number Four: The delay is not caused, in whole or in part, by an event not listed in Section 7.3.8.2 above.

7.3.9. For each day of delay that meets all four conditions prescribed in Section 7.3.8 the Price maybe adjusted as set forth herein.

7.3.10. Except as provided in Articles 7 and 8, the DBE shall have no claim for damage or compensation for any delay, interruption, hindrance, or disruption.

7.3.11. If for any reason one or more of the conditions prescribed in Section 7.3.4 is held legally unenforceable, the remaining conditions must be met as a condition to obtaining an adjustment of the Guaranteed Completion Date under Section 7.3.8.

7.4. FIELD ORDERS

7.4.1. A Field Order as described in Section 7.2.3 above, may be issued by the City. If requested in writing, the DBE shall promptly provide the City's Representative with a Cost Proposal, setting forth the proposed adjustments of the Price and/or the Guaranteed Completion Date, if any, for performing the change in the Scope of Work. The Field Order will be superseded by a Change Order which shall include the actual adjustments, if any, of the Price and the Guaranteed Completion Date, as well as the change in the Scope of Work.

7.4.2. A Field Order signed by the DBE indicates the agreement of the DBE therewith, including the DBE's agreement to the proposed adjustments to the Price and/or the Guaranteed Completion Date stated therein. Such agreement shall be effective immediately and will be incorporated into a Change Order.

7.4.3. Upon receipt of a Field Order, the DBE shall promptly proceed with the change in the Scope of Work.

7.4.4. If the DBE does not agree to the adjustment of the Price set forth in a Field Order, the amount shall be determined in accordance with the provisions of Section 7.3.4 above; and the DBE shall comply with the provisions of Section 7.3.6 regarding records and documentation of actual costs.

7.5. VARIATION IN QUANTITY OF UNIT PRICE WORK

7.5.1. The City shall have the right to increase or decrease the quantity of any Unit price item for which an estimated quantity is stated in the Contract Documents, provided that any change in quantity that materially impacts the design for the Project, DBE's obligations under the Statement of Work, or the timing or cost of DBE's performance will be subject to Change Order according to the provisions herein.

7.6. WAIVER

7.6.1. A waiver of, or failure by, the City or the City's Representative to enforce any requirement in this Article 7, including, without limitation, the requirements in Sections 7.3.6, 7.3.8, 7.3.9, 7.3.10, or 7.3.11 in connection with any adjustment of the Price, will not constitute a waiver of, and will not preclude the City, or the City's Representative, from enforcing, such requirements in connection with any other adjustments of the Price.

7.6.2. The DBE agrees and understands that no oral approval, either express or implied, of any adjustment of the Price by the City or its agents shall be binding upon the City unless and until such approval is ratified by execution of a written change order.

ARTICLE 8. GUARANTEED COMPLETION DATE

8.1. COMMENCEMENT OF WORK ON THE PROJECT

8.1.1. The date of commencement of the Scope of Work shall be set forth in the Notice To Proceed. The date of commencement for the Scope of Work shall not be postponed by the failure of the DBE, Subcontractors, or of persons or firms for whom the DBE is responsible, to act.

8.2. PROGRESS AND COMPLETION

8.2.1. By signing the Contract:

8.2.1.1. The DBE represents to the City that the Guaranteed Completion Date is reasonable for performing the Scope of Work and that the DBE is able to perform and complete the Scope Work within the Guaranteed Completion Date.

8.2.1.2. The DBE agrees that the City is purchasing the right to have the DBE present on the Project for the full duration of the time period necessary to complete the Scope of Work described in the Contract Documents.

8.2.2. The DBE shall not, except by agreement or instruction of the City in writing, commence operations on the Project Site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the DBE. The date of commencement and the Guaranteed Completion Date shall not be changed by the effective date of such insurance.

8.2.3. The DBE shall proceed expeditiously with adequate forces and shall achieve full completion of the work by the Guaranteed Completion Date. If the City's Representative determines and notifies the DBE that the DBE's progress is such that the DBE will not achieve full completion of the work by the Guaranteed Completion Date, the DBE shall immediately and at no additional cost to the City, take all measures necessary, including working such overtime, additional shifts, Sundays, or holidays as may be required to ensure that the entire Project is completed within the Guaranteed Completion Date. Upon receipt of such notice from the City's representative, the DBE shall immediately notify the City's Representative of all measures to be taken to ensure full completion of the work within the Guaranteed Completion Date. The DBE shall reimburse the City for any extra costs or expenses (including the reasonable value of any services provided by the City's employees) incurred by the City as the result of such measures.

8.3. DELAY

8.3.1. There are only two kinds of delay, Excusable Delay and Inexcusable Delay. Only Excusable Delay, that meets the requirements specified herein may result in the

adjustment of the Guaranteed Completion Date, and/or the Price and may be compensated as Extra Work as described below. All other delay(s) are Inexcusable, and except and only to the extent provided otherwise in Articles 7 and 8, by signing the Contract, the DBE agrees:

8.3.1.1. To bear the risk of Inexcusable Delays to completion of the work on the Project; and

8.3.1.2. That this Contract was made with full knowledge of this risk.

8.3.2. In agreeing to bear the risk of Inexcusable Delays to completion of the work on the Project, the DBE understands that, except and only to the extent provided otherwise in Articles 7 and 8, the occurrence of events that result in any delay in completion of the work on the Project shall not excuse the DBE from its obligation to achieve full completion of the work on the Project within the Guaranteed Completion Date, and shall not entitle the DBE to an adjustment of the Price.

8.4. ADJUSTMENT OF THE GUARANTEED COMPLETION DATE FOR EXCUSABLE DELAY

8.4.1. The Guaranteed Completion Date will be extended for an Excusable Delay, if and only if, the DBE demonstrates that all of the following six conditions are met:

8.4.1.1. Condition Number One: When the event causing the delay commences, the DBE has complied with all Contract requirements for maintaining, submitting, and updating Contract Schedules.

8.4.1.2. Condition Number Two: The delay is to the critical path. A delay is to the critical path if and only to the extent it delays a work activity that cannot be delayed without delaying completion of the entire Project beyond the contractually specified date for full completion of the work on the Project as stated in the Notice to Proceed, or as amended by Change Order. Under this Section 8.4.1.2:

8.4.1.2.1. If the Contract Schedule shows completion of the entire Project before the contractually specified date for full completion of the work on the Project, a delay is critical if and only to the extent the delay pushes completion of the entire project to a date that is beyond the contractually specified date for full completion of the Project.

8.4.1.2.2. When two or more delays occur concurrently, and each such concurrent delay by itself without consideration of the other delays would be critical, then all such concurrent delays shall be considered critical. For the purpose of determining whether and to what extent the Guaranteed Completion Date should be adjusted pursuant to Section 8.4.2, such concurrent critical delays shall be treated as a single delay which commences at the start of the delay that begins first and terminates at the cessation of the delay that ends last.

8.4.1.3. Condition Number Three: The delay is supported by the Contract Schedule (or, if appropriate, the Preliminary Schedule), current at the commencement of the event giving rise to the delay. A delay is supported only to the extent the Contract

Schedule (or, if appropriate, the Preliminary Schedule) corroborates that it causes a delay to completion of the entire Project beyond the contractually specified date for full completion because of its effect on the operation referred to in Section 8.4.1.2. The requirement that a delay be supported will be excused if the event causing the delay commences before approval of the Contract Schedule, provided that the absence of an approved Contract Schedule is not due to the DBE's failure to timely submit an acceptable Proposed Contract Schedule.

8.4.1.4. Condition Number Four: Within five (5) days of the date the DBE discovers or reasonably should discover an act, error, omission or unforeseen condition causing the delay, (even if the DBE has not been delayed when the DBE discovers or reasonably should discover the act, error, omission or unforeseen condition giving rise to the delay) the DBE submits a timely Change Order Request that meets the requirements of Section 4.2.

