

**REPORT TO CITY COUNCIL**

**DATE:           OCTOBER 23, 2013**

**TO:             HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL**

**FROM:          GREG RAMIREZ, CITY MANAGER**

**BY:            NATHAN HAMBURGER, ASSISTANT CITY MANAGER**  
**CHRIS DODD, PUBLIC WORKS PROJECT MANAGER**

**SUBJECT:      CONTRACT AWARD FOR THE AGOURA HILLS RECREATION**  
**CENTER REHABILITATION PROJECT RE-BID; NIB 13-04**

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On April 24, 2013, the City Council authorized staff to seek bids for the Agoura Hills Recreation Center Project Re-Bid; NIB 13-04. The scope of work consists of constructing a new 6,500 feet Multi-Purpose Room, support facilities, rehabilitation of existing structures, site work, and landscaping at 29900 Ladyface Court.

On October 10, 2013, the City received ten (10) sealed bids for this project. The bid results were as follows:

Moment Construction Company, Inc.	\$7,456,700.00
Cal-City Construction, Inc.	\$8,230,000.00
Sigma Services, Inc.	\$8,975,000.00
Robert Clapper Construction Services, Inc.	\$9,273,000.00
AMG Associate, Inc.	\$9,567,000.00
Morillio Construction, Inc.	\$9,827,000.00
T.B. Penick & Sons, Inc.	\$9,868,871.00
Kemcorp Construction, Inc.	\$9,893,700.00
AWI Builders, Inc.	\$10,694,500.00
NSA Construction Group	\$10,980,000.00

On October 11, 2013, the apparent low bidder, Moment Construction Company, Inc., withdrew their bid due to a stated clerical error.

Staff reviewed the bid submittal of the apparent second low bidder, Cal-City Construction, Inc., and deemed their bid responsive and acceptable. In addition, staff contacted references to discuss Cal-City Construction's past work, as they have no prior working relationship with the City. The references indicated they were satisfied with the contractor's performance, have proven to have the ability to stay on time and on budget. The company is based in Cerritos, California and has been in the construction business for over 25 years. Having done many projects throughout the Southern California region, Cal-City Construction has worked with many cities, school districts, and other government agencies, as well as RNT Architects, the project Architecture firm.

On October 15, 2013, staff met with representatives of Cal-City Construction to present the City's project goals, expectations, discuss scheduling, and to allow Cal-City Construction to present any issues they foresee with the project. The meeting was successful, with both parties agreeing to move forward.

Staff will be providing project management, along with a contracted construction management firm, which will assist throughout the duration of the project. Construction is scheduled to commence in early November, taking approximately 48 weeks to complete in order to relocate the Community Services staff and programs by the end of calendar year 2014.

The proposed construction contract is within the City's established budget and is consistent with the latest project cost estimate provided by RNT Architects. The construction of the facility will be paid for through monies set-aside in the Recreation Center Fund, several grants, Community Development Block Grant funds, and lease-revenue bond-proceeds.

It is recommended that the City Council authorize a construction contingency in the amount of \$905,300 or 11% of the awarded construction cost. These funds would only be used as necessary, for construction alternatives, and in the case of unforeseen issues that typically arise in construction and rehabilitation projects. Although the design team has made its best efforts to anticipate where issues and problems could arise and to properly address those, it is common for various issues to arise during rehabilitation of an existing building. It is also recommended that the City Council authorize the City Manager to approve all change orders related to the construction of this project. This will allow staff to keep construction and rehabilitation efforts on schedule, should issues arise that require immediate action. Updates on the progress of the construction and finances will be brought back to the City Council periodically.

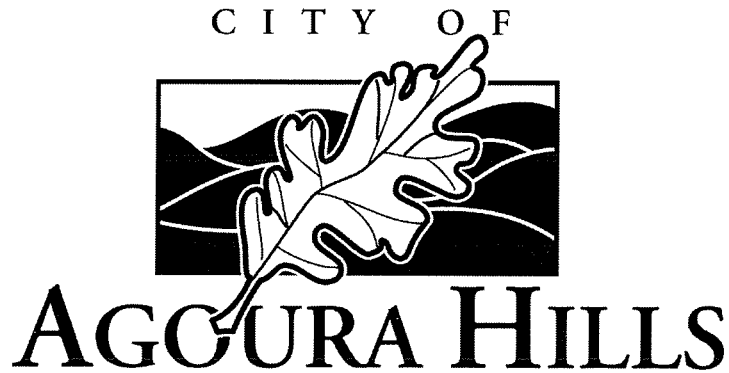
## **RECOMMENDATION**

Staff respectfully recommends the City Council award the contract for Agoura Hills Recreation Center Project Re-Bid; NIB 13-04, to Cal-City Contractors, Inc. , authorize the Mayor to sign the agreement in the amount of \$8,230,000; authorize the contingency amount of \$905,300; and authorize the City Manager to approve change orders related to the Recreation Center project.

Attachment: (A) Agreement Cal-City Construction, Inc.

CITY OF AGOURA HILLS  
CONTRACT DOCUMENTS  
SPECIFICATIONS AND STANDARD DRAWINGS  
FOR  
STORM DRAIN CONNECTOR PIPE SCREEN AND CATCH BASIN  
INLET FILTER INSTALLATION PROJECT

NIB 13-03



Prepared By:  
ROBERT CORTES

CITY OF AGOURA HILLS  
30001 LADYFACE COURT  
AGOURA HILLS, CA 91301  
(818) 597-7322



Under the Supervision of



RAMIRO ADEVA  
DIRECTOR OF PUBLIC WORKS/CITY ENGINEER

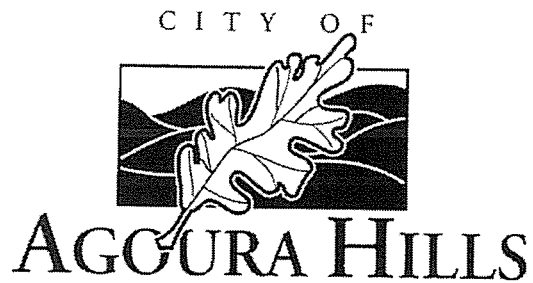
RCE NO. 66865

10/17/13

Date

**CITY OF AGOURA HILLS  
CONTRACT DOCUMENTS  
SPECIFICATIONS AND STANDARD DRAWINGS  
FOR**

**THE AGOURA HILLS RECREATION SITE  
REHABILITATION PROJECT  
NIB 13-04**



**CONTACT: CHRIS DODD, PUBLIC WORKS PROJECT MANAGER  
30001 LADYFACE COURT  
AGOURA HILLS, CA. 91301  
818-597-7317  
FAX: 818-597-7341**

CITY OF AGOURA HILLS  
CITY MANAGER'S OFFICE  
CONTRACT AND ATTACHMENTS

FOR

THE AGOURA HILLS RECREATION CENTER SITE  
REHABILITATION PROJECT

AGOURA HILLS, CALIFORNIA

**THROUGHOUT THESE DOCUMENTS "CITY," AND "OWNER"  
SHALL MEAN THE CITY OF AGOURA HILLS, CALIFORNIA**

**LIST OF DOCUMENTS FOR  
EXECUTION BY SUCCESSFUL BIDDER**

Contract and Payment Schedule ..... 51

Bond for Faithful Performance ..... 60

Form to Accompany Bond for Faithful Performance ..... 62

Bond for Material Suppliers and Laborers..... 63

Form To Accompany Bond for Material Suppliers and Laborers..... 65

General Liability Special Endorsement ..... 66

Automobile Liability Special Endorsement..... 67

CONTRACT BETWEEN THE CITY OF AGOURA HILLS  
AND CAL-CITY CONSTRUCTION, INC.,  
FOR THE AGOURA HILLS RECREATION SITE  
REHABILITATION PROJECT

THIS CONTRACT is made and entered into in the CITY OF AGOURA HILLS on this 23<sup>rd</sup> day of October, 2013, by and between the CITY OF AGOURA HILLS a municipal corporation, hereinafter referred to as "CITY," and Cal-City Construction, Inc., hereinafter referred to as CONTRACTOR. CONTRACTOR's license number is 539265.

RECITALS:

WHEREAS, on October 23, 2013(date), CITY invited bids for THE AGOURA HILLS RECREATION CENTER SITE REHABILITATION PROJECT ("Project") located at 29900 Ladyface Court, Agoura Hills, California, per Specifications No. 13-04.

WHEREAS, pursuant to said invitation, CONTRACTOR submitted a proposal, which was accepted by CITY for said Project.

NOW, THEREFORE, in consideration of their mutual promises, obligations and covenants hereinafter contained, the parties hereto agree as follows:

1. Recitals. The foregoing recitals are true and correct and are a part of this CONTRACT.

2. Term. The term of this CONTRACT shall be from the date this CONTRACT is made and entered, as first written above, and shall be completed upon final acceptance of the Project by the CITY and expiration of the guarantee/maintenance period.

3. Incorporation By Reference. Notice Inviting Sealed Bids; Notice and Instructions to Bidders; Public Contract Code Section 22300; General Bid Terms and Conditions; Special Bid Terms and Conditions; Bidder's Proposal; General Conditions to the Contract; Additional Terms and Conditions to the Contract; Index of Additional Forms; Scope of Work; Building Specifications; Landscape Specifications; Civil Specifications; all other plans, drawings and specifications for the Project; all addenda as prepared prior to the date of bid opening; Required Bonds and Forms (including the Payment Request Form, Payment Schedule, Standard Form Performance Bond, Standard Form Labor and Materials Bond, General Liability Insurance Form and Automobile Liability Insurance Form); Los Angeles County Proposition A, Safe Neighborhood Parks, Gang Prevention, Tree-Planting, Senior and Youth Recreation, Beaches and Wildlife Protection, which voters approved on November 3, 1992 and Safe Neighborhood Parks, which voters approved on November 5, 1996; "Los Angeles County Regional Park and Open Space District Procedural Guide for The Specified Project, The Per Parcel Discretionary, & The Excess Funds Grant Programs"; the latest edition of the Standard Specifications for Public Works Construction (commonly known as the "Greenbook"), including supplements, prepared and promulgated by the Southern California Chapter of the American Public Works Association and the Associated General Contractors of California); and all applicable codes and regulations are hereby incorporated in a made part of this CONTRACT.

WLC

4. **Conflicts.** If there is a conflict between CONTRACT documents, CONTRACTOR shall immediately notify the CITY of said conflict, and the CITY shall have sole authority to resolve the conflict. Conflict exists only when two or more terms, conditions or items are inconsistent with each other. Omissions are not terms, conditions or items for conflict purposes.

5. **City's Obligations.** For furnishing all labor, material and equipment as specified in this CONTRACT, and for performing all work as specified in this CONTRACT, CITY will pay and CONTRACTOR shall receive therefor: \$ 8,230,000.00

Payments to the CONTRACTOR shall be made pursuant to the payment schedule in Attachment A, (four pages) attached hereto and incorporated herein by reference.

A. Payments to the CONTRACTOR shall be made within 30 days after receipt of an original payment request form provided from the CONTRACTOR, in an amount acceptable to CITY, compliance with this CONTRACT, and acceptance of the work specified by CITY and submittal of required releases, payroll reports and other documents required by the payment schedule based on work progress. All payments shall be subject to applicable retention requirements.

B. CITY shall make regular progress payments to the CONTRACTOR. In no event shall the total amount paid exceed the CONTRACT bid price unless otherwise agreed to by parties in writing.

6. **Obligations of the CONTRACTOR.**

A. CONTRACTOR shall perform as required by this CONTRACT.

B. The CONTRACTOR shall pay prevailing wage rates on this contract, and the prevailing wage rate per diem for each type of worker shall be on file at City Hall and shall be made available to any party upon request. CONTRACTOR shall comply with Labor Code Section 1773.2 and a copy of the general wage rate list shall be posted at each job site. CONTRACTOR shall obey all Federal, State, local and special district laws, ordinances and regulations.

7. **Audit and Inspection.** CONTRACTOR shall maintain satisfactory financial accounts, documents and records for the Project for a period of five (5) years after final payment under this Agreement and make them available to CITY or the Los Angeles County Regional Park and Open Space District, hereinafter referred to as "DISTRICT," for auditing at reasonable times. Upon request by CITY or DISTRICT, Contractor will promptly furnish such financial records, documents and records. Additionally, CONTRACTOR shall be subject to State Auditor examination and audit at the request of the CITY or as part of any audit of the CITY, for a period of three (3) years after final payment under this Agreement. Throughout the term of this Agreement, the CITY or the Los Angeles County Regional Park and Open Space District, hereinafter referred to as "DISTRICT," shall have the right to periodically inspect the Project area for any reason or for no reason at all.



8. **Hold Harmless and Indemnification.**

**A. Contractor's Duty.** CONTRACTOR shall defend, indemnify, and hold the CITY, its elected officials, officers, employees, volunteers, agents, and those CITY agents serving as independent contractors in the role of CITY officials (collectively "Indemnitees") free and harmless from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, bid protests, stop notices, judgments, fines, penalties, liabilities, costs and expenses of every kind and nature whatsoever, in any manner arising out of or incident to the performance of the Agreement, including without limitation, the payment of all consequential damages, attorneys' fees, experts' fees, and other related costs and expenses (individually, a "Claim," or collectively, "Claims"). Further, CONTRACTOR shall appoint competent defense counsel approved by the CITY's City Attorney at CONTRACTOR's own cost, expense and risk, to defend any and all such Claims that may be brought or instituted against Indemnitees. CONTRACTOR shall pay and satisfy any judgment, award or decree that may be rendered against Indemnitees in any such Claim. CONTRACTOR shall reimburse Indemnitees for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. CONTRACTOR's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by CONTRACTOR or Indemnitees. This indemnity shall apply to all Claims regardless of whether any insurance policies are applicable.

**B. Bid Protests.** In addition to its obligations pursuant to the paragraph above, Contractor shall reimburse the City for all attorneys' fees and costs incurred by City in connection with, arising out of or incident to any bid protest.

**C. Civil Code Exception.** Nothing in Section 8A shall be construed to encompass Indemnitees' sole negligence or willful misconduct to the limited extent that the underlying Agreement is subject to Civil Code section 2782(a) or the CITY's active negligence to the limited extent that the underlying Agreement is subject to Civil Code section 2782(b).

**D. Nonwaiver of Rights.** Indemnitees do not and shall not waive any rights that they may possess against CONTRACTOR because the acceptance by CITY, or the deposit with CITY, of any insurance policy or certificate required pursuant to this Agreement.