8.4.1.5. Condition Number Five: The delay is not caused by:

8.4.1.5.1. A naturally occurring unforeseen site condition not anticipated in the Contract Documents (e.g., unanticipated naturally occurring rock or sand); or

8.4.1.5.2. The financial inability, misconduct or default of the DBE, a Subcontractor or supplier; or

8.4.1.5.3. The unavailability of materials or parts, as long as such materials or parts were timely ordered by DBE; or

8.4.1.5.4. An error or omission in the Contract Documents caused by the DBE or the DBE's Design Consultants.

8.4.1.6. Condition Number Six: The delay is caused by:

8.4.1.6.1. Fire; or

8.4.1.6.2. Strikes, boycotts, or like obstructive actions by employees or labor organizations; or

8.4.1.6.3. Acts of God, including earthquakes in excess of a magnitude of 3.5 on the Richter Scale, tidal waves, floods, unusually severe weather, epidemic, or other severe natural disaster; or

8.4.1.6.4. A man made (not naturally occurring) unforeseen site condition such as buried utility lines, pipes, and the like; or

8.4.1.6.5. An error or omission in the Contract Documents caused by the City; or

8.4.1.6.6. The City's decision to change the Scope of Work, where such decision is not the result of any default or misconduct of the DBE; or

8.4.1.6.7. The City's decision to suspend the work on the Project, where such decision is not the result of any default or misconduct of the DBE; or

8.4.1.6.8. The failure of the City or the City's representative to timely perform any Contract obligation unless such failure is due to the DBE's default or misconduct.

8.4.2. If and only if a delay meets all six conditions prescribed in Section 8.4.1, then the Guaranteed Completion Date will be extended by the number of days completion of the entire Project is delayed beyond the Guaranteed Completion Date for full completion of the work on the Project.

8.4.3. If for any reason one or more of the six conditions prescribed in Section 8.4.1 is held legally unenforceable, then all remaining conditions must be met as a condition to obtaining an extension of the Guaranteed Completion Date under Section 8.4.2.

8.5. COMPENSATION FOR EXCUSABLE DELAY

8.5.1. City's liability to DBE for delays for which the City is responsible shall be limited to only an extension of time unless such delays were unreasonable under the circumstances. In no case shall the City be liable for any costs which are borne by the DBE in the regular course of business, including, but not limited to, home office overhead and other ongoing costs. Damages caused by unreasonable City delay, including delays caused by items that are the responsibility of the City pursuant to Government Code section 4215, shall be based on actual costs only; no proportions or formulas shall be used to calculate any delay damages. DBE shall be deemed to waive any right to delay damages unless: (i) DBE complies with all requirements of the Contract for providing timely notice to the City and timely requests for adjustments to the Guaranteed Completion Date and Price, and (ii) DBE meets all conditions of section 8.4 and is granted an extension of the Guaranteed Completion Date.

8.5.2. By signing the Contract, the parties agree that the City has the right to do any or all of the following, which are reasonable and within the contemplation of the parties:

8.5.2.1. To order changes in the Scope of Work, regardless of the extent and number of changes, including without limitation:

8.5.2.1.1. Changes to correct errors or omissions caused by the City, if any, in the Contract Documents.

8.5.2.1.2. Changes resulting from the City's decision to change the Scope of the Work subsequent to execution of the Contract.

8.5.2.1.3. Changes due to unforeseen conditions.

8.5.2.2. To suspend work on the Project or any part thereof.

8.5.2.3. To delay work on the Project, including without limitation, delays resulting from the failure of the City or the City's Representative to timely perform any Contract obligation and delays for the City's convenience.

8.6. WAIVER

8.6.1. A waiver of, or failure by, the City or the City's Representative to enforce any requirement in this Article 8, including without limitation the requirements in Section 8.4, in connection with any or all past delays shall not constitute a waiver of, and shall not preclude the City or the City's Representative from enforcing, such requirements in connection with any present or future delays.

8.6.2. The DBE agrees and understands that no oral approval, either express or implied, of any time extension by the City or its agents shall be binding upon the City unless and until such approval is ratified by execution of a written Change Order.

ARTICLE 9. PAYMENTS AND COMPLETION

9.1. COST BREAKDOWN/SCHEDULE OF VALUES

9.1.1. Within ten (10) days after DSA plan approval, the DBE shall submit to the City's Representative a detailed Cost Breakdown/Schedule of Values ("Cost Breakdown") of the portion of the Price applicable to that phase of the work in a form reasonably approvable to the City. Each such Cost Breakdown shall itemize as separate line items the cost of each work activity for the applicable phase and all associated costs, including but not limited to warranties, as built documents, overhead expenses, and the total allowance for profit. Insurance and bonds shall each be listed as separate line items. The total of all line items shall at all times be consistent with the Price. The Cost Breakdown, when approved by the City's Representative, shall become part of the Contract Documents and shall be the basis for determining the cost of the work performed for the DBE's Applications for Payment.

9.2. PROGRESS PAYMENT

9.2.1. The City agrees to pay monthly to the DBE, subject to Section 9.4.2, an amount equal to 95% of the sum of the following:

9.2.1.1. Cost of the Construction Work in permanent place as of the end of the preceding month.

9.2.1.2. Cost of materials not yet incorporated in the Construction Work, subject to Section 9.3.5.

9.2.1.3. Less amounts previously paid.

9.2.1.4. During the Design Work, the City shall pay the DBE monthly a uniform amount prorated, based on the Guaranteed Completion Date and Price associated with either Schematic Design or Construction Documents Phase.

9.3. APPLICATION FOR PAYMENT

9.3.1. On or before the 10th day of the month or such other date as is established by the Contract Documents, the DBE shall submit to the City's Representative an itemized Application For Payment, for the cost of the work in permanent place, as approved by the City's Representative, which has been completed in accordance with the Contract Documents as of the last day of the preceding month, less amounts previously paid. The Application For Payment shall be prepared as follows:

9.3.1.1. In a form approved by the City.

9.3.1.2. Itemized in accordance with the Cost Breakdown as applicable.

9.3.1.3. Include such data substantiating the DBE's right to payment as the City's Representative may reasonably require, such as invoices, certified payrolls, daily time and material records, and, if securities are deposited in lieu of retention pursuant to Section 9.5, a certification of the market value of all such securities as of a date not earlier than 5 days prior to the date of the Application For Payment as applicable.

9.3.1.4. Itemized retention.

9.3.2. Applications For Payment shall not include requests for payment on account of (1) changes which have not been authorized by Change Orders or (2) amounts the DBE does not intend to pay a Subcontractor because of a dispute or other reason.

9.3.3. If required by the City, an Application For Payment shall be accompanied by (1) a summary showing payments that will be made to Subcontractors covered by such application and (2) unconditional waivers and releases of claims and Stop Payment Notices, in the form contained in the Exhibits, from each Subcontractor listed in the preceding Application For Payment covering sums disbursed pursuant to that preceding Application For Payment.

9.3.4. The DBE warrants that, upon submittal of an Application For Payment, all work on the Project, for which Certificates For Payment have been previously issued and payment has been received from the City, shall be free and clear of all claims, Stop Payment Notices, security interests, and encumbrances in favor of the DBE, Subcontractors, or other persons or firms entitled to make claims by reason of having provided labor, materials, or equipment relating to work on the Project.

9.3.5. The City's Representative may approve for inclusion in the Application For Payment the cost of materials not yet incorporated in the Construction Work but already delivered and suitably stored either at the Project Site or at some other appropriate location acceptable to the City's Representative, such as, but not limited to, a licensed and bonded warehouse. DBE shall maintain insurance coverage as required by this Contract for the stored materials. In such case, the DBE shall furnish evidence satisfactory to the City's Representative (1) of the cost of such materials and (2) that such materials are under the exclusive control of the DBE. Only materials to be incorporated in the work on the Project will be considered for payment. Any payment shall not be construed as acceptance of such materials nor relieve the

DBE from sole responsibility for the care and protection of such materials; nor relieve the DBE from risk of loss to such materials from any cause other than negligence or willful misconduct of the City; nor relieve the DBE from its obligation to complete the work on the Project in accordance with the Contract; nor act as a waiver of the right of the City to require fulfillment of all terms of the Contract.