**E. Waiver of Right of Subrogation.** CONTRACTOR, on behalf of itself and all parties claiming under or through it, hereby waives all rights of subrogation against the Indemnitees, while acting within the scope of their duties, from all Claims arising out of or incident to the activities or operations performed by or on behalf of the CONTRACTOR.

**F. Survival.** The provisions of this Section 8 shall survive the termination of this Agreement and are in addition to any other rights or remedies that Indemnitees may have under the law. Payment is not required as a condition precedent to an Indemnitee's right to recover under this indemnity provision, and an entry of judgment against a CONTRACTOR shall be conclusive in favor of the Indemnitee's right to recover under this indemnity provision.

9. **Amendments.** Any amendment, modification, or variation from the terms of this CONTRACT shall be in writing and shall be effective only upon written approval by the City Manager, or his designee.

10. **Nondiscrimination.** In the performance of the terms of this CONTRACT, CONTRACTOR shall not engage in, nor permit subcontractors to engage in discrimination in employment of persons because of the age, race, color, religious creed, sex, sexual orientation, national origin ancestry, physical disability, mental disability, medical condition, or marital status of such persons. Violation of this provision may result in the imposition of penalties referred to in Labor Code Section 1735.

11. **Termination.** If, during the term of this CONTRACT, if CITY determines that CONTRACTOR is not faithfully abiding by any term or condition contained herein, including the CONTRACTOR'S refusal or failure to prosecute the work on any separate part thereof with such diligence as will ensure its completion within the time specified or any extension thereof, CITY may notify CONTRACTOR in writing of such defect or failure to perform. The notice must give to the CONTRACTOR a ten (10) calendar day period of time thereafter in which to perform said work or cure the deficiency. This includes, without limitation, increasing the work force and speeding delivery of materials. If CONTRACTOR has not performed the work or cured said deficiency within the ten (10) days specified in the notice, such failure shall constitute a breach of this CONTRACT, and CITY may terminate this CONTRACT immediately by written notice to CONTRACTOR to said effect. Thereafter, neither party shall have any further duties, obligations, responsibilities, or rights under this CONTRACT except, however, any and all obligations of CONTRACTOR'S surety shall remain in full force and effect, and shall not be extinguished, reduced, or in any manner waived by the termination hereof. In said event, CONTRACTOR shall be entitled to the reasonable value of its services performed from the beginning of the period in which the breach occurs up to the day it received CITY' Notice of Termination, minus any damages, including liquidated damages if so provided herein, occasioned by such breach.

CITY reserves the right to delay any such payment, if any, until completion or confirmed abandonment of the Project, as may be determined in the CITY' sole discretion, so as to permit a full and complete accounting of costs. In no event, however, shall CONTRACTOR be entitled to receive in excess of the compensation quoted in its bid.

12. **Insurance.** CONTRACTOR shall, prior to commencing performance hereunder, submit proof of all insurance coverage as required in the CONTRACT, special bid terms and conditions and all conditions to the contract for construction. All required insurance: shall name the CITY and the DISTRICT, as well as each of their officials, employees and agents, as additional insureds; and shall expressly provide that insurance coverage shall not be cancelled or modified by the insurance carrier without thirty (30) days prior written notice to the CITY and the DISTRICT. At all times during the term of this Agreement, CONTRACTOR shall maintain on file with the CITY's City Clerk a certificate of insurance showing that all insurance policies are in effect in the required amounts. The insurance provided by CONTRACTOR shall be primary to any coverage available to the CITY or the DISTRICT.

13. **Complete CONTRACT.** This CONTRACT shall constitute the complete CONTRACT between the parties hereto. No oral agreement, understanding, or representation not reduced to writing and specifically incorporated herein shall be of any force or effect, nor shall any such oral agreement, understanding, or representation be binding upon the parties hereto.

14. **Independent Contractor.** CONTRACTOR is and shall at all times remain, as to the CITY, a wholly independent contractor. Neither the CITY nor any of its agents shall have control over the conduct of CONTRACTOR or any of the CONTRACTOR's employees, except as herein set forth, and CONTRACTOR is free to dispose of all portions of its time and activities which it is not obligated to devote to the CITY in such a manner and to such persons, firms, or corporations at the CONTRACTOR wishes except as expressly provided in this Agreement. CONTRACTOR shall have no power to incur any debt, obligation, or liability on behalf of the CITY, bind the CITY in any manner, or otherwise act on behalf of the CITY as an agent. CONTRACTOR shall not, at any time or in any manner, represent that it or any of its agents, servants or employees, are in any manner agents, servants or employees of CITY. CONTRACTOR agrees to pay all required taxes on amounts paid to CONTRACTOR under this Agreement, and to indemnify and hold the CITY harmless from any and all taxes, assessments, penalties, and interest asserted against the CITY by reason of the independent contractor relationship created by this Agreement. CONTRACTOR shall fully comply with the workers' compensation law regarding CONTRACTOR and its employees. CONTRACTOR further agrees to indemnify and hold the CITY harmless from any failure of CONTRACTOR to comply with applicable workers' compensation laws. The CITY shall have the right to offset against the amount of any compensation due to CONTRACTOR under this Agreement any amount due to the CITY from CONTRACTOR as a result of its failure to promptly pay to the CITY any reimbursement or indemnification arising under this Section.

15. **Time of Performance.** Time is of the essence in this CONTRACT. The Project shall be completed no later than 48 weeks commencing from the issuance of the CITY of the Notice to Proceed to the CONTRACTOR.

16. **Liquidated Damages.** Should the CONTRACTOR fail to complete the Project, or any part thereof, in the time agreed upon in the CONTRACT or within such extra time as may have been allowed for delays or extensions granted as provided in the CONTRACT, the CONTRACTOR shall reimburse the CITY for the additional expense and damage for each calendar day that the CONTRACT remains uncompleted after the CONTRACT completion date. It is agreed that the amount of such additional expense and damage incurred by reason of failure to complete the CONTRACT is the per diem rate \$250.00 per calendar day. Such amounts are hereby agreed upon as liquidated damages for the loss to the CITY resulting from the failure of the CONTRACTOR to complete the Project within the allotted time and to the value of the operation of the works dependent thereon.

It is expressly understood and agreed that this amount is a reasonable amount and is established in lieu of damages which are incapable of calculation at the inception hereof; and this amount is not to be considered in the nature of a penalty. The CITY shall have the right to deduct such damages from any amount due, or that may become due to the CONTRACTOR, or the amount of such damages shall be due and collectible from the CONTRACTOR or the CONTRACTOR'S Surety.

Progress payments made after the scheduled completion date shall not constitute a waiver of liquidated damages.

17. **Conflict of Interest.** Neither CONTRACTOR nor any employees, agents or subcontractors of CONTRACTOR who will be assigned to this Project, to the best of CONTRACTOR'S knowledge, own any property or interest in properties, business relationships, or sources of income which may be affected by the performance of this CONTRACT. Should one party hereto learn of any such interest, income source, or business relationship, such fact shall immediately be brought to the attention of the other party hereto. If the parties thereupon cannot mutually agree upon a means to eliminate the conflict, CITY may terminate the CONTRACT immediately for non-performance pursuant to Section 11 herein.

18. **Successors and Assigns.** The terms hereof shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided, however, that no party hereto shall assign any of the benefits and burdens hereunder, whether voluntarily or by operation of law, without the prior written consent of the other party, and any such assignment without said consent shall be void.

19. **Authority to Execute Contract.** Both CITY and CONTRACTOR do covenant that each individual executing this CONTRACT on behalf of each party is a person duly authorized and empowered to execute CONTRACTS for such party.

20. **Notices.** All written notices required by, or related to this CONTRACT shall be sent by Certified Mail, Return Receipt Requested, postage prepaid and addressed as listed below. Neither party to this CONTRACT shall refuse to accept such mail; the parties to this CONTRACT shall promptly inform the other party of any change of address. All notices required by this CONTRACT are effective on the day of receipt, unless otherwise indicated herein. The mailing address of each party to this CONTRACT is as follows:

CITY                      City of Agoura Hills  
                                 30001 Ladyface Court.  
                                 Agoura Hills, CA 91301  
                                 Staff Contact: Chris Dodd, Public Works Project Manager

CONTRACTOR          Cal-City Construction, Inc.  
                                 16605 Norwalk Blvd  
                                 Cerritos, CA., 90703

21. **Lobbyist Certification.** CONTRACTOR fully comply with the Los Angeles County Lobbyist Ordinance codified in Los Angeles County Code Chapter 2.160.

22. **Debarred, Suspended or Ineligible Contractors.** CONTRACTOR shall not be debarred throughout the duration of this Agreement. CONTRACTOR shall not perform work with debarred subcontractor pursuant to California Labor Code Section 1777.1 or 1777.7.

23. **Antitrust Claims.** In entering into this Agreement, CONTRACTOR offers and agrees to assign to the CITY all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the California Business and Professions Code) arising from purchases of goods, services, or materials pursuant to the Agreement. This assignment shall be made and become effective at the time the CITY tenders final payment to CONTRACTOR without further acknowledgment by the parties.

24. **Third Party Claims.** CITY shall have full authority to compromise or otherwise settle any claim relating to the Agreement at any time. CITY shall timely notify CONTRACTOR of the receipt of any third-party claim relating to the Agreement. CITY shall be entitled to recover its reasonable costs incurred in providing this notice.
25. **Trenching and Excavations.** If the Project involves trenching more than four (4) feet deep, CONTRACTOR shall promptly and before the following conditions are disturbed notify the CITY in writing of any: material that CONTRACTOR believes may be material that is hazardous waste, as defined in California Health and Safety Code Section 25117, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; subsurface or latent physical conditions at the site differing from those indicated; or unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Agreement. The CITY shall promptly investigate the conditions, and if the CITY finds that the conditions do materially differ or do involve hazardous waste and cause a decrease or increase in CONTRACTOR's cost of or the time required for performance of any part of the work, the CITY shall issue a change order.
26. **Utilities.** The CITY acknowledges its responsibilities under Government Code section 4215 and incorporates that section herein by this reference.
27. **Extra Work.** Extra work, when ordered in writing by the representative of the CITY and accepted by the CONTRACTOR, shall be paid for underwritten work order in accordance with the terms therein provided. Payment for extra work will be made at the unit price or lump sum previously agreed upon in writing between the CONTRACTOR and the CITY's representative. All extra work shall be adjusted daily upon report sheet furnished by the CONTRACTOR, prepared by the CITY's representative, and signed by both parties, and said daily report shall be considered thereafter the true records of extra work done.
28. **Force Majeure.** Neither the CITY nor CONTRACTOR shall be responsible for delays in performance under this Agreement due to causes beyond its control, including but not limited to acts of God, acts of the public enemy, acts of the Government, fires, floods or other casualty, epidemics, earthquakes, labor stoppages or slowdowns, freight embargoes, unusually severe weather, and supplier delays due to such causes. Neither economic nor market conditions nor the financial condition of either party shall be considered a cause to excuse delay pursuant to this Section. Each party shall notify the other promptly in writing of each such excusable delay, its cause and its expected delay, and shall upon request update such notice.
29. **Subcontracting.** CONTRACTOR shall adhere to all provisions of the Subletting and Subcontracting Fair Practices Act, Public Contract Code Section 4100 *et seq.*, which is incorporated herein by this reference.
30. **Attorneys' Fees.** If any legal action or other proceeding, including action for declaratory relief, is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default or misrepresentation in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, experts' fees, and other costs, in addition to any other relief to which the party may be entitled.

31. **Severability.** If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**Attest: City Clerk**

By: \_\_\_\_\_

**City of Agoura Hills, Mayor**

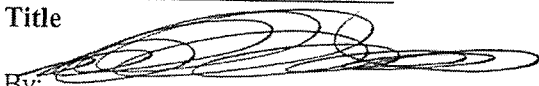
By: \_\_\_\_\_

**Approved as to Form:**

By: \_\_\_\_\_  
**City Attorney**

**Contractor: Cal-City Construction, Inc.**

By: Woo S. Lim/President  
**Title**

By:   
**Title**

ATTACHMENT A

Page-1

PAYMENT REQUEST FORM

DATE: \_\_\_\_\_

Contractor: \_\_\_\_\_

Application: # \_\_\_\_\_  
For period: \_\_\_\_\_ to \_\_\_\_\_

Project: Agoura Hills Recreation Center Site Rehabilitation Project

Contract Amount \_\_\_\_\_  
Change Order \_\_\_\_\_  
Revised Contract \_\_\_\_\_

Includes C/O #s: \_\_\_\_\_

Total paid to date \_\_\_\_\_ Contract  
Total paid to date \_\_\_\_\_ Change order(s)  
Total paid to date \_\_\_\_\_

Retention holding contract (includes this draw) \_\_\_\_\_  
Retention holding change order (includes this draw) \_\_\_\_\_  
Other withholds \_\_\_\_\_  
Total Retention Held \_\_\_\_\_

Total due \_\_\_\_\_  
Total due this invoice \_\_\_\_\_  
Balance after this invoice is paid \_\_\_\_\_

The undersigned Contractor Certifies that the work covered by this application for Payment has been completed in accordance with the Contract, that all amounts have been paid by him for work for which previous payments were issued by and payments received from the City, and the current payment shown herein is now due.

By: \_\_\_\_\_ Title \_\_\_\_\_  
By: \_\_\_\_\_ Title \_\_\_\_\_

Attach: Required wage certification for subcontractor/labor involved in this payment request on U.S. Government or City approved forms. Also, attach all releases required by Contract Documents.

PAYMENT REQUEST FORM (Continued)

Project: Agoura Hills Recreation Center Site Rehabilitation

Application: # \_\_\_\_\_

For period: \_\_\_\_\_ to \_\_\_\_\_

ITEM #	TRADE/ DESCRIPTION	VALUE	PREVIOUS APPROVED	CURRENT APPLICATION	TOTAL % COMPLETE	BALANCE REMAINING
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
GRAND TOTAL						

CONTRACTOR: \_\_\_\_\_

BY : \_\_\_\_\_

TITLE : \_\_\_\_\_

Note:

1. Use additional pages, if necessary.
2. Items to match final approved Schedule of Values.
3. Contractor may duplicate this form in a computer generated format.



## PAYMENT SCHEDULE

Total Contract:

## PAYABLE AS FOLLOWS:

1. Payment of Ninety-Five Percent (95%) of the amounts listed in each City-approved invoice will be paid on a monthly basis. Monthly invoices will be based upon the City-approved percentage of work complete, and extent of inspections, tests and City's acceptance of each individual item shown on the approved Schedule of Values for the pay period involved and compliance with all requirements of the CONTRACT. Monthly update of all record documents (for the pay period) must be approved by City prior to payment for that period.  
  
Rough, final inspection and approval by governing agencies will be required prior to 100% payment (minus retention) on the following trades, without limitation: electrical, mechanical, H.V.A.C., plumbing, fire alarm and fire code items, safety items, landscaping and irrigation, final grading and drainage. Final payment (as opposed to 100% payment less retention) is defined as payment of all retention and other withholds.
2. The remaining final five percent (5%) retention will be paid, fifty-five (55) days after 1) all work under this CONTRACT is completed, inspected and accepted by all regulatory agencies, 2) any remaining pick-up work is completed, 3) all final documentation received and approved, 4) Consent of surety for final payment is provided, 5) City has verified that there are no unresolved disputes or claims arising out of the CONTRACT and 6) Notice of Completion has been recorded by the City, whichever occurs later.
3. RETENTION IS FOR CLAIM PROTECTION, NOT FOR UNCOMPLETE WORK OR CORRECTIVE WORK.
4. Certified payroll reports and required releases must be submitted with each application for payment (use City acceptable forms). City may defer these items until check is ready to issue; at City's sole option
5. Amounts billed by contractors and suppliers are not a measure of work completed.
6. All payments shall be in accordance with the provisions of the CONTRACT including this Payment Schedule. The items of work for the project are shown in the Schedule of Values and consist of lump sum items for payment. It is the intent of these conditions that the cost of all work shown or specified but not specifically included in a lump sum item, shall be considered as being included in the amounts shown for the various items in the bid proposal.
7. Prior to receiving final retention payment, the CONTRACTOR shall execute a "General Release Agreement" form, provided herein which shall operate as, and shall be, a release to the City, the City Council and each member of the Council and their agents, officers, consultants, and employees, from any and all claims and liability to the CONTRACTOR for anything done or furnished for, or relating to, the work or for any act of neglect of the City, its agents, officials, officers, representatives, consultants, and employees, relating to or affecting the work.

8. Another requirement prior to receiving the final retention payment is that the CONTRACTOR shall file with the City his/her affidavit sworn to before a Notary Public stating that all workers and persons employed, all firms supplying materials and all subcontractors upon the project, have been paid in full, and that there are no bills outstanding against the project for either labor or materials except certain items, if any to be set forth in such affidavit, covering disputed claims or items in connection with which Notices to Withhold have been filed under the provisions of the Code of Civil Procedure. The filing of such affidavit by the CONTRACTOR shall be a prerequisite of the making, by the CITY, of the final payment on the CONTRACT, less any withholds, the City deems necessary.
9. Three copies of all payment requests, releases and certified payroll must be submitted with each payment request, one set must be an original.
10. Change orders will be listed separately on a payment request application. (After subtotal of original schedule of value items). Change orders may be listed only if executed by both parties.

BOND FOR FAITHFUL PERFORMANCE  
BOND NO. \_\_\_\_\_

KNOW ALL PERSONS BY THESE PRESENTS:

That we, \_\_\_\_\_ hereinafter referred to as "Contractor" as principal, and \_\_\_\_\_ hereinafter referred to as "Surety," are held and firmly bound unto the City of Agoura Hills, California, hereinafter referred to as "City", or "Obligee" in the 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, jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that:

WHEREAS, said Contractor has been awarded and is about to enter into the annexed Contract with the City of Agoura Hills, California, for the General Construction for the Agoura Hills Recreation Center Site Rehabilitation Project, and is required by said City to give this bond in connection with the execution of said Contract.

NOW, THEREFORE, if the said Contractor shall well and truly do and perform all the covenants and obligations of said Contract to be done and performed at the time and in the manner specified herein, then this obligation shall be null and void one year after date of recordation of Notice of Completion by City of the completed work and expiration of the guarantee period; otherwise it shall be and remain in full force and effect, and Surety shall cause the Contract to be fully performed or to pay to obligee the cost of performing said Contract in an amount not exceeding the said sum above specified, and shall also, in case suit is brought upon this bond, pay to obligee court costs and a reasonable attorney's fee, to be fixed by the court.

BOND FOR FAITHFUL PERFORMANCE (Cont'd.)

IT IS FURTHER PROVIDED, that any alterations in the work to be done or the material to be furnished shall not in any way release the Contractor or the Surety thereunder, nor shall any extensions of time granted under the provisions of the Contract release either the Contractor or the Surety; and notice of such alterations or extensions of the Contract is hereby waived by the Surety.

WITNESS our hands this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

---

Contractor:

Surety:

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

FORM TO ACCOMPANY BOND FOR FAITHFUL PERFORMANCE

STATE OF CALIFORNIA     )  
COUNTY OF                ) SS.  
CITY OF                    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2013, before me, the undersigned, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared \_\_\_\_\_, personally known to be (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument; and known to be the \_\_\_\_\_ of \_\_\_\_\_ and the same person whose name is subscribed to the within instrument as the \_\_\_\_\_ of said \_\_\_\_\_ and the said \_\_\_\_\_ duly acknowledged to me that he/she subscribed the name of \_\_\_\_\_ thereto as surety and his/her own as \_\_\_\_\_.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in the certificate first above written.

\_\_\_\_\_  
Notary Public in and for said  
County and State aforesaid.



BOND FOR MATERIAL SUPPLIERS AND LABORERS

KNOW ALL PERSONS BY THESE PRESENTS:

That we, \_\_\_\_\_ hereinafter referred to as "Contractor" as principal, and \_\_\_\_\_ hereinafter referred to as "Surety," are held and firmly bound unto the CITY OF AGOURA HILLS, CALIFORNIA, hereinafter referred to as "City" in the 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, jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that:

WHEREAS, said Contractor has been awarded and is about to enter into the annexed Contract with the City, for the General Construction for the Agoura Hills Recreation Center Site Rehabilitation Project, and is required by City to give this bond in connection with the execution of said Contract.

NOW, THEREFORE, if the said principal as Contractor in said Contract or subcontractors fails to pay for any materials, provisions, or its other supplies, or items, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Code with respect to such work or labor, said Surety will pay for the same in an amount not exceeding the sum specified above, and also, in case suit is brought upon this bond, a reasonable attorney's fee to be fixed by the court.

This bond shall inure to the benefit of any and all persons named in Section 3181 of the Civil Code of the State of California. This bond shall remain in full force and effect through the term of the Agreement and beyond as set forth herein. The Contractor may cause the Bond to be exonerated six (6) months after the date of recordation of the Notice of Completion by the City and only with the City' written permission. However, Bond shall not be exonerated if claims or stop notices remain outstanding.

BOND FOR MATERIAL SUPPLIERS AND LABORERS (Cont'd.)

IT IS FURTHER PROVIDED, that any alterations in the work to be done or the material to be furnished, which may be made pursuant to the terms of said Contract shall not in any way release either the Contractor or the Surety thereunder, nor shall any extensions of time granted under the provisions of said Contract release either the Contractor or the Surety; and notice of such alterations or extensions of the Contract is hereby waived by the Surety.

WITNESS our hands this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

---

Contractor:

By \_\_\_\_\_

Title \_\_\_\_\_

Surety:

By \_\_\_\_\_

Title \_\_\_\_\_

FORM TO ACCOMPANY BOND FOR MATERIAL SUPPLIERS AND LABORERS

STATE OF CALIFORNIA     )  
COUNTY OF                ) SS.  
CITY OF                    )

On this \_\_\_\_ day of \_\_\_\_\_, 2013, before me, the undersigned, a Notary Public in and for said County and State, residing herein, duly commissioned and sworn, personally appeared \_\_\_\_\_, known to be the \_\_\_\_\_ of \_\_\_\_\_ and the said \_\_\_\_\_ duly acknowledged to me that subscribed the name of \_\_\_\_\_ hereto as Surety and own as \_\_\_\_\_.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in the certificate first above written.

\_\_\_\_\_  
Notary Public in and for said  
County and State aforesaid



# General Liability Form

Automobile Liability Form

CITY OF AGOURA HILLS

CITY MANAGER'S OFFICE

GENERAL CONDITIONS TO THE CONTRACT

FOR

THE AGOURA HILLS RECREATION CENTER SITE  
REHABILITATION PROJECT

AGOURA HILLS, CALIFORNIA

**THROUGHOUT THESE DOCUMENTS "CITY," AND "OWNER"  
SHALL MEAN THE CITY OF AGOURA HILLS, CALIFORNIA**

## GENERAL CONDITIONS TO THE CONTRACT FOR CONSTRUCTION

The General Conditions may be supplemented or amended elsewhere in the Contract Documents by provisions located in, but not necessarily limited to, Division 1 of the Specifications and other sections of the Project Manual. All provisions which are not so amended or supplemented remain in full force and effect.

Contractor agrees that if there is a conflict within the documents, or a conflict or repetition or ambiguity within any of the documents, the City shall be the sole person to decide which document or provision shall govern, to the interest of the City.

The Architect and Construction Manager will make recommendations to the City, who will make the final decisions.

All references to arbitration (if any) are hereby deleted from this document and all other contract documents.

## ARTICLE 1

### GENERAL CONDITIONS

#### 1.1 BASIC DEFINITIONS

##### 1.1.1 THE CONTRACT

The Contract represents the entire and integrated Agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract shall not be construed to create a contractual relationship of any kind (1) between the Architect and Contractor, (2) between the City's Construction Manager and Contractor, (3) between the Architect and City's Construction Manager, (4) between the City and a Subcontractor or supplier or (5) between any persons or entities other than the City and Contractor.

##### 1.1.2 THE WORK

The term "work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The work may constitute the whole or part of the project.

##### 1.1.3 THE PROJECT

The "project" is the total construction of the work performed under the Contract Documents and may be the whole or a part and which may include construction by other Contractors and by the City's own forces including persons or entities under separate contracts not administered by the City's Construction Manager.

##### 1.1.4 THE DRAWINGS

The "drawings" are the graphic and pictorial portions of the Contract, wherever located and whenever issued, showing the design, location and dimensions of the work, generally including plans, elevations, sections, details, schedules, and diagrams.

##### 1.1.5 THE SPECIFICATIONS

The "specifications" are that portion of the Contract consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the work, and performance of related services.

##### 1.1.6 THE PROJECT MANUAL

The Project Manual is the volume assembled for the work which includes without limitation, the bidding requirements and documents, sample forms, the contract terms and conditions of the Contract.

1.1.6.1 The drawings, specifications, project manual, contract and all incorporation's by reference comprise the contract documents.

## 1.2

### **EXECUTION, CORRELATION AND INTENT**

1.2.1 The Contract Documents shall be signed by the City and Contractor as provided in the Contract. Contractor shall initial all pages of the Contract Documents.

1.2.2 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the work is to be performed and correlated personal observations with requirements of the Contract and agrees to all terms and conditions of the contract documents.

1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the work by the Contractor. THE CONTRACT DOCUMENTS ARE COMPLEMENTARY, AND WHAT IS REQUIRED BY ONE SHALL BE BINDING AS IF REQUIRED BY ALL.

1.2.4 Organization of the specifications into divisions, sections and articles, and arrangements of drawings shall not control the Contractor in dividing the work among Subcontractors or in establishing the extent of work to be performed by any trade.

1.2.5 Unless otherwise stated in the Contract, words which have well-known technical or construction industry meanings are used in the Contract in accordance with such recognized meanings.

## 1.3

### **OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS**

1.3.1 The drawings, specifications and other documents prepared by the Architect are instruments of the Architect's service through which the work to be executed by the Contractor is described. The Contractor may retain one contract record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the drawings, specifications and other documents prepared by the Architect, and unless otherwise indicated, the Architect shall be deemed the author of them and will retain all common law, statutory and other reserved rights, in addition to the copyright. All copies of them, except the Contractor's record set, shall be returned to the City, on request and as required, upon completion of the work. The drawings, specifications and other documents prepared by the Architect, and copies thereof furnished to the Contractor, are for use solely with respect to this project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this project outside the scope of the work without the prior written consent of the City and Architect. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are granted a limited license to use and reproduce

applicable portions of the drawings, specifications and other documents, prepared by the Architect, appropriate to and for use in the execution of their work under this Contract. All copies made under this license shall bear the statutory copyright notice, if any, shown on the drawings, specifications and other documents prepared by the Architect. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this project is not to be construed as publication in derogation of the Architect's copyright or other reserved rights.

**1.4 CAPITALIZATION**

**1.4.1** Terms capitalized in these General Conditions include those which are (1) specifically defined and (2) the titles of numbered articles and identified references to Paragraphs, Sub-paragraphs and Clauses in this document.

**1.5 INTERPRETATION**

**1.5.1** In the interest of brevity the Contract frequently omits 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.

## ARTICLE 2

### OWNER

#### 2.1 DEFINITION

2.1.1 The City is the person or entity identified as such in the Contract and is referred to throughout the Contract as if singular in number. The terms "City," "Owner" means the City of Agoura Hills, and it is the owner.

2.1.2 The City upon reasonable written request shall furnish to the Contractor in writing information which is necessary and relevant for the Contractor to evaluate, give notice or enforce claim rights.

#### 2.2 INFORMATION AND SERVICES REQUIRED BY THE CITY

2.2.1 The City shall at the request of the Contractor, prior to execution of the Contract, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the City's obligations under the Contract.

2.2.2 The City shall furnish surveys describing physical characteristics, and legal limitations for the site of the project.

2.2.3 Except for permits and fees which are the responsibility of the Contractor under the Contract, the City shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Unless otherwise provided under the Contract, the City, shall secure and pay for the building permit.

2.2.4 Information or services under the City's control shall be furnished by the City with reasonable promptness to avoid delay in orderly progress of the work.

2.2.5 As necessary, the City shall forward all communications to the Contractor through the fax and/or first class mail, personal delivery, or overnight delivery service and shall contemporaneously provide the same communications to the Architect.



2.3

**CITY'S RIGHT TO STOP THE WORK**

2.3.1 If the Contractor fails to correct work which is not in accordance with the requirements of the Contract or persistently fails to carry out work in accordance with the Contract, the City, by written order signed personally or by an agent specifically so empowered by the City in writing, may order the Contractor to stop the work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the City to stop the work shall not give rise to a duty on the part of the City to exercise this right for the benefit of the Contractor or any other person or entity. These remedies are supplemental to remedies found elsewhere in the Contract.