9.4. APPROVAL OF APPLICATION FOR PAYMENT BY CITY

9.4.1. [RESERVED]

9.4.2. Failure by the City to deduct any sums from a progress payment shall not constitute a waiver of the City's right to such sums. The City may keep any moneys which would otherwise be payable at any time hereunder and apply the same, or so much as may be necessary therefore, to the payment of any expenses, losses, or damages as determined by the City, incurred by the City for which the DBE is liable under the contract. For instance, the City may withhold payment, in whole or in part, to such extent as may be necessary to protect the City from loss because of:

9.4.2.1. Failure to provide requested supporting documents;

9.4.2.2. Defective work not timely remedied;

9.4.2.3. Stop Payment Notices. If any Stop Payment Notice or other lien is filed on the Project for labor, materials, supplies, equipment or any other thing of value claimed to have been furnished to or incorporated into the work on the Project, or for other alleged contribution thereto, the City shall retain from payments otherwise due the DBE, in addition to other amounts properly withheld under this Section or under other provisions of the Contract, an amount equal to 125 percent (125%) of the amount claimed under such Stop Payment Notice; provided, however, that the City may release such funds upon receipt of evidence satisfactory to the City to the effect that the DBE has resolved such claim, by settlement, Stop Payment Notice Release Bond or otherwise. All other provisions of state law with respect to Stop Payment Notices shall also apply;

9.4.2.4. Liquidated damages assessed against the DBE;

9.4.2.5. Commercially reasonable doubt, after consultation with the DBE, that the work on the Project can be completed for the unpaid balance of any Price or within the Guaranteed Completion Date;

9.4.2.6. Damage to the City, another contractor, or subcontractor, including any sums expended by or on behalf of the City in performing any of the DBE's obligations under the Contract which the DBE has failed to perform or has performed inadequately;

9.4.2.7. Unsatisfactory prosecution of the work by the DBE;

9.4.2.8. Failure to store and properly secure materials;

9.4.2.9. Failure of the DBE to submit on a timely basis, proper and sufficient documentation required by the Contract, including, without limitation, monthly progress schedules, shop drawings, submittal schedules, schedule of values, product data and samples, proposed product lists, executed change orders, and verified reports;

9.4.2.10. Failure of the DBE to maintain record drawings;

9.4.2.11. Erroneous estimates by the DBE of the value of the work on the Project performed, or other false statements in an Application for Payment;

9.4.2.12. Unauthorized deviations from the Contract Documents;

9.4.2.13. Failure of the DBE to prosecute the work on the Project in a timely manner in compliance with established progress schedules and completion dates; or

9.4.2.14. Forfeiture of funds pursuant to California Labor Code Section 1727. The City shall retain and transfer those funds pursuant to California Labor Code Section 1730.

9.4.3. Subject to the withholding provisions of Section 9.4.2, the City will pay the DBE the amount set forth in the Application For Payment no later than 30 days after the City's receipt of the Application For Payment.

9.4.4. Neither the City nor the City's Representative will have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

9.4.5. No payments or approvals/processing of Applications For Payment made by the City will constitute acceptance of Defective Work.

9.5. DEPOSIT OF SECURITIES IN LIEU OF RETENTION AND DEPOSIT OF RETENTION INTO ESCROW

9.5.1. At the request and expense of the DBE, a substitution of securities may be made for any monies retained by the City under Section 9.2 to ensure performance under the Contract Documents. Securities equivalent in value to the retention amount required by the Contract Documents for each Application For Payment shall be deposited by the DBE with a state or federally chartered bank in the State of California ("Escrow Agent"), which shall hold such securities pursuant to the escrow Contract referred to in Section 9.5.3 until final payment is due in accordance with Section 9.7. Securities shall be valued as often as conditions of the securities market warrant, but in no case less than once per month. The DBE shall deposit additional securities so that the current market value of the total of all deposited securities shall be at least equal to the total required amount of retention.

9.5.2. Alternatively to Section 9.5.1, and at the request and expense of the DBE, the City will deposit retention directly with Escrow Agent. The DBE may direct the investment of such deposited retention into interest bearing accounts or securities, and such deposits or

securities shall be held by Escrow Agent upon the same terms provided for securities deposited by the DBE.

9.5.3. A prerequisite to the substitution of securities in lieu of retention or the Deposit of retention into escrow shall be the execution by the DBE, the City, and Escrow Agent of an Escrow Contract for Deposit of Securities in Lieu of Retention and Deposit of Retention in the form set forth in the Public Contract Code. The terms of such escrow Contract are incorporated into the requirements of this Section 9.5.

9.6. COMPLETION AND FINAL PAYMENT

9.6.1. Completion shall be when the City's Representative determines that the work on the Project is fully completed and in accordance with the Contract Documents. When the DBE gives notice to the City's Representative that the Construction Work is complete, unless the City's Representative determines that the Construction Work is not sufficiently complete to warrant an inspection to determine Completion, the City's Representative will inspect the Construction Work, and prepare and give to the DBE a comprehensive list of items to be completed or corrected before establishing Completion. The DBE shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the DBE to complete all Construction Work in accordance with the Contract Documents. The City's Representative will make an inspection to determine whether the Construction Work is complete. If the City's Representative's inspection discloses any item, whether or not included on the list, which must be completed or corrected before Completion, the DBE shall complete or correct such item. The DBE shall then submit a request for another inspection by the City's Representative to determine Completion. Costs for additional inspection that are required because of DBE's failures or omissions by the City's Representative shall be deducted from any monies due and payable to the DBE. Completion shall not occur until DBE procures all guarantees and warranties, all operating manuals for equipment installed in the Project, all As-built documents, and all other submittals required by the Contract Documents, except for submittals due concurrently with the final Application for Payment.

9.6.2. Neither final payment nor any retention shall become due until the DBE submits the final Application For Payment and all submittals required in accordance with Section 9.3.

9.6.3. Acceptance of final payment by the DBE shall constitute a waiver of all claims, except those previously made in writing and identified by the DBE as unsettled at the time of the final Application For Payment, and DBE shall submit a waiver of all such claims (except those previously made in writing and identified by the DBE as unsettled at the time of the final Application For Payment), in a form reasonably acceptable to the City, at the time of final payment.

9.6.4. The Guarantee To Repair Period will begin on the date of acceptance of the Project by the City.

ARTICLE 10. PROTECTION OF PERSONS AND PROPERTY

10.1. SAFETY PRECAUTIONS AND PROGRAMS

10.1.1. The DBE shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

10.2. SAFETY OF PERSONS AND PROPERTY

10.2.1. The DBE shall take adequate precautions for safety of and shall provide adequate protection to prevent damage, injury, or loss to the following:

10.2.1.1. Employees involved in the Construction Work and other persons who may be affected thereby.

10.2.1.2. The Construction Work in place and materials and equipment to be incorporated therein, whether in storage on or off the Project Site, under care, custody, or control of the DBE or Subcontractors.

10.2.1.3. Other property at the Project Site and adjoining property.

10.2.2. The DBE shall erect and maintain, as required by existing conditions and performance of the work on the Project, adequate safeguards for safety and protection, including providing adequate lighting and ventilation, posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying City and users of adjacent sites and utilities.

10.2.3. When use or storage of explosives, other hazardous materials, equipment, or unusual methods are necessary for execution of the Construction Work, the DBE shall exercise the utmost care and carry on such activities only under the supervision of properly qualified personnel.

10.2.4. The DBE shall designate a responsible member of the DBE's organization at the Project Site whose duty shall be the prevention of accidents. That person shall be the Superintendent, unless otherwise designated by the DBE in writing to the City and the City's Representative.

10.2.5. The DBE shall not load or permit any part of the Construction Work or the Project Site to be loaded so as to endanger the safety of persons or property.

10.3. EMERGENCIES

10.3.1. In an emergency affecting the safety of persons or property, the DBE shall act to prevent or minimize damage, injury, or loss. The DBE shall promptly notify the City's Representative, which notice may be oral followed by written confirmation, of the occurrence of such an emergency and the DBE's action.

ARTICLE 11. INSURANCE AND BONDS

11.1. THE DESIGN-BUILD ENTITY'S INSURANCE

11.1.1. Minimum Scope of Insurance.

11.1.1.1. General Liability: Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01). The policy shall not contain any endorsement restricting standard Insurance Services Office "insured contract" language.

11.1.1.2. Automobile Liability: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto).

11.1.1.3. Workers' Compensation and Employers' Liability: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

11.1.1.4. Professional Liability: Professional Liability Insurance insuring the DBE, its officers, directors, stockholders, employees, agents, or partner, and all other persons for whose acts the DBE may be liable, against any and all liabilities arising out of or in connection with the negligent acts, errors or omissions of any of the foregoing in connection with the carrying out of their professional responsibilities described in this Contract. Professional Liability Insurance shall remain in full force and effect, and shall be so certified to the City by the insurer, for a period of three (3) years after the termination of this Contract and the completion of all of the DBE's services hereunder.

11.1.2. Minimum Limits of Insurance.

11.1.2.1. General Liability: General Liability will be provided in the following: 2,000,000 per Occurrence; 4,000,000 General Aggregate; 4,000,000 Products / Completed Operations Aggregate. The General Aggregate must apply separately to each project.

11.1.2.2. Automobile Liability: \$1,000,000 combined single limit per accident. Coverage must apply to all owned, hired, and non-owned vehicles.

11.1.2.3. Workers' Compensation and Employers' Liability: Workers' compensation limits as required by the Labor Code of the State of California. Employers Liability limits of \$1,000,000 per accident, \$1,000,000 disease per employee, and \$1,000,000 disease per policy.

11.1.2.4. Professional Liability Insurance: \$1,000,000 per claim and \$1,000,000 in Project-specific professional excess coverage.

11.1.3. Additional Insureds. The City, its Council Members and officers, employees, agents and representatives shall be named as Additional Insureds for liability arising out of ongoing and completed operations, and shall continue to be Additional Insureds for completed operations for one (1) year after completion of the work. General liability coverage

can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10, CG 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

11.1.4. Verification of Coverage. The DBE shall provide to City certificates of insurance and endorsements effecting coverage required by this Contract. The certificates must reference the Project name. All insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VII, licensed to do business in California, and satisfactory to the City. All insurance required by this Section shall also contain standard separation of insureds provisions and shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents and volunteers. All policies shall contain a provision stating that such policies are primary insurance and that the insurance of City or any named insured shall not be called upon to contribute to any loss. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on industry standard forms (such as an ISO CG 2010 (or insurer's equivalent) signed by the insurer's representative, and a certificate of insurance (Acord form 25-S or equivalent) with additional insured endorsements attached), and acceptable to the City. All certificates and endorsements must be received and approved by the City within five (5) calendar days of the date of the award. The City reserves the right to require complete, certified copies of all required insurance policies, at any time. Upon written request, certified copies of the required insurance policies must be provided within thirty (30) days.

11.1.5. Waiver of Subrogation. DBE shall waive all rights against City and any of its assignees, agents and, each of the other, for damages caused by fire or other perils to the extent covered (i.e., insurance proceeds are actually received) by insurance obtained pursuant to this Article 11 or other insurance applicable to the Project. DBE shall require of any assignees, Subcontractors, sub-Subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a Person or entity even though that Person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the Person or entity had an insurable interest in the property damaged. If the insurance policies purchased hereunder do not allow the insured to waive rights of recovery against others prior to loss, DBE shall cause them to be endorsed with a waiver of subrogation as required above. The waiver of subrogation provided herein shall be effective as against all corporations or entities provided insurance coverage to or for the Project of any person or entity performing work on the Project, and this waiver includes but is not limited to, insurance coverage provided by private sector insurers and self-insured contractors or corporations.

11.1.6. Self-Insured Retentions. Insurance deductibles or self-insured retentions must be declared by the DBE, and such deductibles and retentions shall have the prior written consent from the City. At the election of the City, the DBE shall either 1) reduce or eliminate such deductibles or self-insured retentions, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses. Any deductible or self-insured retention shall be shown on the Certificates of Insurance. DBE is responsible for any deductible or self-insured retention and shall fund it upon City's written

request, regardless of whether DBE has a claim against the insurance or is named as a party in any action involving City. If umbrella or excess liability coverage is used to meet any required limit(s) specified herein, the DBE shall provide a “follow form” endorsement satisfactory to the City indicating that such coverage is subject to the same terms and conditions as the underlying liability policy.

11.1.7. Material Modifications. DBE shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased. In the event of a material modification or cancellation of coverage, the City may terminate or stop the Work in accordance with the Contract Documents, unless the City receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverages set forth herein and the insurance required herein is in full force and effect. DBE shall not take possession, or use the Site, or commence operations under this Agreement until the City has been furnished original Certificate(s) of Insurance and certified original copies of endorsements or policies of insurance including all endorsements and any and all other attachments as required in this Section. The original endorsements for each policy and the Certificate of Insurance shall be signed by an individual authorized by the insurance carrier to do so on its behalf.

11.1.8. Subcontractors. DBE shall pass down the insurance obligations contained herein to all tiers of sub-contractors working under this Contract. The minimum coverage limits shall remain the same as for DBE, except that subcontractors may provide general liability coverage in the amounts of \$1,000,000 per occurrence; \$2,000,000 general aggregate; and \$2,000,000 products/completed operations aggregate. The general aggregate shall apply separately to each project.

11.1.9. Other Insurance. The DBE shall provide all other insurance required to be maintained under applicable laws, ordinances, rules, and regulations.

11.2. PERFORMANCE AND PAYMENT BOND

11.2.1. The DBE shall furnish bonds covering the faithful performance of the Contract (Performance Bond) and payment of obligations arising thereunder (Payment Bond) on the forms contained in the exhibits to the Contract.

11.2.2. The Payment Bond and Performance Bond shall each be in the amount of the Price.

11.2.3. The Payment Bond and Performance Bond shall be in effect on the Date the Contract is signed by the City.

11.2.4. Surety companies used by the DBE shall be, on the Date the Contract is signed by the City, listed in the latest published State of California, Department of Insurance list of "Insurers Admitted to Transact Surety Insurance in this State."

11.2.5. The premiums for the Payment Bond and Performance Bond shall be paid by the DBE.

11.2.6. The DBE maintains and agrees that it has executed Payment and Performance Bonds in the amounts and manner required by the Bid Documents.

11.2.7. No payment will be made to the DBE until the DBE's Payment Bond and Performance Bond have been approved by the City.

11.2.8. Should, in the City's sole opinion, any bond become insufficient or Surety found to be unsatisfactory, the DBE shall renew or replace the effected bond within 10 days of receiving notice from the City.

11.2.9. To the extent, if any, that the Price is increased in accordance with the Contract, the DBE shall, upon request of the City, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the City.

11.2.10. No change or alteration of the Contract (including, without limitation, an increase in the Price, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the DBE will release the surety. If the DBE fails to furnish any required bond, the City may terminate the Contract for cause.

ARTICLE 12. UNCOVERING AND CORRECTION OF CONSTRUCTION WORK

12.1. UNCOVERING OF WORK ON THE PROJECT

12.1.1. If a portion of the Construction Work is covered contrary to the City's Representative's request or direction, or contrary to the requirements of the Contract Documents, it must, if required in writing by the City's Representative, be uncovered for the City's Representative's observation and be replaced at the DBE's expense without adjustment of the Guaranteed Completion Date or the Price.