2.4

**CITY'S RIGHT TO CARRY OUT THE WORK**

2.4.1 Notwithstanding other remedies available to the City, if the Contractor defaults or neglects to carry out the work in accordance with the Contract and fails within a ten (10) calendar day period after receipt of written notice from the City to commence and correct such default or neglect with diligence and promptness, the City, at its sole option and without obligation, may, with their own or outside forces, correct such deficiencies. In such case an appropriate change order shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the City's' Construction Manager and Architect's and their respective consultants' additional services and expenses made necessary by such default, neglect, or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Cities. This remedy is cumulative.

**ARTICLE 3**  
**CONTRACTOR**

**3.1 DEFINITION**

3.1.1 The Contractor is the person or entity identified as such in the Contract and is referred to throughout this Contract as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

3.1.2 The plural term "Contractors" refers to persons or entities who perform construction under conditions of the Contract that are administered by the City's Construction Manager, and that are identical or substantially similar to these conditions.

**3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

3.2.1 In addition to other investigations required by the contract documents, the Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the City's Construction Manager and Architect at once.

3.2.2 The Contractor shall perform the work in accordance with the Contract.

**3.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

3.3.1 The Contractor shall supervise and direct the work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and all safety requirements for coordinating all portions of work under this Contract, subject to overall coordination of the Construction, and subject to overall coordination of the City's Construction Manager as provided in Subparagraphs 4.5.3.

3.3.2 The Contractor shall be responsible to the City for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons performing portions of the work under a contract with the Contractor.

3.3.3 The Contractor shall not be relieved of obligations to perform the work in accordance with the Contract either by activities or duties of the City's Construction Manager or Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

3.3.4 The Contractor shall inspect portions of the project related to the Contractor's work in order to determine that such portions are in proper condition to receive subsequent work.

3.4 **LABOR AND MATERIALS**

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

3.5 **WARRANTY**

3.5.1 The Contractor warrants to the City, City's Construction Manager and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract, that the work will be free from defects not inherent in the quality required or permitted, and that the work will conform with the requirements of the Contract. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective by City at its option. Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment as required by the contract documents and as requested by the city's Construction Manager or architect.

3.5.2 Besides guarantees required elsewhere, the Contractor shall, and hereby does, guarantee all work for a period of one (1) year or longer if provided by manufacturer or required by Statute/Contract Documents after acceptance by the City and date of recordation of Notice of Completion by City (whichever occurs later) and shall repair or replace any or all such work, together with any other work, which may be displaced in so doing, that may prove defective in workmanship and/or materials within one (1) year period from date of acceptance (whichever occurs later) of project by the City and recording of notice of completion by City without expense whatsoever to the City, ordinary wear and tear, unusual abuse or neglect excepted. The City will give notice of observed defects. The Contractor shall notify the City upon completion of repairs.

3.5.3 Subsequent to the award of Contract, the Contractor shall submit with the signed Contract and other required contract documents, a signed Guarantee form (provided in this document) guaranteeing the work to be performed by the Contractor (see page 139.)

3.5.4 During the guarantee period, the Contractor shall act on all regular complaints within 48 hours and immediately for emergency repairs pursuant to Owner's inducement form (provided). The City will not be required to call Subcontractors, suppliers or manufacturers directly.

3.5.5 The above Guarantees shall be supported by the Bond held by the City in accordance with the Special Bid Terms and Conditions of the Contract.

3.5.6 In the event of failure of the Contractor to comply with above mentioned conditions within two calendar days (48 hours) or immediately for emergencies and, after being notified in writing, the City is hereby authorized to proceed to have defects repaired and made good at expense of the Contractor who hereby agrees to pay costs and charges, direct and indirect, therefor immediately on demand.

3.5.7 If, in the opinion of the City, defective work creates a dangerous condition

or requires immediate correction or attention to prevent further loss to the City or to prevent interruption of operations of the City, the City will attempt to give the notice required by this article. If the Contractor cannot be contacted or does not comply with the City's request for correction within a reasonable time as determined by the City, the City may, notwithstanding the provisions of this Article, proceed to make such correction or provide such attention and the costs of such correction or attention shall be charged against the Contractor. Such action by the City will not relieve the Contractor of the guarantees provided in this article or elsewhere in this Contract.

**3.5.8** This article does not in any way limit the guarantee on any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period. The Contractor shall furnish the City all appropriate guarantee or warranty certificates, as required, upon completion of the project.

**3.6 TAXES**

**3.6.1** The Contractor shall pay sales, consumer, use and similar taxes for the work or portions thereof provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

**3.7 PERMITS, FEES AND NOTICES**

**3.7.1** The City shall secure and pay for the grading, building, encroachment, mechanical, electrical and plumbing permits, the health and environmental impact fees due to water and sewer connections, Edison and Gas Company capital improvement fees and the zoning regulation fees and permits. The Contractor and his Electrical, HVAC, Plumbing, Fire Alarm, Security and other Subcontractors are required to sign any such permits. The Contractor shall secure and pay for all other permits including, without limitation, plan check and permit fees for fire alarm and fire sprinkler systems and other permits, as required.

**3.7.2** The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the work.

**3.7.3** If the Contractor performs work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations, the Contractor shall assume full responsibility for such work and shall bear the attributable costs to remove, correct and/or otherwise comply with the law.

**3.8 ALLOWANCES**

See page 30 and 31 of CONTRACTORS bid documents.

3.9 **CONTRACTOR'S SUPERVISION/SUPERINTENDENT**

3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in full-time attendance at the project site during performance of the work (including after hours and weekends). They shall have extensive experience in projects similar to this one. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. The Contractor shall give efficient supervision to work, using his/her best skill and attention. He/she shall carefully study and compare all drawing, specifications and other instructions and shall at once report to the Architect any error, inconsistency or omission which he/she may discover.

3.10 **CONTRACTOR'S CONSTRUCTION SCHEDULE**

3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the City's and Architect's information and the City's Construction Manager's approval a Contractor's construction schedule for the work. Such schedule shall not exceed time limits current under the Contract, shall be revised at appropriate intervals as required by the contract documents, conditions of the work and progress. The construction schedule shall provide for expeditious and practicable execution of the work and shall show procurement and submittals. See specifications for further requirements regarding construction schedule.

3.10.2 The Contractor shall cooperate with the City's Construction Manager in scheduling and performing the Contractor's work to avoid conflict, delay in or interference with the work of other Contractors or the construction or operations of the City's own forces.

3.10.3 The Contractor shall prepare and keep current, for the City's Construction Manager's and Architect's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect and all consultants reasonable time to review submittals. Contractor shall also keep current a Request For Information (RFI) schedule and reply record.

3.11 **DOCUMENTS AND SAMPLES AT THE SITE**

3.11.1 The Contractor shall maintain at the site for the City one record copy of the drawings, specifications, addenda, change orders and other modifications, in good order and marked currently to record changes and selections made during construction, as well as approved shop drawings, product data, samples and similar required submittals. These shall be available to the City's Construction Manager and Architect and shall be delivered to the City's Construction Manager for submittal to the City upon completion of the work along with other required close out items and documents.

### 3.12

#### SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

3.12.1 Shop drawings are drawings, diagrams, schedules and other data specially prepared for the work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the work.

3.12.2 Product data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the work.

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

3.12.4 Shop drawings, product data, samples and similar submittals are not part of the Contract. The purpose of their submittal is to demonstrate for those portions of the work for which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract. Review by the Architect is subject to the limitations of Subparagraph 4.5.10.

3.12.5 The Contractor shall review, approve and submit to the Architect, in accordance with the schedule and sequence approved by the Architect, shop drawings, product data, samples and similar submittals required by the Contract Documents. The Contractor shall cooperate with the Architect in the coordination of the Contractor's shop drawings, product data, samples and similar submittals with related documents submitted by other Contractors. Submittals made by the Contractor which are not required by the Contract may be returned without action.

3.12.6 The Contractor shall not perform any portion of the work requiring submittal and review of shop drawings, product data, samples or similar submittals until the respective submittal has been approved, in writing, by the Architect.

3.12.7 By approving and submitting shop drawings, product data, samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, and has checked and coordinated the information contained within such submittals with the requirements of the work and of the Contract.

3.12.8 The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract by the Architect's approval of shop drawings, product data, samples or similar submittals unless the Contractor has specifically informed the Architect and the City in writing of such deviation at the time of submittal and the Architect has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in shop drawings, product data, samples or similar submittals by Architect's approval thereof.

3.12.9 The Contractor 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 Architect on previous submittals.

3.12.10 Informational submittals upon which the Architect are not expected to take responsive action should be so identified by the Contractor.

3.12.11 When professional certification of performance criteria of materials, systems or equipment is required by the Contract, Architect shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

### 3.13 USE OF SITE

3.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract and shall not unreasonably encumber the site with materials or equipment.

3.13.2 The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the City before using any portion of the site.

### 3.14 CUTTING AND PATCHING

3.14.1 The Contractor shall be responsible for cutting, fitting or patching as required to complete the work or to make its parts fit together properly.

3.14.2 The Contractor shall not damage or endanger a portion of the work or fully or partially completed construction performed by the City's own forces or of other Contractors by cutting, patching, excavating or otherwise altering such construction, patching, excavating or otherwise altering such construction. The Contractor shall not cut or otherwise alter such construction by other Contractors or by the City's own forces except with written consent of the City and such other Contractors; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the other Contractors or the City the Contractor's consent to cutting or otherwise altering the work. See additional cutting and patching section of the specifications.

### 3.15 CLEANING UP

3.15.1 The Contractor shall, at all times, keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the work the Contractor shall remove from and about the project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.

3.15.2 If the Contractor fails to clean up as provided in the Contract, the City may do so and the cost thereof shall be charged to the Contractor and/or paid from retention funds. See additional clean up requirements in the specifications.

3.16 **ACCESS TO WORK**

3.16.1 The Contractor shall provide the City, and its designated representatives, employees, City's Construction Manager and Architect access to the work in preparation and progress wherever located.

3.17 **ROYALTIES AND PATENTS**

3.17.1 The Contractor shall pay all royalties and license fees, fees for use of patent rights and shall hold the City, City's Construction Manager and Architect harmless from the loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer is required by the Contract.



## ARTICLE 4

### ADMINISTRATION OF THE CONTRACT

#### 4.1 ARCHITECT

4.1.1 The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Contract and is referred to throughout the Contract as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

4.1.2 The Architect shall be one of the City's representatives during construction period and he/she shall observe the progress and quality of the work on behalf of the City. He/she shall have the authority to act on behalf of the City only to the extent expressly provided in the Contract.

4.1.3 The Architect shall have all responsibilities and powers established by law and the provisions hereof.

4.1.4 The Architect shall, within a reasonable time, make recommendations on all claims of the City or the Contractor and on all other matters relating to the execution and progress of the work.

#### 4.2 CITY'S REPRESENTATIVES

4.2.1 One or more Representatives employed by the City may be assigned to the work. His/her duties shall be defined by the City.

4.2.2 The City's Construction Manager is the person or entity identified as such in the Contract and is referred to throughout the Contract as if singular in number.

4.2.3 City Representatives shall have full access to all operations involving work under this Contract and shall be provided reasonable advance notice of the time and place of operations which he/she desires to observe.

4.2.4 All work shall be under observation of the City Representatives. They shall have free access to any or all parts of work at any time. The Contractor shall furnish City Representatives reasonable facilities for obtaining such information as may be necessary to keep them fully informed respecting progress and manner of work and character of materials. Observation of work shall not relieve the Contractor from any obligation to fulfill this Contract. Project Manager shall have authority to stop work whenever provisions of the Contract are not being complied with and the Contractor shall instruct his/her employees accordingly.

4.3 Duties, responsibilities and limitations of authority of the City's Construction Manager and the Architect as set forth in the Contract shall not be restricted, modified or extended without written consent of the City, City's Construction Manager, Architect and Contractor. Consent shall not be unreasonably withheld.

4.4 In case of termination of employment of the City's Construction Manager or Architect, the City shall appoint a Construction Manager or architect against whom the Contractor makes no reasonable objection and whose status under the Contract shall be that of the former Construction Manager or architect, respectively.

4.5 **ADMINISTRATION OF THE CONTRACT**

4.5.1 The City's Construction Manager and Architect will provide administration of the Contract as described in the Contract under the direction of the Project Manager, and will advise the City during construction, until all contractual obligations are completed and contract performed or terminated. The City's Construction Manager and Architect will advise and consult with the City and will have authority as stated in the Contract, unless otherwise modified by written instrument in accordance with other provisions of the Contract. The Architect and Construction Manager will make recommendations to the City who will make the final decisions.

4.5.2 The City's Construction Manager will determine that the work is being performed in accordance with the requirements of the Contract, will keep the City informed of the progress of the work, and will endeavor to guard the City against defects, deficiencies in the work and slow progress.

4.5.3 The City's Construction Manager will provide for coordination of the activities of other Contractors and of the City's own forces with the work of the Contractor, who shall cooperate with them. The Contractor shall participate with other Contractors and the City's Construction Manager and City in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and as required by the contract documents. The construction schedules, until subsequently revised, shall constitute the schedules to be used by the Contractor, other Contractors, the City's Construction Manager and the City.

4.5.4 The Architect and City's Construction Manager will attend the bi-weekly meetings and will visit the site at times appropriate to the stage of construction to become generally familiar with the progress and quality of the completed work and to determine in general if the work is being performed in a manner indicating that the work, when completed, will be in accordance with the Contract. However, the Architect and City Construction Manager will not be required to make exhaustive or continuous on-site inspections to check quality or quantity of the work but will endeavor to guard the City against defects, deficiencies in the work and slow progress. Construction Manager may visit the job site on a daily basis.

4.5.5 The City's Construction Manager and Architect will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, since these are solely the Contractor's responsibility. Neither will be responsible for the Contractor's failure to carry out the work in accordance with the Contract. Neither the City's Construction Manager nor the Architect will have control over or charge of or be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the work.

4.5.6 Communications Facilitating Contract Administration. The City and Contractor shall communicate directly, and shall contemporaneously provide the same communications to the Architect and Construction Manager. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractor's and material suppliers shall be through the Contractor. Communications by and with other Contractors shall be through the City and shall be contemporaneously provided to the Architect and Construction Manager.