12.1.2. If a portion of the Construction Work has been covered, which is not required by the Contract Documents to be observed or inspected prior to its being covered and which the City's Representative has not specifically requested to observe prior to its being covered, the City's Representative may request to see such Construction Work and it shall be uncovered and replaced by the DBE. If such Construction Work is in accordance with the Contract Documents, the costs of uncovering and replacing the Construction Work shall be added to the Price by Change Order; and if the uncovering and replacing of the Construction Work extends the Guaranteed Completion Date, an appropriate adjustment of the Guaranteed Completion Date shall be made by Change Order. If such Construction Work is not in accordance with the Contract Documents, the DBE shall pay such costs and shall not be entitled to an adjustment of the Guaranteed Completion Date or the Price.

12.2. CORRECTION OF DEFECTIVE WORK AND GUARANTEE TO REPAIR PERIOD

12.2.1. The term "Guarantee To Repair Period" means a period of one (1) year, unless a longer period of time is specified, commencing from the date of the City's acceptance of the Project.

12.2.2. The DBE shall (1) correct Defective Work that becomes apparent during the progress of the work on the Project or during the Guarantee To Repair Period and (2) replace, repair, or restore to the City's satisfaction any other parts of the work on the Project and any other real or personal property which is damaged or destroyed as a result of Defective Work or the correction of Defective Work. The DBE shall promptly commence such correction, replacement, repair, or restoration upon notice from the City's Representative or the City, but in no case later than ten (10) days after receipt of such notice; and the DBE shall diligently and continuously prosecute such correction to completion. The DBE shall bear all costs of such correction, replacement, repair, or restoration, and all Losses resulting from such Defective Work, including additional testing, inspection, and compensation for the City's Representative's services and expenses; however, if the City requests additional testing or inspections that reveal the work by the DBE is not Defective Work, the City will bear the cost of such additional testing or inspection. The DBE shall perform corrective work on the Project at such times that are acceptable to the City and in such a manner as to avoid, to the extent practicable, disruption to the City's activities.

12.2.3. If immediate correction of Defective Work is required for life safety or the protection of property and is performed by the City or Separate Contractors, the DBE shall pay to the City all reasonable costs of correcting such Defective Work. The DBE shall replace, repair, or restore to the City's satisfaction any other parts of the Construction Work and any other real or personal property which is damaged or destroyed as a result of such Defective Work or the correction of such Defective Work.

12.2.4. The DBE shall remove from the Project Site portions of the Construction Work and materials which are not in accordance with the Contract Documents and which are neither corrected by the DBE nor accepted by the City.

12.2.5. If the DBE fails to commence correction of Defective Work within ten (10) days after notice from the City or the City's Representative or fails to diligently prosecute such correction to completion, the City may correct the Defective Work in accordance with Section 2.4; and, in addition, the City may remove the Defective Work and store salvageable materials and equipment at the DBE's expense. Any of the Scope of Work that is not performed by the DBE pursuant to this Section may limit or invalidate the warranties provided under the Contract Documents.

12.2.6. If the DBE fails to pay the costs of such removal and storage as required by Sections 12.2.4 and 12.2.5 within ten (10) days after written demand, the City may, without prejudice to other remedies, sell such materials at auction or at private sale, or otherwise dispose of such material. The DBE shall be entitled to the proceeds of such sale, if any, in excess of the costs and damages for which the DBE is liable to the City, including compensation for the City's

Representative's services and expenses. If such proceeds of sale do not cover costs and damages for which the DBE is liable to the City, the Price shall be reduced by such deficiency plus interest at the highest rate allowed by law. If there are no remaining payments due the DBE or the remaining payments are insufficient to cover such deficiency, the City may obtain payment for such deficiency from the bonds furnished by the DBE according to the Contract Documents.

12.2.7. The DBE's obligations under this Article 12 are in addition to and not in limitation of its warranty obligations hereunder or any other obligation of the DBE under the Contract Documents. Enforcement of the DBE's express warranties and guarantees to repair contained in the Contract Documents shall be in addition to and not in limitation of any other rights or remedies the City may have under the Contract Documents or at law or in equity for Defective Work. Nothing contained in this Article 12 shall be construed to establish a period of limitation with respect to other obligations of the DBE under the Contract Documents. Establishment of the Guarantee To Repair Period relates only to the specific obligation of the DBE to correct the work on the Project and in no way limits either the DBE's liability for Defective Work or the time within which proceedings may be commenced to enforce the DBE's obligations under the Contract Documents.

ARTICLE 13. TERMINATION OR SUSPENSION OF THE CONTRACT

13.1. TERMINATION BY THE DESIGN-BUILD ENTITY

13.1.1. Subject to Section 13.1.2, the DBE shall have the right to terminate the Contract only upon the occurrence of one of the following:

13.1.1.1. The work on the Project is stopped for ninety (90) consecutive days, through no act or fault of the DBE, any Subcontractor, or any employee or agent of the DBE or any Subcontractor, due to an issuance of an order of a court or other public authority having jurisdiction or due to an act of government, such as a declaration of a national emergency making material unavailable.

13.1.1.2. The City fails to perform any material obligation under the Contract Documents and fails to cure such default within thirty (30) days after receipt of notice from the DBE stating the nature of such default.

13.1.1.3. Repeated suspensions by the City, other than such suspensions as are agreed to by the DBE under Section 13.3, which constitute in the aggregate more than 20% of the Guaranteed Completion Date or ninety (90) days, whichever is larger.

13.1.2. Upon the occurrence of one of the events listed in Section 13.1.1, the DBE may, upon ten (10) days additional notice to the City and the City's Representative, and provided that the condition giving rise to the DBE's right to terminate is continuing, terminate the Contract.

13.1.3. Upon termination by the DBE, the City will pay to the DBE the sum determined by Section 13.4.4. Such payment will be the sole and exclusive remedy to which the DBE is entitled in the event of termination of the Contract by the DBE pursuant to Section 13.1;

and the DBE will be entitled to no other compensation or damages and expressly waives the same.

13.2. TERMINATION BY THE CITY FOR CAUSE

13.2.1. The City will have the right to terminate the Contract for cause at any time after the occurrence of any of the following events:

13.2.1.1. The DBE becomes insolvent or files for relief under the bankruptcy laws of the United States.

13.2.1.2. The DBE makes a general assignment for the benefit of its creditors or fails to pay its debts as the same become due.

13.2.1.3. A receiver is appointed to take charge of the DBE's property.

13.2.1.4. The commencement or completion of any work activity is thirty (30) days or more behind the Date set forth in the Contract Schedule for such work activity, and which results in an Inexcusable Delay.

13.2.1.5. The DBE abandons work on the Project.

13.2.2. Upon the occurrence of any of the following events, the City will have the right to terminate the Contract for cause if the DBE fails to promptly commence to cure such default and diligently prosecute such cure within ten (10) days after notice from the City:

13.2.2.1. The DBE persistently or repeatedly refuses or fails to supply skilled supervisory personnel, an adequate number of properly skilled workers, proper materials, or necessary equipment to prosecute the work on the Project in accordance with the Contract Documents.

13.2.2.2. The DBE fails to make prompt payment of amounts properly due Subcontractors after receiving payment from the City.

13.2.2.3. The DBE disregards Applicable Code Requirements.

13.2.2.4. The DBE persistently or materially fails to execute the work on the Project in accordance with the Contract Documents.

13.2.2.5. The DBE is in default of any other material obligation under the Contract Documents.

13.2.2.6. The DBE persistently or materially fails to comply with applicable safety requirements.

13.2.3. Upon any of the occurrences referred to in Sections 13.2.1 and 13.2.2, the City may, at its election and by notice to the DBE, terminate the Contract, including any warranties or guaranties provided in the Contract Documents (excluding equipment manufacturer

warranties), and take possession of the Project Site; accept the assignment of any or all of the subcontracts; and then complete the Project by any method the City may deem expedient. The DBE shall remove all of the DBE's materials, supplies, equipment, tools, and construction equipment and machinery from the Project Site within fifteen (15) days of such request; and if the DBE fails to do so, the City may remove or store any of the same at the DBE's expense.

13.2.4. No termination or action taken by the City after termination shall prejudice any other rights or remedies of the City provided by law or by the Contract Documents, excluding any warranties or guarantees (excluding equipment manufacturer warranties) upon such termination; and the City may proceed against the DBE to recover all Losses suffered by the City.

13.3. SUSPENSION BY THE CITY FOR CONVENIENCE

13.3.1. The City may, at any time and from time to time, without cause, order the DBE, in writing, to suspend, delay, or interrupt the work on the Project in whole or in part for such period of time, up to ninety (90) days, as the City may determine, with such period of suspension to be computed from the Date of delivery of the written order. Such order shall be specifically identified as a "Suspension Order" under this Section 13.3. The work on the Project may be stopped for such further period as the parties may agree. Upon receipt of a Suspension Order, the DBE shall, at the City's expense, comply with its terms and take all reasonable steps to minimize costs allocable to the work covered by the Suspension Order during the period of work stoppage. Within ninety (90) days after the issuance of the Suspension Order, or such extension to that period as is agreed upon by the DBE and the City, the City shall either cancel the Suspension Order or delete the work covered by such Suspension Order by issuing a Change Order.

13.3.2. If a Suspension Order is canceled or expires, the DBE shall continue with the work on the Project. A Change Order will be issued to cover any adjustments of the Price or the Guaranteed Completion Date necessarily caused by such suspension. Any Claim by the DBE for an adjustment of the Price or the Guaranteed Completion Date shall be made within twenty-one (21) days after the end of the work suspension. The DBE agrees that submission of its claim within said twenty-one (21) days is an express condition precedent to its right to Arbitrate or Litigate such a claim.

13.3.3. The provisions of this Section 13.3 shall not apply if a Suspension Order is not issued by the City. A Suspension Order shall not be required to stop the work on the Project as permitted or required under any other provision of the Contract Documents.

13.4. TERMINATION BY THE CITY FOR CONVENIENCE

13.4.1. The City may, at its option, terminate this Contract, in whole or from time to time in part, at any time by giving notice to the DBE. Upon such termination, the DBE agrees to waive any claims for damages, including loss of anticipated profits, on account thereof; and, as the sole right and remedy of the DBE, the City shall pay the DBE in accordance with Section 13.4.4.

13.4.2. Upon receipt of notice of termination under this Section 13.4, the DBE shall, unless the notice directs otherwise, do the following:

13.4.2.1. Immediately discontinue the work on the Project to the extent specified in the notice.

13.4.2.2. Place no further orders or subcontracts for materials, equipment, services, or facilities, except as may be necessary for completion of such portion of the work on the Project as is not discontinued.

13.4.2.3. Promptly cancel, on the most favorable terms reasonably possible, all subcontracts to the extent they relate to the performance of the Discontinued portion of the work on the Project.

13.4.2.4. Thereafter do only such work as may be necessary to preserve and protect work on the Project already in progress and to protect materials, plants, and equipment on the Project Site or in transit thereto.

13.4.3. Upon such termination, the obligations of the Contract shall continue as to portions of the work on the Project already performed and, subject to the DBE's obligations under Section 13.4.2, as to bona fide obligations assumed by the DBE prior to the Date of termination with respect to those portions of the work already performed.

13.4.4. Except as set forth in Section 13.4.5 below, upon such termination, the City shall pay to the DBE the sum of the following:

13.4.4.1. The amount of the Price allocable to the portion of the work on the Project properly performed by the DBE as of the Date of termination, less sums previously paid to the DBE.

13.4.4.2. Plus previously unpaid costs of any items delivered to the Project Site which were fabricated for subsequent incorporation in the work on the Project.

13.4.4.3. Plus any proven Losses with respect to materials and equipment directly resulting from such termination.

13.4.4.4. Plus reasonable demobilization costs.

13.4.4.5. Plus reasonable costs of preparing a statement of the aforesaid costs, expenses, and Losses in connection with such termination.

13.4.5. The above payment shall be the sole and exclusive remedy to which the DBE is entitled in the event of termination of the Contract by the City pursuant to Section 13.4; and the DBE will be entitled to no other compensation or damages and expressly waives same.

ARTICLE 14. STATUTORY REQUIREMENTS

14.1. HOURS OF WORK

14.1.1. The DBE and Subcontractors shall furnish sufficient forces to ensure the prosecution of the work on the Project in accordance with the Construction Schedule and in such a manner to allow for the full and adequate completion of the Project within the Guaranteed Completion Date.

14.1.2. Work on the Project shall be performed during regular working hours, except that in the event of an emergency or when required to complete the work on the Project in accordance with job progress, work may be performed outside of regular working hours with advance written notice to the City. Regular working hours shall be per local ordinance and shall not be changed except with consent of the City.

14.1.3. As may be applicable by law, provided in Article 3 (commencing at § 1810), Chapter 1, Part 7, Division 2 of the Labor Code, eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the DBE or by any Subcontractor on any subcontract under this Contract, upon the work or upon any part of the work contemplated by this Contract, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereinafter provided. Notwithstanding the provision hereinabove set forth, work performed by employees of DBE in excess of eight (8) hours per day and forty (40) hours during any one week shall be permitted upon this public work compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1-1/2) times the basic rate of pay.

14.1.4. As may be applicable by law, the DBE shall pay to the City a penalty of Twenty-five Dollars (\$25.00) for each worker employed in the execution of this Contract by the DBE, or by any Subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one (1) calendar week, in violation of the provisions of Article 3 (commencing at § 1810), Chapter 1, Part 7, Division 2 of the Labor Code, unless compensation for the workers so employed by DBE is not less than one and one-half (1-1/2) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

14.1.5. If the work done after hours is required by the Contract to be done outside the DBE's or the Inspector's regular working hours, the costs of any inspections, if required to be done outside normal working hours, shall be borne by the City.

14.1.6. If the City allows the DBE to do work outside regular working hours for the DBE's own convenience, the costs of any inspections required outside regular working hours shall be invoiced to the DBE by the City and deducted from the next Progress Payment.

14.1.7. If the DBE elects to perform work outside the Inspector's regular working hours, costs of any inspections required outside regular working hours shall be invoiced to the DBE by the City and deducted from the next Progress Payment.

14.2. WAGE RATES, TRAVEL, AND SUBSISTENCE

14.2.1. The DBE is aware of the requirements of California Labor Code sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since this Project involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, the DBE agrees to fully comply with such Prevailing Wage Laws. The DBE shall obtain a copy of the prevailing rates of per diem wages at the commencement of this Contract from the City's Business Office which wage rates are also available on the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at www.dir.ca.gov/dlsr/. The DBE shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to perform work on the Project available to interested parties upon request, and shall post copies at the DBE's principal place of business and at the Project Site. The DBE shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or allege failure to comply with the Prevailing Wage Laws. The DBE shall prepare and shall cause each Subcontractor performing any portion of the work under this Contract to prepare an accurate and certified payroll record, 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 by the DBE and/or each Subcontractor in connection with the work. certified payroll records shall be furnished directly to the Department of Industrial Relations on a weekly basis and in the format prescribed by the Department of Industrial Relations, which may include electronic submission. If requested by the City, certified payroll records shall also be submitted to the City. In the event of noncompliance with certified payroll record requirements specified herein, the DBE shall have ten (10) days in which to comply subsequent to receipt of written notice specifying any item or actions necessary to ensure compliance herewith. Should noncompliance still be evident after such ten (10) day period, the DBE shall, as a penalty to the City, forfeit one hundred dollars (\$100.00) for each day, or portion thereof, for each worker until strict compliance is effectuated. Upon the request of the California Department of Industrial Relations, such penalties shall be withheld from contract payments.