4.5.7 The City's Construction Manager will review and certify all applications for payment by the Contractor, including final payment. The City's Construction Manager will assemble each of the Contractor's applications for payment with similar applications from other Contractors into a project application and request for payment. After reviewing and certifying the amounts due the Contractors, the City's Construction Manager will submit the application and request for payment, along with the applicable Contractors' applications, releases, back up, and certificates to the Architect for concurrence.

4.5.8 Based on the City's Construction Manager's observations and evaluations of Contractor's applications for payment, and the certifications of the Architect, the application will be processed. Final approval for payment rests with the Project Manager.

4.5.9 The Architect and City will have authority to reject work which does not conform to the Contract, and to require additional inspection or testing, whether or not such work is fabricated, installed or completed, but will take such action only after notifying the City's Construction Manager. Subject to review by the Architect, the City will have the authority to reject work which does not conform to the Contract. Whenever the City's Construction Manager considers it necessary or advisable for implementation of the Contract, the City's Construction Manager may recommend that the City require additional inspection or testing of the work, whether or not such work is fabricated, installed or completed. Neither the Architect nor the City's Construction Manager's authority to act under this Subparagraph 4.5.9 nor a decision made by either of them in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the City's Construction Manager to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing any of the work.

4.5.10 The Architect will receive, review and approve and/or take other

appropriate action upon the Contractor's submittals such as shop drawings, product data and samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract. The Architect's action will be taken with such reasonable promptness as to cause no delay in the work of the Contractor or in the activities of the other Contractors, the City, or the City's Construction Manager, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Paragraph 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, or of any construction means, methods, techniques, sequences or procedures.

4.5.11 The City's Construction Manager will prepare change orders and the Architect will prepare construction change directives, when approved by the City.

4.5.12 Following consultation and direction from the City's Construction Manager and City, the Architect will take appropriate action on change orders or construction change directives in accordance with Article 7.

4.5.13 The Contractor will maintain at the construction field office, for the City, one record copy of all contracts, drawings, specifications, addenda, change orders and other modifications, in good order and marked currently to record all changes made during construction, and in addition approved shop drawings, product data, samples and similar required submittals sent by the Architect. The Architect will maintain copies of all submittals and samples which are delivered to the City upon completion of the project. Contractor will also keep a set of all submittals/substitution and color samples.

4.5.14 The City's Construction Manager will assist the Architect in conducting inspections to determine the dates of completion. The Architect will receive written warranties and related documents required by the Contract and assembled by the Contractor. The City's Construction Manager will maintain copies of all final documents required for close out of contract, after receipt of Architect's approved documents.

4.5.15 If the City and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site.

4.5.16 The Architect will interpret and make recommendations regarding matters concerning performance under, and requirements of the Contract on written request of the City, City's Construction Manager, or Contractor. The Architect's response to such requests will be made with reasonable promptness. If no agreement is made concerning the time within which interpretations required of

the Architect shall be furnished, delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 5 days after written request is made for them, 10 days if a consultant is included.

**4.5.17** Interpretations and recommendations of the Architect will be consistent with the intent of and reasonably inferable from the Contract and will be in writing and/or in the form of drawings.

**4.5.18** The Architect will make recommendations on matters relating to aesthetic effect. Final decision on matters relating to aesthetic effect rest with the City.

## 4.6

### CLAIMS AND DISPUTES

**4.6.1 Definition.** A claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "claim" also includes other disputes and matters in question, between the City and Contractor arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate claims shall rest with the party making the claim. An unresolved claim is an unresolved dispute.

**4.6.2 Time Limits on Claims.** Claims by either party must be made within 21 calendar days after occurrence of the event giving rise to such claim or within 21 days after the claimant first recognizes the condition giving rise to the claim, whichever is later. Claims must be made by written notice. An additional claim made after the initial claim has been implemented by Change Order will not be considered unless submitted in a timely manner.

**4.6.3 Continuing Contract Performance.** Pending final resolution of a claim, or unresolved dispute, answer to a change order request, settlement of a change order request, unless otherwise agreed in writing, the Contractor shall proceed diligently with performance of the work and contractual obligations and the City shall continue to make agreed upon payments in accordance with the Contract. Also see 4.7.5.

**4.6.4 Claims for Additional Cost.** If the Contractor wishes to make claim for an increase in the contract lump sum, written notice as provided herein shall be given before proceeding to execute the work as required. Prior notice is not required for claims relating to an emergency endangering life or property arising under Paragraph 10.3. If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the City to stop the work where the Contractor was not at fault, (3) a written order for a minor change in the work issued by the Architect, (4) failure of payment by the City, (5) termination of the Contract by the City, (6) or City's suspension of work, claims shall be filed in accordance with the procedure established herein.

**4.6.5 Claims for Additional Time.** Also see #9 of "Additional Terms and Conditions of the Contract."

**4.6.5.1** If the Contractor wishes to make claim for an extension in time to complete the Contract, written notice on C.O. R. form, as provided herein, shall be given by the Contractor. The Contractor's claim shall include an estimate of probable effect of delay on progress of the work. In the case of a continuing delay only one claim is necessary.

**4.6.5.2** If adverse weather conditions are the basis for a claim for additional time, such claim shall be documented in writing substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction. Payment for general condition items, overhead, and profit shall not be made for additional time granted for adverse weather conditions, vandalism, casualty loss and/or material availability. Contractor expressly waives any rights to such claims. Contractor must have provided required erosion control and access protection as a requirement to making claims for extension of time because of adverse weather conditions.

**4.6.5.3** No claims for adverse weather conditions for weekends or holidays will be granted unless contractor specifically requested (in writing) permission to work and was granted such permission by the City. If rain is predicted when the request to work is received by the City, the request to work will be rejected, unless the work is inside and protected access is in place.

**4.6.6 Injury or Damage to Person or Property.** If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 2 days after initial observance or notification. The notice shall provide sufficient detail to enable the other party to investigate the matter.

4.7

**RESOLUTION OF CLAIMS AND DISPUTES**

**4.7.1** The Architect and City's Construction Manager will review claims, with the City's Project Manager, and take one or more of the following preliminary actions within ten (10) days of receipt of a claim: (1) request additional supporting data from the claimant, (2) submit a schedule to the parties indicating when they expect to take action, (3) recommend rejecting the claim in whole or in part, stating reasons for rejection, (4) recommend approval of the claim by the other party or (5) suggest a compromise. The Architect and City may also, but are not obligated to, notify the surety, if any, of the nature and amount of the claim.

4.7.2 If a claim has been resolved, the City will notify the parties in writing of the resolution.

4.7.3 An unresolved claim over any matter whatsoever is an unresolved dispute.

4.7.4 If a claim has not been resolved, the party making the claim shall, within ten (10) days after the Architect's preliminary response, take one or more of the following actions: (1) submit additional supporting data requested by the Architect, (2) modify the initial claim, (3) notify the Architect that the initial Claim stands, or (4) withdraw the claim.

4.7.5 Contractor, in the event of any dispute or controversy with the City over any matter whatsoever, shall not cause any delay or cessation in or of work, but shall proceed with the performance of the work in dispute. This includes disputed time extension requests and prices for changes.

The disputed work will be categorized as an "unresolved dispute" and payment, if any, shall be as later determined by mutual agreement or a court of law. Contractor will keep accurate, detailed records on all disputed work, claims and other disputed matters. Public Contract Code 20104 et Seq. shall govern procedures of the claim process.

4.7.6 **NO RESERVATION ALLOWED** - In no event will the Contractor or the Sub-Contractors be allowed to reserve their rights to assert a claim for time extension or any other type claim, later than as required by paragraph 4.6.2 unless the owner agrees in writing to allow such reservation.

## ARTICLE 5

### SUBCONTRACTORS

#### 5.1 DEFINITIONS

5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the work at the site. The term "Subcontractor" is referred to throughout the Contract as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include other Contractors or Subcontractors of other Contractors. A Subcontractor shall be considered an employee of the Contractor and the Contractor shall be responsible for his/her work.

5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the work at the site. The term "Sub-subcontractor" is referred to throughout the Contract as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

#### 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 All contracts between the general Contractor and its subcontractors and suppliers shall include a provision that the subcontractors and suppliers shall be bound to the Contractor to the same extent that the Contractor is bound to the City by all terms and provisions of the Contract, and shall incorporate the contract by reference into all subcontracts. If the Contractor shall subcontract any part of this Contract, the Contractor shall be as fully responsible to the City for acts and omissions of Subcontractor and of persons either directly or indirectly employed by Subcontractor, as he/she is for acts and omissions of persons directly employed by himself/herself. Nothing contained in the Contract shall create any contractual relation between any Subcontractor and the City.

5.2.2 Contractor will comply with the bidding requirements, and shall furnish in writing to the City's Construction Manager for review by the City, the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the work.

5.2.3 The City's consent to or approval of any Subcontractor under this Contract shall not in any way relieve the Contractor of his/her obligations under this Contract and no such consent or approval shall be deemed to waive any provision of this Contract.

5.2.4 The Contractor shall not contract with a proposed person or entity to whom the City, City's Construction Manager or Architect has made reasonable and timely objection. The Contractor shall not contract to any unlicensed or uninsured Subcontractor or supplier.



5.2.5 The Contractor shall not change a Subcontractor, person or entity previously approved if the City, City's Construction Manager or Architect makes reasonable objection to such change. Substitution or addition shall be permitted only as authorized in Chapter 2 (commencing at Section 4100) Division 5, Title 1 of California Government Code.

### 5.3

#### SUBCONTRACTURAL RELATIONS

5.3.1 Each subcontract agreement shall preserve and protect the rights of the City, under the Contract with respect to the work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by this Contract, has against the City. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

## ARTICLE 6

### CONSTRUCTION BY CITY OR BY OTHER CONTRACTORS

#### 6.1 CITY'S RIGHT TO PERFORM CONSTRUCTION WITH OWN FORCES AND TO AWARD OTHER CONTRACTS

6.1.1 The City reserves the right to perform construction or operations related to the project with the City's own forces, which include persons or entities under separate contracts not administered by the City's Construction Manager. The City further reserves the right to award other contracts in connection with other portions of the project or other construction or operations on the site.

6.1.2 When the City performs construction or operations with the City's own forces including persons or entities under separate contracts, the City shall provide for coordination of such forces with the work of the Contractor, who shall fully cooperate with them.

#### 6.2 MUTUAL RESPONSIBILITY

6.2.1 The Contractor shall afford the City's own forces, City's Construction Manager and other Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract.

6.2.2 If part of the Contractor's work depends for proper execution or results upon construction or operations by the City's own forces or other Contractors, the Contractor shall, prior to proceeding with that portion of the work, promptly report to the City and Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the City's own forces or other Contractors' completed or partially completed construction is fit and proper to receive the Contractor's work.

6.2.3 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the City or other Contractors as provided in Subparagraph 12.2.1.

6.2.4 Claims and other disputes and matters in question between the Contractor and other Contractors shall be subject to the provisions of Paragraph 4.7.

6.3

**CITY'S RIGHT TO CLEAN UP**

6.3.1 If a dispute arises among the Contractor, other Contractors and the City as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Paragraph 3.15, the City may clean up and allocate the cost among those responsible as the City, in consultation with the Architect and Construction Manager, determines to be equitable.

## ARTICLE 7

### CHANGES IN THE WORK

#### 7.1 CHANGES

7.1.1 Changes in the work may be accomplished after execution of the Contract, and without invalidating the Contract, by change order, construction change directive or order for a minor change in the work, subject to the limitations stated in this Article 7 and elsewhere in the Contract.

7.1.2 A change order shall be based upon prior written agreement among the City, City's Construction Manager, Architect and Contractor; a construction change directive requires prior written agreement by the City, City's Construction Manager and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the work may be issued by the Architect with City's approval. Final approval for all change orders rests with the City. The City's Project Manager is the final approving authority.

7.1.3 Changes in the work shall be performed under applicable provisions of the Contract, and the Contractor shall proceed promptly, unless otherwise provided in the change order, construction change directive or order for a minor change in the work.

7.1.4 All requests for changes and time extensions must be made on change order request forms (provided in this manual) with detailed backup and substantiated reasons. Letter requests are unacceptable and will be returned without action.

#### 7.2 CHANGE ORDERS

7.2.1 A change order is a written instrument prepared by the City's Construction Manager and signed by the City, Architect and Contractor, stating their agreement upon all of the following:

- .1 a subsequent change in the work;
- .2 the amount of the adjustment in the Contract lump sum, if any; and
- .3 the extent of the adjustment in the Contract time, if any.

#### 7.3 CONSTRUCTION CHANGE DIRECTIVES

7.3.1 A construction change directive is a written order prepared by the Architect signed by the City, and the Architect, directing a change in the work and stating a proposed basis for adjustment, if any; in the Contract lump sum or Contract time, or both. The City may, by construction change directive, without breaching the contract, order changes in the work within the general scope of the Contract consisting of additions,

deletions or other revisions, the Contract lump sum and Contract time being adjusted accordingly.

7.3.2 A construction change directive shall be used in the absence of total agreement on the terms of a change order or pending change order.

7.3.3 If the construction change directive provides for an adjustment to the Contract lump sum, the adjustment shall be based on one of the following methods

- .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 unit prices stated in the Contract or subsequently agreed upon in writing;
- .3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 as provided in Subparagraph 7.3.6.

7.3.4 Upon receipt of a Construction change directive, the Contractor shall promptly proceed with the change in the work involved and advise the City's Construction Manager and Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction change directive for determining the proposed adjustment in the Contract lump sum or Contract time.

7.3.5 A Construction change directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract lump sum and Contract time or the method for determining them. Such agreement shall be executed as a change order.

7.3.6 If the Contractor does not respond promptly or disagrees with the method or amount for adjustment in the Contract lump sum, the method, amount and the adjustment shall be determined by the City's Construction Manager in consultation with the Architect and Owner on the basis of reasonable expenditures and savings of those performing the work attributable to the change, including, in case of an increase in the Contract lump sum, the pre-determined percentage for overhead and profit. In such case, the Contractor shall keep and present, in such form as the City's Construction Manager may prescribe, an itemized account together with appropriate supporting data. Unless otherwise provided in the Contract, costs for the purposes of this Subparagraph 7.3.6 shall be limited to the following:

- .1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers compensation insurance;

- .2 costs of materials, supplies and equipment, including cost of delivery by supplier, whether incorporated or consumed;
- .3 reasonable, competitive rental costs of equipment over \$75/day, exclusive of hand tools, whether rented from the Contractor or others;
- .4 permit fees, and sales, use or similar taxes related to the work; as limited in the conditions of the Contract.