14.2.2. Holiday and overtime work, when permitted by law, shall be paid for at a rate of at least one and one-half (1½) times the above specified rate of per diem wages, unless otherwise specified. Holidays shall be defined in the Collective Bargaining Contract applicable to each particular craft, classification, or type of worker employed.

14.2.3. The DBE shall pay and shall cause to be paid each worker engaged in work on the Project not less than the general prevailing rate of per diem wages determined by the Director, regardless of any contractual relationship which may be alleged to exist between the DBE or any Subcontractor and such workers.

14.2.4. The DBE shall pay and shall cause to be paid to each worker needed to execute the work on the Project travel and subsistence payments, as such travel and subsistence

payments are defined in the applicable collective bargaining Contracts filed with the Department of Industrial Relations in accordance with Labor Code § 1773.8.

14.2.5. Pursuant to Labor Code § 1775, the DBE shall as a penalty to the City, forfeit Two-Hundred Dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing rate of per diem wages, determined by the Director, for such craft or classification in which such worker is employed for any public work done under the Contract by the DBE or by any Subcontractor under it. The amount of the penalty shall be determined by the Labor Commission and shall be based on consideration of the DBE's mistake, inadvertence, or neglect in failing to pay the correct prevailing rate of per diem wage, the previous record of the DBE in meeting his or her prevailing rate of per diem wage obligations, or the DBE's willful failure to pay the correct prevailing rate of per diem wages. A mistake, inadvertence, or neglect in failing to pay the correct prevailing rate of per diem wage is not excusable if the DBE had knowledge of it or the obligations under this part. The difference between such prevailing rate of per diem wage and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing rate of per diem wage shall be paid to each work by the DBE.

14.2.6. Any worker employed to perform work on the Project, which work is not covered by any craft or classification listed in the general prevailing rate of per diem wages determined by the Director, shall be paid not less than the minimum rate of wages specified therein for the craft or classification which most nearly corresponds to the work on the Project to be performed by them, and such minimum wage rate shall be retroactive to time of initial employment of such person in such craft or classification.

14.2.7. Pursuant to Labor Code § 1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Labor Code § 1773.8.

14.2.8. The DBE shall post at appropriate conspicuous points on the Site, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned.

14.2.9. The DBE, or any subcontractor working under the DBE, may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Section 1777.1 or Section 1777.7 of the California Labor Code. Any contract on a public works project entered into between the DBE and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid, or may have been paid to a debarred subcontractor by the DBE on the project shall be returned to the City. The DBE shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the project.

14.3. APPRENTICES AND SKILLED WORKFORCE

14.3.1. The DBE's attention is directed to the provisions of Sections 1777.5, 1777.6, and 1777.7 of the Labor Code concerning employment of apprentices by the DBE or any subcontractor. The DBE shall obtain a certificate of apprenticeship before employing any apprentice pursuant to Section 1777.5, 1777.6, and 1777.7 of the Labor Code. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, the Administrator of Apprenticeships, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

14.3.2. In accordance with Public Contract Code section 22164(c), the DBE and its Subcontractors at every tier shall 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. At least monthly, DBE shall provide City with evidence of it and its Subcontractors are complying with this requirement.

14.3.3. As used in this section:

14.3.4. "Apprenticeable occupation" means an occupation for which the chief had approved an apprenticeship program pursuant to Section 3075 of the Labor Code prior to January 1, 2014.

14.3.5. "Skilled and trained workforce" means all the workers are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the Chief of the Division of Apprenticeship Standards and at least 20 percent of the skilled journeypersons employed to perform work on the Project are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor. For an apprenticeable occupation in which no apprenticeship program had been approved by the chief prior to January 1, 1995, up to one-half of the graduation percentage requirements may be satisfied by skilled journeypersons who commenced working in the apprenticeable occupation prior to the chief's approval of an apprenticeship program for that occupation in the county in which the project is located.

14.3.6. "Skilled journeyperson" means a worker who either graduated from an apprenticeship program for the applicable occupation that was approved by the chief or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor or has at least as many hours of on-the-job experience in the applicable occupation as would be required to graduate from an apprenticeship program for the applicable occupation that is approved by the chief.

14.4. THIRD-PARTY CLAIMS (Pub. Contract Code § 9201.)

14.4.1. The City will provide the DBE with timely notice of any third party claim relating to the Contract for the Project. The City also retain full authority to compromise or otherwise settle any claim related to the Contract for the Project.

14.5. ANTI-TRUST CLAIM ASSIGNMENT (Pub. Contract Code §7103.5.)

14.5.1. The City shall provide the DBE with timely notification of the receipt of any third-party claim, relating to the Contract and the City is entitled to recover its reasonable costs incurred in providing such notification.

14.5.2. At final payment, DBE or subcontractor must agree to assign awarding party all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract.

ARTICLE 15. MISCELLANEOUS PROVISIONS

15.1. GOVERNING LAW

15.1.1. This Contract shall be governed by the laws of the State of California, venue shall be in the locale of the Project.

15.2. SUCCESSORS AND ASSIGNS

15.2.1. The City and the DBE respectively bind themselves and their successors, permitted assigns, and legal representatives to the other party and to the successors, permitted assigns, and legal representatives of such other party in respect to covenants, Contracts, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract, in whole or in part, without prior written consent of the other party, which may not be unreasonably withheld, conditioned or delayed. Notwithstanding any such assignment, each of the original contracting parties shall remain legally responsible for all of its obligations under the Contract.

15.3. RIGHTS AND REMEDIES

15.3.1. All the City's rights and remedies under the Contract Documents will be cumulative and in addition to, and not in limitation of, all other rights and remedies of the City under the Contract Documents or otherwise available at law or in equity.

15.3.2. No action or failure to act by the City or the City's Representative will constitute a waiver of a right afforded them under the Contract, nor will such action or failure to act constitute approval of or acquiescence in a condition or breach thereunder, except as may be specifically agreed in writing. No waiver by the City or the City's Representative of any condition, breach or default will constitute a waiver of any other condition, breach or default; nor will any such waiver constitute a continuing waiver.

15.3.3. No provision contained in the Contract Documents shall create or give to third parties any claim or right of action against the City, the City's Representative, or the DBE.

15.4. SURVIVAL

15.4.1. The provisions of the Contract which by their nature survive termination of the Contract or Final Completion, including all warranties, indemnities, payment obligations, and the City's right to audit the DBE's books and records, shall remain in full force and effect after Final Completion or any termination of the Contract.

15.5. COMPLETE CONTRACT

15.5.1. The Contract Documents constitute the full and complete understanding of the parties and supersede any previous agreements or understandings, oral or written, with respect to the subject matter hereof. The Contract may be modified only by a written instrument signed by both parties or as provided in Article 7.

15.6. SEVERABILITY OF PROVISIONS

15.6.1. If any one or more of the provisions contained in the Contract Documents should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

15.7. THE CITY'S RIGHT TO AUDIT

15.7.1. Subject to the confidentiality obligations contained within the Contract Documents, the City and entities and agencies designated by the City will have access to and the right to audit and the right to copy at the City's cost all of the DBE's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, and memoranda relating to the DBE's performance of Work on this Project. The DBE shall preserve all such records and other items for a period of at least three (3) years after Final Completion.

15.8. NOTICES

15.8.1. Except as otherwise provided, all notices, requests, demands, and other communications to be given under the Contract Documents shall be in writing and shall be transmitted by one of the following methods:

15.8.1.1. Personally delivered.

15.8.1.2. Sent by telecopy where receipt is confirmed.

15.8.1.3. Sent by courier where receipt is confirmed.

15.8.1.4. Sent by electronic mail (e-mail) where receipt is confirmed.

15.8.1.5. Sent by registered or certified mail, postage prepaid, return receipt requested.

15.8.2. Such notices and other communications shall be deemed given and received upon actual receipt in the case of all except registered or certified mail; and in the case of registered or certified mail, on the Date shown on the return receipt or the Date delivery during normal business hours was attempted. Such notices and communications shall be given at the respective street addresses set forth in the Contract. Such street addresses may be changed by notice given in accordance with this Section 15.8.