7.3.7 Pending final determination of cost to the City, amounts not in dispute may be included in applications for payment if a change order, to that effect has been signed by the parties. The amount of credit to be allowed by the Contractor to the City for a deletion or change which results in a net decrease in the Contract lump sum shall be actual net cost as confirmed by the City's Construction Manager. When both additions and credits covering related work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

7.3.8 If the City and Contractor agree with the determination made by the City's Construction Manager and Architect concerning the adjustments in the Contract lump sum and Contract time, or otherwise reach agreement upon the adjustments, such agreement shall be recorded by preparation and execution of an appropriate change order.

7.3.9 Change Orders do not become effective until executed by all parties.

#### 7.4 MINOR CHANGES IN THE WORK

7.4.1 The Architect will have authority to order minor changes in the work not involving adjustment in the Contract lump sum or extension of the Contract time and consistent with the scope of the work covered by the Contract. Such changes shall be effected by written order issued through the Architect and approved by the City upon recommendation of the Construction Manager. The Contractor shall carry out such written orders promptly.

## ARTICLE 8

### TIME

#### 8.1 DEFINITIONS

8.1.1 Unless otherwise provided, time for performance is the number of calendar days and/or hours, including authorized adjustments, allotted in the Contract for substantial completion of the work.

8.1.2 The date of commencement of the work is the date stated in the Notice to Proceed issued by the City. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

8.1.3 The date the project is completed is the date so certified by the City.

8.1.4 The term "day" as used in the Contract shall mean calendar day unless otherwise specified.

#### 8.2 PROGRESS AND COMPLETION

8.2.1 Time limits stated in the Contract are of the essence. By submitting the proposal, the Contractor confirms that the Contract time is a reasonable period for performing the work.

8.2.2 The Contractor shall not knowingly, except by prior consent or direction of the City in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by the Contract to be furnished by the Contractor. The date of commencement of the work shall not be changed by the effective date of such insurance. The date of commencement will be established by a notice to proceed given by the City.

#### 8.3 DELAYS AND EXTENSION OF TIME

8.3.1 Subject to provisions of the Project Manual, the Contractor may request a time extension to the contract. He/she may request an extension listing reasons for the delay and submitting substantiating evidence. If the City determines the request is reasonable, a change order may be issued for said time extension.

8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Paragraph 4.6 and other appropriate sections of the contract documents.

## ARTICLE 9

### PAYMENTS AND COMPLETION

#### 9.1 CONTRACT LUMP SUM

9.1.1 The Contract lump sum is stated in the Contract and, including authorized adjustments, is the maximum amount payable by the City to the Contractor for performance of the work under the Contract.

#### 9.2 SCHEDULE OF VALUES

9.2.1 Before the first application for payment, or sooner if required by other parts of the contract documents, the Contractor shall submit to the Architect, through the City's Construction Manager a Schedule of Values allocated to various portions of the work, prepared in such form and supported by such data to substantiate its accuracy as the City's Construction Manager and Architect may require. This schedule, unless objected to by the City's Construction Manager, or Architect, shall be used as a basis for reviewing the Contractor's applications for payment.

Schedule of Values shall comply with the terms of Division 1 of Specifications and shall be submitted to the City prior to submittal of the first payment request. No such first payment request shall be honored until the Schedule of Values has been submitted and approved by the City's Construction Manager, in his/her sole discretion. General condition items will be listed individually and grouped sequentially in the Schedule of Values. City may request and contractor shall furnish, any additional information or format revisions prior to approval of the Schedule of Values including, without limitation, copies of bids and quantitative estimates. A "Front loaded" Schedule of Values, (as determined by the City), will be rejected. The final City-approved schedule of values will be used as a basis for payments. Format to be furnished by City.

#### 9.3 APPLICATIONS FOR PAYMENT

9.3.1 Contractor shall submit to the City's Construction Manager an itemized application for payment for work completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the City, City's Construction Manager or Architect may require. Use City provided forms.

9.3.1.1 Such applications may not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason.

9.3.1.2 Amounts billed by subcontractor or supplier are not a measure of work completed.

9.3.1.3 "Anticipation" of work to be completed after the pay period shown on the pay request will not be allowed. Bill for pay period only.

9.3.2 The Contractor warrants that upon submittal of an application for payment all work for which recommendation for payment have been previously issued and payments received from the City shall, to the best of the Contractor's knowledge,



information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, material or equipment relating to the work.

9.3.3 All payments shall be made pursuant to payment terms, payment schedule and requirements of the Contract.

9.3.4 All Applications for payment shall be submitted on the proper payment request forms provided by City.

9.3.5 Payments shall be made pursuant to Schedule of Values only.

9.3.6 Substantial completion does not constitute approval for final payment nor final acceptance of the work.

9.3.7 Any language set forth in Article 9 in conflict with Subsections 9.3.1 through 9.3.8 is hereby amended and superseded by the language in said subsections.

9.3.8 Payment requests will be rejected, and/or delayed, due to lack of, or improper releases or other improper or incomplete documents required to be submitted with payment requests, as determined by the City.

9.3.9 Payment for stored materials will be at the sole discretion of the City. Original detailed copies of invoices, acceptable to the City, will be required as back up for payment requests for stored materials. If paid, stored materials will be paid at actual itemized invoice amount with no "mark up." No payment will be made for materials stored off-site. Stored materials are considered as "big ticket" items, i.e., switchgear, light fixtures, finish hardware, and HVAC equipment. Pipe, wire, miscellaneous steel, ducts, miscellaneous hardware, conduit or fittings will not be paid for until installed. Payment for stored materials will not be made on a "percentage" basis.

9.3.10 All payments shall be made pursuant to payment terms, payment schedule and requirements of the contract documents.

9.3.11 There is no separate "Certificate for Payment." The owner's issuance of a check constitutes a certificate of payment.

#### 9.4 **RECOMMENDATION FOR PAYMENT**

9.4.1 The City's Construction Manager will assemble a project application for payment by certifying the amounts due on such applications and forward them to the Architect within five days.

9.4.2 Within three working days after the Architect's receipt of the project application for payment, the City's Construction Manager and Architect will either issue to the City a recommendation for payment, for such amounts as the City's Construction Manager and Architect determine is properly due, or notify the City in writing of the City's Construction Manager's and Architect's reasons for

withholding certification in whole or in part as provided in Subparagraph 9.5.1. Such notification will be forwarded to the Contractor by the City.

9.4.3 The issuance of a recommendation for payment will constitute representations made separately by the City's Construction Manager and Architect to the City, based on their individual observations at the site and the data comprising the application for payment submitted by the Contractor, that the work has progressed to the point indicated and that, to the best of the City's Construction Manager's and Architect's knowledge, information and belief, the quality and quantity of the work conforms to the Contract. The foregoing representations are subject to an evaluation of the work for conformance with the Contract upon substantial completion, to results of subsequent tests and inspections, to minor deviations from the Contract correctable prior to completion and to specific qualifications expressed by the City's Construction Manager or Architect. The issuance of a recommendation for payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the recommendation for payment will not be a representation that the City's Construction Manager or Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the work, (2) reviewed the Contractor's construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the City to substantiate the Contractor's right to payment or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract lump sum.

## 9.5

### DECISIONS TO WITHHOLD CERTIFICATION

9.5.1 The City's Construction Manager or Architect may decide not to certify payment and may withhold a recommendation for payment in whole or in part, to the extent reasonably necessary to protect the City, if in the City's Construction Manager's or Architect's opinion the representations to the City required by Subparagraph 9.4.3 cannot be made. If the City's Construction Manager or Architect is unable to certify payment in the amount of the application, the City's Construction Manager or Architect will notify the Contractor and City as provided in Subparagraph 9.4.2. If the Contractor, City's Construction Manager and Architect cannot agree on a revised amount, the City's Construction Manager and Architect will promptly issue a recommendation for payment for the amount for which the City's Construction Manager and Architect are able to make such representations to the City. The City's Construction Manager or Architect may also decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a recommendation for payment previously issued, to such extent as may be necessary in the City's Construction Manager's or Architect's opinion to protect the City from loss because of, but not limited to, the following:

- .1 defective work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims;

- .3 alleged failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the work cannot be completed for the unpaid balance of the Contract lump sum;
- .5 damage to the City or another contractor or third party allegedly by Contractor, his/her agent or employee;
- .6 reasonable evidence that the work will not be completed within the Contract time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 persistent failure to carry out the work in accordance with the Contract;
- .8 re-testing of non-passing tests; reimbursement for inspections, overtime and minimum times not used.
- .9 anticipated and/or breach of terms and conditions of Contract Documents;
- .10 liquidated damages; or
- .11 payments which may be past due and payable for just claims against Contractor or any Subcontractor for labor or materials furnished in and about the performance of work on the project under this Contract.
- .12 improper, incomplete or unacceptable documents, releases or back up materials.
- .13 Alleged breach of term and conditions of contract documents.
- .14 Disputed items and issues.

9.5.2 When the above reasons for withholding certification are removed to the City's satisfaction, certification will be made for amounts previously withheld.

9.5.3 The City may apply such withheld amount or amounts to payment of such claims or obligations at its discretion. In so doing, the City shall be deemed the agent of the Contractor and any payment so made by the City shall be considered as a payment made under Contract by the City to the Contractor and the City shall not be liable to the Contractor for such payments made in good faith. Such payments may be made without prior judicial determination of claim or obligations. The City will render the Contractor a proper accounting of such funds disbursed on behalf of the Contractor.

9.6

**PROGRESS PAYMENTS**

9.6.1 After the City's Construction Manager and Architect have issued a recommendation for payment, the City shall make payment in the manner and within the time provided in the Contract, and shall so notify the City's Construction Manager and Architect.

9.6.2 The Contractor shall promptly pay each Subcontractor and supplier, upon receipt of payment from the City, out of the amount paid to the Contractor on account of such Subcontractor's or supplier's portion of the work, the amount of which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-Subcontractors and suppliers, if any, in similar manner. Contractor shall obtain and submit releases on the approved forms for any payment made to subcontractors, sub-subcontractors and suppliers.

9.6.3 The City's Construction Manager may, at City's option, furnish to a Subcontractor, requested information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the City.

9.6.4 Neither the City, City's Construction Manager nor Architect shall have an obligation to pay or cause to be paid money to a Subcontractor except as may otherwise be required by law.

9.6.5 Payment to material suppliers shall be treated in the same manner provided in Subparagraphs 9.6.2, 9.6.3, and 9.6.4.

9.6.6 A Recommendation for payment, a progress payment, or partial or entire use or occupancy of the property by the City shall not constitute acceptance of work.

9.7

**SUBSTANTIAL COMPLETION**

9.7.1 Substantial Completion is the stage in the progress of the work when the work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy and utilize the work for its intended use.

9.7.2 When the Contractor considers that the work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor and City's Construction Manager shall jointly prepare and submit to the Architect a comprehensive list of items to be completed or corrected. The Contractor 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 Contractor to complete all work in accordance with the Contract Documents. Upon receipt of the list, the Architect, assisted by the City's Construction Manager, will make an inspection to determine whether the work or designated portion thereof is substantially

complete. If the Architect's inspection discloses any item, whether or not included on the list, which is not in accordance with the requirements of the Contract Documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect and/or City. The Contractor shall then submit a request for another inspection by the Architect, assisted by the City's Construction Manager, to determine Substantial Completion. When the work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial completion, shall establish switch over dates of the Owner and Contractor for security, maintenance, heat, utilities, damage to the work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. References to warranty commencement are supplemented by Subsection 3.5.2, 3.5.4 and other Contract Documents. Failed inspection reimbursement applies to this paragraph.

9.7.3 Progress payments will continue to be made pursuant to the contract.

## 9.8 PARTIAL OCCUPANCY OR USE

9.8.1 Prior to partial occupancy or use, the Owner, City's Construction Manager, Contractor and Architect shall jointly inspect the area to be occupied or portion of the work to be used in order to determine and record the condition of the work.

9.8.2 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the work shall not constitute acceptance of work (not complying with the requirements of the Contract).

## 9.9 FINAL COMPLETION AND FINAL RETENTION PAYMENT

9.9.1 Upon completion of the work, as specified in the Contract, the Contractor shall forward to the City's Construction Manager and Architect a written notice that the work is ready for final inspection and acceptance and shall also forward to the City's Construction Manager a Contractor's application for final retention payment. Upon receipt, the City's Construction Manager will forward the notice and application to the Architect who will promptly make such inspection. When the Architect and City's Construction Manager find the work acceptable under the Contract and the terms and conditions of the Contract fully performed, the City's Construction Manager and Architect will promptly issue a final recommendation for retention payment stating that to the best of their knowledge, information and belief, and on the basis of their observations and inspections, the work has been completed in accordance with terms and conditions of the Contract and that the entire balance found to be due the Contractor is due and payable.

9.9.2 No final retention payment shall become due until the Contractor submits to the Architect through the City's Construction Manager (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the work for which the City or the City's property might be responsible or encumbered (less amounts withheld by City) have been paid or otherwise

satisfied. (2) a certificate evidencing that insurance required by the Contract to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days prior written notice has been given to the City, (3) a certificate from the insurance company indicating that the insurance will cover the period required by the Contract, (4) consent of surety, if any, to final payment, (5) a certificate evidencing that Bonds required by the Contract will remain in full force and effect until City issues written permission to exonerate them (6) all documentation required by the payment schedule (attachment A) and (7) if required by the City, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the City. If such claim remains unsatisfied after payments are made, the Contractor shall refund to the City all money that the City may be compelled to pay in discharging such claim, including all costs and reasonable attorneys fees.

9.9.3 There is no separate "Certificate for Payment." The owner's issuance of a check constitutes a certificate of payment.

9.9.4 The payment schedule of the Contract as set forth in Attachment "A" to the Contract sets forth additional final payment conditions.

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ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 The Contractor shall be responsible for initiating maintaining and supervising all safety precautions and programs in connection with the performance of the Contract including, without limitation, safety, job meetings and training. The Contractor shall submit the Contractor's safety program to the City and coordinate with the safety programs of other Contractors. Contractor will furnish minutes of all safety meetings to the City.

10.1.2 In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop work in the area affected and report the condition to the City, City's Construction Manager and Architect in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the City and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, either by written agreement of the City and Contractor, or in accordance with final determination by the Architect.

10.1.3 The Contractor shall not be required to perform without written consent any work relating to asbestos or polychlorinated biphenyl (PCB).

10.1.4 To the fullest extent permitted by law, the City shall indemnify and hold harmless the Contractor, City's Construction Manager, Architect, their consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys fees, arising out of or resulting from performance of the work in the affected area if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless, as determined by governing authority, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the City, anyone directly or indirectly employed by the City or anyone for whose acts the City may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Subparagraph 10.1.4.

10.1.5 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop work in the affected area and report the condition to the City,



City's Construction Manager and Architect in writing. The City, the City's Construction Manager, and Architect shall then proceed in the same manner described in Subparagraph 10.1.2.

10.1.6 The City shall be responsible for obtaining the services of a licensed laboratory to verify a presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract, the City shall furnish in writing to the Contractor, City's Construction Manager and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor, the City's Construction Manager and the Architect will promptly reply to the City in writing stating whether or not any of them has objection to the persons or entities proposed by the City. If the Contractor, City's Construction Manager or Architect has an objection to a person or entity proposed by the City, the City's Construction Manager shall propose another to whom the Contractor, the City's Construction Manager and the Architect have no reasonable objection.

## 10.2

### SAFETY OF PERSONS AND PROPERTY

10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- .1 employees on the work and other persons who may be affected thereby;
- .2 the work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors;
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction; and
- .4 construction or operations by the City or other Contractors.

10.2.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

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

10.2.5 The Contractor shall promptly remedy damage and loss (whether or not insured under property insurance required by the Contract) to property referred to in Clauses 10.2.1.2, 10.2.1.3, and 10.2.1.4 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, supplier, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Clauses 10.2.1.2, 10.2.1.3 and 10.2.1.4. This includes damage or loss caused by unknown persons or causes. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under the indemnity sections of the Contract.

10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the City, City's Construction Manager and Architect.

10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger safety to persons or property.

### 10.3

#### EMERGENCIES

10.3.1 In an emergency affecting safety of persons or property; the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraph 4.7 and Article 7.

## ARTICLE 11

### INSURANCE

11.1 **CONTRACTOR'S INSURANCE** (See Bid Terms and Conditions for additional insurance requirements)

11.1.1 The Contractor shall purchase from and maintain in a company or companies "admitted" by the State of California such insurance as specified in the Special Bid Terms and Conditions for this Project as will protect the Contractor from claims which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

11.1.2 The insurance required by Subparagraph 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverage's must be written on an occurrence basis and shall be maintained without interruption from date of commencement of the work until after guarantee period expires and City has given written permission to cancel insurance.

11.1.3 Certificates of Insurance acceptable to the City shall be submitted to the City's Project Manager for transmittal to the City with a copy to the Architect prior to commencement of the work. Additional certificate evidencing continuation of coverage after final payment shall be submitted with the final Application for Payment as required by Subparagraph 9.9.2.

11.1.4 All certificates must be original. An original endorsement, naming the City as additional names insured and as required in 11.2.1 below, as required must be submitted in the required time frame.

11.2 **PROPERTY INSURANCE**

11.2.1 The Contractor shall purchase and maintain, in a company or companies "admitted" by the State of California, property insurance in the amount of the initial Contract Sum as well a subsequent modifications thereto for the entire work at the site on a replacement cost basis without voluntary deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until 30 days after written permission to cancel is issued by City or until no person or entity other than the Owner has an insurable interest in the property required by this Paragraph 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-Subcontractors in the work. Said insurance coverage is required in addition to all other insurance coverage required by other provisions of the Contract Documents. Contractor to pay all deductibles, if any. (Maximum deductible is \$5,000.) The City is to be the loss payee of this policy.

11.2.1.1 Property insurance shall be on an "all-risk" policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including, without limitation or duplication of coverage, theft, vandalism, malicious mischief, collapse, false work, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and City's Contract Administrator services and expenses required as a result of such insured loss. Coverage for other perils shall not be required unless otherwise provided in the Contract Documents.

11.2.1.2 Unless otherwise provided in the Contract Documents, this property insurance shall cover portions of the work stored off the site after written approval of the Owner at the value established in the approval, and also portions of the work in transit.

11.2.1.3 Unless otherwise provided, all required Insurance coverage shall remain in full force and effect for the length of time specified in other sections of this project manual. All required insurance coverage shall be documented by an acceptable Certificate of Insurance. Said Certificates of Insurance shall name the City of Agoura Hills as loss payee. Contractor to pay all deductibles.

11.2.1.4 The insurance required by this Paragraph 11.2 is not intended to cover machinery, tools or equipment owned or rented by the Contractor which are utilized in the performance of the work but not incorporated into the permanent improvements. The Contractor shall, at the Contractor's own expense, provide insurance coverage for owned or rented machinery, tools or equipment.

**11.2.2 Machinery and Equipment Insurance.** The Contractor shall obtain all insurance coverage required by this section. Said insurance coverage is required in addition to all other insurance coverage required by other provisions of the Contract Documents." Contractor to pay all deductibles.

11.2.3 Before an exposure to loss may occur, the Contractor shall file with the Owner a copy of each policy that includes insurance coverage's required by this Paragraph 11.2. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire until at least 30 days prior written notice has been given to the Owner.

11.2.4 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power.

11.2.5 All insurance certificates will be on forms proved in this document.

## ARTICLE 12

### UNCOVERING AND CORRECTION OF WORK

#### 12.1 UNCOVERING OF WORK

12.1.1 If a portion of the work is covered contrary to the Construction Manager's or Architect's request or to requirements specifically expressed in the Contract, it must, if required in writing by either, be uncovered for their observation and be replaced at the Contractor's expense without change in the Contractual time.

12.1.2 If a portion of the work has been covered which the City or Architect has not specifically requested to observe prior to its being covered, the City or Architect may request to see such work and it shall be uncovered by the Contractor. If such work is in accordance with the Contract, costs of uncovering and replacement shall, by appropriate change order, be charged to the City. If such work is not in accordance with the Contract, the Contractor shall pay such costs unless the condition was caused by the City or one of its Contractors in which event the City shall be responsible for pay of such costs.

#### 12.2 CORRECTION OF WORK

12.2.1 The Contractor shall promptly correct work rejected by the City, the City's Construction Manager or Architect for failing to conform to the requirements of the Contract, whether observed before or after substantial completion and whether or not fabricated, installed or completed. The Contractor shall bear costs of correcting such rejected work, including additional testing and inspections and compensation for the City's Construction Manager's and Architect's services and expenses made necessary thereby.

12.2.2 If, within one year after the date of recordation of Notice of Completion by City of the work or designated portion thereof, or after the date for commencement of warranties established by the Contract, or by terms of an applicable special warranty required by the Contract, any of the work is found to be not in accordance with the requirements of the Contract, the Contractor shall correct it promptly after receipt of written notice from the City to do so unless the City has previously given the Contractor a written acceptance of such condition known to the City. This period of one year shall be extended with respect to portions of work first performed after recordation of Notice of Completion by City by the period of time between recordation of Notice of Completion by City and the actual performance of the work. This obligation under this Subparagraph 12.2.2 shall survive acceptance of the work under the Contract and termination of the Contract. The City shall give such notice promptly after discovery of the condition.

12.2.3 The Contractor shall immediately remove from the site portions of the work which are not in accordance with the requirements of the Contract and are neither corrected by the Contractor nor accepted by the City.

12.2.4 If the Contractor fails to correct non-conforming work within the specified time, the City may correct it in accordance with Paragraph 2.4. If the Contractor does not proceed with correction of such non-conforming work within a reasonable time fixed by written notice from the Architect issued through the City, the City may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the City may upon ten (10) additional days written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the City's Construction Manager's and Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract lump sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the City on demand.

12.2.5 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the City or other Contractors which is not in accordance with the requirements of the Contract.

12.2.6 Nothing contained in this Paragraph 11.2.6 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract. Establishment of the time period of one year as described in Subparagraph 11.2.2 relates only to the specific obligation of the Contractor to correct the work, and has no relationship to the time within which the obligation to comply with the Contract may be sought to be enforced, nor the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the work.

### 12.3

#### ACCEPTANCE OF NONCONFORMING WORK

12.3.1 If the City prefers to accept work which does not conform with the requirements of the Contract, the City may do so instead of requiring its removal and correction, in which case the Contract lump sum will be reduced accordingly. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13

MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW

13.1.1 The Contract shall be governed and constructed in accordance with the laws of the State of California and all Federal and local ordinances.

13.2 RIGHTS AND REMEDIES

13.2.1 Duties and obligations imposed by the Contract and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

13.2.2 No action or failure to act by the City, Construction Manager, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically in writing.

13.3 TESTS AND INSPECTIONS

13.3.1 See Specifications section 014000.

CITY OF AGOURA HILLS  
CITY MANAGER'S OFFICE

ADDITIONAL TERMS AND CONDITIONS TO THE CONTRACT

FOR

THE AGOURA HILLS RECREATION CENTER SITE  
REHABILITATION PROJECT

AGOURA HILLS, CALIFORNIA

**THROUGHOUT THESE DOCUMENTS "CITY," AND "OWNER"  
SHALL MEAN THE CITY OF AGOURA HILLS, CALIFORNIA**



## ADDITIONAL TERMS AND CONDITIONS TO THE CONTRACT

### 1. SCOPE OF WORK

The scope of work shall be all that work required by the Contract.

### 2. CONTRACT COMPLETION

The Project will be considered complete when the work covered by the plans and specifications is complete; including construction of the structure and appurtenant work, all of the on and off-site construction and improvements shown on the plans along with any accepted alternates, landscaping, and irrigation will have been completed; all regulatory agencies have issued their approval of the work completed and/or provided certificates of compliance; and all documentation required under the terms of the contract documents have been submitted and accepted, the time waiting periods called for in the contract have lapsed, and the City has certified that the guarantee period is over.

### 3. CITY'S CONSTRUCTION MANAGER

The City/Owner has retained the services of a Construction Manager for this project. He/she shall work with the owner, and selected bidder in the administration of the Contract, including, but not limited to daily field operations, work progress, approval of invoices, verification of releases, observation of quantity and quality of materials and scheduling. The Construction Manager is an independent Contractor, and reports to the City's Project Manager.

He/she will act as liaison between the parties and assist in expediting any issues that arise. He/she will provide recommendations to the City, who will make all final decisions. The selected bidder will be required to fully cooperate and work with the Construction Manager.

### 4. DEFINITIONS

In addition to other definitions in the documents, the following definitions shall be applicable:

- A. Services: Services shall mean work to be performed by Contractor pursuant to the Contract;
- B. Satisfactory: Satisfactory shall mean satisfactory to the Director of Community Services of the City and any designated person he/she has appointed to oversee the project;
- C. Acceptance: Acceptance shall mean formal written acceptance by the City of the completed project;
- D. Contractor: Contractor shall mean the bidder selected to perform the work under these specifications.

## 5. SCHEDULE

- 5.1 The Contractor shall commence the work on the date stated in the Notice to Proceed and shall diligently pursue the work to completion within 252 calendar days thereafter, based upon the work schedule, if any, as such time may be extended in writing by the City in accordance with the Contract Terms and Conditions, time being of the essence.
- 5.2 Contractor will sign all release forms required by City for payment. A VALID RELEASE FOR ALL LABOR AND MATERIALS FROM EACH LABOR AND MATERIALS SUPPLIER MUST BE SUBMITTED PRIOR TO ANY PAYMENT BEING MADE ON THE REQUEST FOR PAYMENT. THESE RELEASES WILL BE ON A FORM PROVIDED BY AND ACCEPTABLE TO THE CITY (see Forms section of The Project Manual). Suppliers may be called to verify releases. Contractor will provide notarized claim releases with each invoice, if required by City. All releases must be wet-signed. Copies or Fax's are not acceptable. All releases must clearly indicate (printed or typed, in addition to signed) the name and title and phone number of the person signing it.
- 5.3 If an unconditional release cannot be provided, a conditional release must be provided showing the true amount of money owed to a materials supplier or Subcontractor. A FULL UNCONDITIONAL RELEASE WILL BE PROVIDED FROM ALL SUPPLIERS AND SUBCONTRACTORS FOR ALL PAYMENTS MADE ON THE PREVIOUSLY PAID REQUESTS FOR PAYMENT BEFORE NEXT PAYMENT. SUBSEQUENT PROGRESS PAYMENTS CANNOT BE MADE UNLESS THIS IS ACCOMPLISHED. In addition to Unconditional Final Releases, the General Contractor will sign the City's Final General Release in order to receive final payment.
- 5.3.1 Releases will be required regardless of receipt of California Preliminary Notice.
- 5.4 Failure to provide releases could result in the invoice being REJECTED and returned until releases are proper. All joint checks will be sent to the Contractor with a copy to the supplier.
- 5.5 All invoices must be received at City Hall by the last business day of the month in order to be paid within thirty days.
- 5.6 No checks will be issued without prior receipt of request for payment and prior approval of work and contract compliance by the City's Construction Manager.
- 5.7 City's Inducement Form is to be signed prior to Final Payment.
- 5.8 City shall have the option to make payments jointly to Contractor and his/her suppliers of materials and/or Subcontractors. Contractor agrees to furnish, on a form acceptable to City (furnished in this project manual), labor and material release forms and completely execute and furnish the information required in said forms, before Contractor shall be entitled to any payments hereunder. Use of non-City forms does not constitute a waiver of this requirement by the City. If the Contractor fails to meet and pay all of its just obligations incurred at the time

when any payment is due, or if any claims or demands arising out of or in connection with the work or its performance shall be outstanding at the time any payment may be due or is likely to be made thereafter, or if any claim arising out of or in connections with the contract are made against the City by any other person, persons, or entity, or if corrective work remains unfinished, the City shall have the right to withhold out of any payments, final or otherwise, such sums as the City may deem ample to protect it against loss, completion of work and/or to assure the payment of just claims of third persons. A minimum of 125% of the value of the uncorrected work or claim will be held.

- 5.9 Contractor shall protect existing facilities and the work of others and will be fully responsible for any damages to the work of others and/or any delays he/she causes to others or City. All charges for same will be paid by Contractor or deducted from any moneys due and owing to him/her under the Contract.
- 5.10 Non-Complying Work - Neither the final payment nor any provision in the Contract, nor partial or entire occupancy of the premises by the City, shall constitute an acceptance of work not done in accordance with the Contract nor shall it relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship.