15.9. TIME OF THE ESSENCE

15.9.1. Time limits stated in the Contract Documents are of the essence of the Contract.

15.10. STATUTORY LIMITATION

15.10.1. Commencement of statutory limitation periods and statute of repose periods shall be as follows:

15.10.1.1. As to acts or failures to act occurring prior to Final Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Final Completion.

15.10.1.2. As to acts or failures to act occurring after the Date of Final Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the Date of any act or failure to act by the DBE pursuant to any applicable warranty, the Date of any correction of work on the Project or failure to correct work by the DBE, or the Date of actual commission of any other act or failure to perform any duty or obligation by the DBE or the City, whichever occurs last.

15.10.1.3. The time period for the applicable Statute of Repose shall commence to run at Final Completion of the Project.

15.11. CORRECTION OF ERRORS AND OMISSIONS

15.11.1. The DBE agrees to correct any error or omission in the Construction Documents or Contract Documents at no additional cost to the City.

15.12. INTERPRETATION

15.12.1. This Contract shall not be construed in favor of or against any party, but shall be construed as if all parties prepared this Contract.

**ATTACHMENT 3
PERFORMANCE BOND**

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, THE CITY OF AVALON (“City”) has awarded to _____, (“Contractor”) an agreement for _____ (hereinafter referred to as the “Project”).

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as “Contract Documents”), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, _____, the undersigned Contractor and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the City in the sum of _____ dollars, (\$_____), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one (1) year guarantee of all materials and workmanship; and shall indemnify and save harmless the City, its officers and agents, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees including reasonable attorney’s fees, incurred by City in enforcing such obligation.

The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the City’s rights or the Contractor or Surety’s obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

Whenever Contractor shall be, and is declared by the City to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the City's option:

- (1) Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or
- (2) Obtain a Bid or Bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible Bidder, arrange for a Contract between such Bidder, the Surety and the City, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the Contract price, including other costs and damages for which Surety may be liable. The term "balance of the Contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.
- (3) Permit the City to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the Contract price, including other costs and damages for which Surety may be liable. The term "balance of the Contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the City may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a Bid from Contractor for completion of the Project if the City, when declaring the Contractor in default, notifies Surety of the City's objection to Contractor's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

Design-Build Entity

By: _____
President

Surety

By: _____
Attorney-in-Fact

The rate of premium on this bond is _____ per thousand. The total amount of premium charges, \$_____.

(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety)

(Name and Address of Agent or Representative for service of process in California, if different from above)

(Telephone number of Surety and Agent or Representative for service of process in California)

State of California)
) ss.
County of _____)

On _____ before me, (here insert name and title of the notary), personally appeared _____

_____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (Seal)

NOTE: A copy of the Power-of-Attorney to local representatives of the bonding company must be attached hereto.

DRRAFT

**ATTACHMENT 4
PAYMENT BOND (LABOR AND MATERIALS)**

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the **CITY OF AVALON** ("City"), by action taken or a resolution passed _____, 20____ has awarded to _____, hereinafter designated as the "Principal," a contract ("Contract") for the work described as follows:
("Project"); and

WHEREAS, said Principal is required to furnish a bond in connection with said Contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

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

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 9100 of the Civil Code, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the Work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the Contractor and his subcontractors pursuant to Section 18663 of the Revenue and Taxation Code, with respect to such Work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by the City in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Section 9100 of the Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of

claimants otherwise entitled to recover under any such Contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of Contract between the owner or City and original Contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 9100 of the Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned and the provisions of Sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the ____ day of _____ 20____ the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

(Corporate Seal of Principal, if corporation)

Design-Build Entity

By: _____
President

(Seal of Surety)

Surety

By: _____
Attorney-in-Fact

(Attached Attorney-In-Fact Certificate and Required Acknowledgements)

***Note: Appropriate Notary Acknowledgments of Execution by Contractor and Surety and a Power of Attorney MUST BE ATTACHED.**

State of California)
) ss.
County of _____)

On _____ before me, (here insert name and title of the notary), personally appeared _____

_____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (Seal)

NOTE: A copy of the Power-of-Attorney to local representatives of the bonding company must be attached hereto.

DRAFT

**ATTACHMENT 5
RATE SCHEDULE**

Authorizations, Change Orders

The following billing rates consist of hourly rate, payroll taxes, workers' compensation insurance and overhead. All materials, subcontracts, site overhead, expenses at cost plus ____%.

Class	Rate / hr
Vice President	
Senior Project Manager	
Engineer	
Project Manager	
Designer	
Assistant Project Manager	
Site Supervisor	
Senior Project Administrator	
Project Administrator	

**ATTACHMENT 6
WARRANTIES**

[COMPLETE EQUIPMENT WARRANTIES TO BE ATTACHED BEHIND THIS COVER PAGE.]

DRAFT

**ATTACHMENT 7
WORKERS' COMPENSATION CERTIFICATION**

Labor Code section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- a. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.
- b. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work of this Contract.

Date: _____

Name of DBE: _____

Signature: _____

Print Name: _____

Title: _____

(In accordance with Article 5 - commencing at section 1860, chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any Work under this Contract.)

**ATTACHMENT 8
ASBESTOS & OTHER HAZARDOUS MATERIALS CERTIFICATION**

DBE hereby certifies that no Asbestos, or Asbestos-Containing Materials, polychlorinated biphenyl (PCB), or any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations "New Material Hazardous", shall be furnished, installed, or incorporated in any way into the Project or in any tools, devices, clothing, or equipment used to affect any portion of DBE's work on the Project for City.

DBE further certifies that it has instructed its employees with respect to the above-mentioned standards, hazards, risks, and liabilities.

Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (.1%) asbestos shall be defined as asbestos-containing material.

Any disputes involving the question of whether or not material is New Hazardous Material shall be settled by electron microscopy or other appropriate and recognized testing procedure, at the City's determination. The costs of any such tests shall be paid by DBE if the material is found to be New Hazardous Material.

All Work or materials found to be New Hazardous Material or Work or material installed with "New Hazardous Material" containing equipment will be immediately rejected and this Work will be removed at DBE's expense at no additional cost to the City.

DBE has read and understood the document Hazardous Materials Procedures & Requirements, and shall comply with all the provisions outlined therein.

Date: _____

Name of DBE: _____

Signature: _____

Print Name: _____

Title: _____

ATTACHMENT 9
IRAN CONTRACTING ACT CERTIFICATION
(Public Contract Code Section 2200 et seq.)

As required by California Public Contract Code Section 2204, the Design-Build Entity certifies subject to penalty for perjury that the option checked below relating to the Design-Build Entity's status in regard to the Iran Contracting Act of 2010 (Public Contract Code Section 2200 et seq.) is true and correct:

- The Design-Build Entity is not:
 - (i) identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203; or
 - (ii) a financial institution that extends, for 45 days or more, credit in the amount of \$20,000,000 or more to any other person or entity identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203, if that person or entity uses or will use the credit to provide goods or services in the energy sector in Iran.

- The City has exempted the Design-Build Entity from the requirements of the Iran Contracting Act of 2010 after making a public finding that, absent the exemption, the City will be unable to obtain the goods and/or services to be provided pursuant to the Contract.

- The amount of the Contract payable to the Design-Build Entity for the Project does not exceed \$1,000,000.

Signed: _____

Titled: _____

Firm: _____

Date: _____

Note: In accordance with Public Contract Code Section 2205, false certification of this form shall be reported to the California Attorney General and may result in civil penalties equal to the greater of \$250,000 or twice the Contract amount, termination of the Contract and/or ineligibility to bid on contracts for three years.