## 6. MISCELLANEOUS PROVISIONS

- 6.1 Should a change be contemplated in the name or nature of the Contractor's legal entity, the Contractor shall first notify the City in order that proper steps may be taken to have the change reflected in the Contract.
- 6.2 The remedies contained in the Contract will be cumulative and in addition to any remedy at law or in equity to which the City may be entitled.
- 6.3 Contractor has carefully examined the site and contract documents and understands the relationship of each to all of the work. Receipt of all plans, bidding addenda, technical specifications, reference drawings, and addenda, and the project manual is hereby acknowledged.
- 6.4 Contractor will be responsible for any fines or levies because of his/her violation of safety or Union regulations, if in the Union.
- 6.5 Contractor, if required by City, shall provide warning labels and ingredient list for all materials furnished by Contractor and any other pertinent information about the makeup of their materials. This is in compliance with Proposition 65.
- 6.6 If it is discovered that, an oak tree needs trimming, a clarification of the plans, correction of an error, omission or ambiguity is necessary, or a field condition necessitates clarification or modification, the City will be notified immediately. The time necessary to accomplish these clarifications and corrections for omissions, field conditions, or ambiguities is included in the contract at no charge. Contractor understands that in some cases this may necessitate stopping all or portions of Contractor's work on the job until the corrections, clarifications, omissions or ambiguity are settled and approved by public authority. There is no charge or time extension for these delays and Contractor expressly waives any right to claims for such charges or extensions. However, the City, at its sole discretion, may grant a time extension if a stoppage occurs.

If an extension of time is granted for 6.6 above, said time extension shall be the Contractor's sole and exclusive remedy for any such delay, interference, or hindrance. The Contractor shall not be entitled to any damages or compensation of any kind, nature or description for any such delay (directly or indirectly); interference or hindrance and expressly waives any rights to such claims.

In this regard, by submission of the proposal and signing of the contract, contractor expressly acknowledges and agrees that without limitation, the conditions and items listed in this sub-section 6.6 are considered normal job occurrences have been foreseen and anticipated and are not considered owner caused delays. Contractor acknowledges that he/she has made provisions in his/her proposal for these delays and any time extension for the above reasons (6.6), if granted, is non-compensable.

- 6.7 Notwithstanding 4.6.3 of the General Conditions, no extra work shall be authorized unless extra work orders are signed by the Project Manager.
- 6.8 Changes shall be null and void if not initialed, by both parties, unless these documents currently allow for changes unilaterally, in which case just by that party that is authorized to make the change, on these or future documents.
- 6.9 When a joint check is issued, it will be sent to the Contractor. City reserves the right to send joint checks to the subcontractor or supplier with a copy to the Contractor and sub-contractor.
- 6.10 The City is exempted from any liability to the Contractor for any delay, loss or damage to its work, including but not limited to, inclement weather, vandalism or theft.
- 6.11 An amount equal to at least five percent (5%) of the total amount of the contract shall be retained until after all work has been completed, inspected, and passed by all relevant public agencies; all pursuant to payment terms. City shall have the right to retain out of any payments, final or otherwise, any amount it deems necessary as long as claims, corrections and/or repairs and/or uncompleted work remains. The Contractor agrees to execute a written guaranty on a form provided by the City, for his/her work agreeing to correct without cost to the City, any and all defects or failures of every kind arising out of work performed and material supplied under this contract for a period of one (1) year after completion of all work under this contract and recording of Notice of Completion whichever occurs later. Longer guarantees are included if required by law or these documents.
- 6.12 The City's representative on the job shall have the right to control or restrict parking on the site, and Contractor agrees to cooperate and abide with said restrictions.
- 6.13 Any materials stored on job site, or off site, shall be at Contractor's sole risk.
- 6.14 If requested, Contractor agrees to furnish certified verification of the grade or quality of materials he/she is using in his/her work. Such verification shall be at his/her own cost and expense and shall be from a recognized association or the U.S. Bureau of Standards Grading.
- 6.15 Alcoholic beverages, drugs, pets and children will not be permitted on the job site and may result in termination of this Contract. This includes compliance with

California laws regarding smoking.

- 6.16 If, in the opinion of the City, supervision and/or project management is inadequate, Contractor shall remove supervisor and/or project manager from job and furnish new qualified personnel to fill those positions.
- 6.17 Contractor, at his/her sole expense, will comply with all Federal, State and Local safety programs including, but not limited to training, job meetings, written programs, posting, hard hats, etc. Contractor will pay all fines or levies imposed on himself/herself and the City due to his/her or his/her sub-contractor/supplier violations of safety standards.
- 6.18 Contractor will keep up-to-date Contract Documents and any required permits at the job site.
- 6.19 Until improvements under the Contract are accepted by the City, the Contractor shall be responsible for the care and maintenance of such addition or improvements and shall bear all risks and costs of loss or damage to said improvements. Neither City, nor its officers, agents, consultants and employees, shall have any liability for any accident, loss or damage to the improvements prior to their completion and written acceptance by the City. Notice of completion is not considered written acceptance.
- 6.20 Job Hours: Work hours are 7:00 a.m. through 5:00 p.m., Monday through Friday. However, all work performed after 5:00 p.m. shall be restricted to activities which do not generate any noise, dust or other nuisance which could impact surrounding properties, as determined by the City. After hours work, holiday, and weekend work will not be permitted without written permission of City. This includes working on equipment after hours.

Conditions of Saturday, Sunday or Holiday Work: (If approved);

- (1) Work hours shall conform to the work hour limitations set forth herein.
- (2) All requirements of the Contract and any other applicable local ordinances shall be observed.
- (3) Contractor understands that questions posed to City representatives may not be answered or decisions made until the next business day.

## 7. VENUE

The Contract is made, entered into, executed and is to be performed in the City of Agoura Hills, Los Angeles County, California, and any action filed in any court or for arbitration for interpretation, enforcement and/or otherwise of the terms, covenants and conditions referred to herein shall be filed in the applicable court in Los Angeles County, California.

## 8. CITY'S AGENT

The Project Manager and/or his designee shall have the right to review, coordinate and

approve all work to be performed by Contractor pursuant to the terms of this Contract and shall be the City's agent with respect to review, coordination and approval of the services to be performed by the Contractor.

## 9. CHANGE ORDERS/TIME EXTENSION

In addition to the provisions of Article 7 of General Conditions and other conditions of the Contract for Construction, the following provisions and procedures shall apply. No deviations from scope of work shall be made by the Contractor without prior approval in writing from the City. No claims for extras above the amount of said contract will be honored unless authorized in writing. No verbal instructions will be considered as a waiver of this or any other provision of this contract.

All change orders will be on City forms and include the following agreement:

"Both Contractor and owner hereby agree and acknowledge that execution of this change order and/or time extension constitutes a mutual accord and satisfaction as to the work covered hereby and Contractor specifically waives and releases any and all claims, rights or interest, including but not limited to, those for impact, disruption, loss of efficiency, ripple, or other extraordinary or consequential costs arising directly or indirectly out of the work described in this change order except as specifically included herein."

All prices for extras and credits are to be competitive and standard for the scope and location of the work. City may, at its sole discretion, and without obligation, obtain its own bids and estimates and do the extra work. Contractor will cooperate with owners Subcontractor's/suppliers/ agents to facilitate owner-supplied work. A detailed breakdown and valid reason will be furnished with any request for extras or credits. If a Subcontractor is involved, his/her detailed proposal will be included. Break down will show quantities of labor/materials, mark up and profit. Any unit prices submitted with the bid proposal will be used for extra charges. All changes and time delays will be by change order on City form.

When prices for changes are requested, Contractor will act promptly to submit them to the City. No extra time will be allowed for obtaining requested prices. It is the Contractor's responsibility to check all Subcontractor and supplier quotes for correctness, completeness and detail, and that prices are fair and reasonable for the work involved before submitting to owner. Contractor is obligated to obtain the best possible price (for changes) prior to submitting a Change Order Request (C.O.R.). A change order does not automatically warrant a time extension.

If City and Contractor do not agree on prices, see article 4.6 and 4.7 of the General Conditions of the Contract.

No additional overhead or time will be allowed for changes that are not on the critical path (as separate items) and that can be done as overlap to any other components of the work as determined by the City.

The maximum profit, overhead, (including, without limitation, supervision, bonds and insurance) and markup allowed for change orders is, cumulatively, 15% if Contractor uses his own forces, 7% if a Subcontractor is used. Maximum Subcontractor mark up is

10% on 1st \$2,000, and 5% in excess of \$2,000. The detailed back-up submitted with change order requests must indicate actual costs with mark up listed separately. Payment for general condition items, overhead, and profit shall not be made for additional time granted for adverse weather conditions, vandalism, casualty loss and/or material availability. Contractor expressly waives any rights to such claims.

If charges are allowed for general condition items, overhead, and profit because of a time delay, the daily charges shall not exceed the liquidated damages specified in the contract. All such charges must be backed up with actual contracts, payroll reports, leases, and other appropriate documents. If detailed back up totals less than the daily liquidated damages amount, the lesser price will be used. All such extensions/charges shall be by change order and must be approved by the City.

Time extensions for inclement weather will only be allowed if the job site is unworkable as determined by the City. (See also page 21)

**10. INTERPRETATION OF CONTRACT AND TERMS AND CONDITIONS**

Should interpretation of the Contract, or any portion thereof, be necessary, it is deemed that the Contract was prepared jointly and equally, and shall not be interpreted against either party on the ground that the party prepared the Contract or caused it to be prepared.

City has advised General Contractor to have the Terms and Conditions, agreement and all contract documents reviewed by an attorney.

**11. EXPERTISE**

The project is a unique rehabilitation project and requires the Contractor and his/her Subcontractors to provide administrative, management and field personnel trained and skilled in this type of work. City is relying on Contractor's expertise in the execution of all work under the contract.

Contractor has visited the job site and agrees that commencement of work under the contract shall constitute Contractor's acceptance of the site as suitable for the work required herein.

**12. ADDITIONAL DEFINITIONS**

12.1 Surety is the person, firm, or corporation that executes as surety the Contractor's Performance Bond and Payment Bond.

12.2 "Provide" shall include "provide complete in place," that is, "furnish and install."

12.3 "As shown," "as indicated," "as detailed," refer to drawings, specifications and the other contract documents.

12.4 Work of the Contractor or Subcontractor includes labor and materials.

### 13. DRAWINGS AND SPECIFICATIONS

- 13.1 Notwithstanding Article I of the general conditions to the contract for construction, Contract Documents are intended to be complementary, and what is required by one shall be binding as if required by all. The intention of documents is to include all labor and materials, equipment, and transportation necessary for the proper execution of the work. Materials or work described in words which so applied have a well known technical or trade meaning shall be deemed to refer to such recognized standards.
- 13.2 Interpretations: Unless otherwise shown or stated, figured dimensions on drawings shall govern, but work not dimensioned shall be as directed. Work not particularly shown or specified shall be same as similar parts that are shown or specified. A large scale detail shall take precedence over smaller scale details as to shape and details of construction. Specifications shall govern as to materials, workmanship, and installation procedures. Drawings and specifications are intended to complement each other and to agree. However, if the Contractor observes that the drawings and specifications are in conflict, he/she shall promptly notify the Architect in writing of the conflict before proceeding any further with the work.

### 14. DETAIL DRAWINGS AND INSTRUCTIONS

- 14.1 In case of ambiguity, conflict, or lack of information, the Architect shall furnish with reasonable promptness, additional instructions by means of drawings or otherwise necessary for proper execution of work. All such drawings and instructions shall be consistent with the Contract Documents, true developments thereof, and reasonably inferable therefrom.
- 14.2 Work shall be executed in conformity therewith and the Contractor shall do no work without proper drawings and instructions.

### 15. SEPARATE CONTRACTS

- 15.1 The City reserves the right to enter into other Contracts in connection with this work. The Contractor shall afford other Contractors reasonable opportunity for introduction and storage of their materials and execution of their work and shall properly connect and coordinate his/her work with theirs.

**15.1.1 CO-OPERATION AND COLLATERAL WORK.** Contractor shall be responsible for ascertaining the nature and extent of any simultaneous and collateral work by others. City, its workers, Contractors, and others, have the right to operate within or adjacent to the work site to perform such work. City, Contractor, and such workers, Contractors, and others shall coordinate their operations and co-operate to minimize interference. Contractor shall absorb in its bid all costs entailed by it in coordination its work with others and shall not be entitled to additional compensation because of such simultaneous and collateral work. Contractor shall take all steps necessary to minimize damage and delay



including re-deployment of its forces to other parts of the work.

- 15.2 If any part of the Contractor's work depends for proper execution or results upon work of any other Contractor, the Contractor shall inspect and promptly report to the Architect any defects in such work that render it unsuitable for such proper execution and results. His/her failure to so inspect and report shall constitute his/her acceptance of other Contractor's work as fit and proper for reception of his/her work, except as to defects which may develop in other Contractor's work after execution of his/her work.
- 15.3 To ensure proper execution of his/her subsequent work, the Contractor shall measure and inspect work already in place and shall at once report to the Architect any discrepancy between executed work and Contract.
- 15.4 The Contractor shall ascertain to his/her own satisfaction the scope of the project and nature of any other contracts that have been or may be awarded by the City in prosecution of project to the end that the Contractor may perform this Contract in the light of such other contracts, if any. Nothing herein contained shall be interpreted as granting to the Contractor exclusive occupancy at site of project. The Contractor shall not cause any unnecessary hindrance or delay to any other Contractor working on this project. If simultaneous execution of any Contract or project is likely to cause interference with performance of some other Contract or Contracts, the City shall decide which Contractor shall cease work temporarily and which Contractor shall continue or whether work can be coordinated so that so that Contractors may proceed simultaneously. The City shall not be responsible for any damages suffered or extra costs incurred by the Contractor resulting directly or indirectly from award or performance or attempted performance of any other Contractor on project, or caused by any decision or omission of the City respecting the order of precedence in performance of Contractors.

## 16. EXCESS

- 16.1 If, in the opinion of the City, unpaid balance of Contract price shall exceed expense of finishing work including compensation for additional architectural, managerial, and administrative services, and liquidated damages incurred by City as a result of a termination, such excess shall be paid to the Contractor. If such expense shall exceed such unpaid balance, the Contractor shall pay difference to the City within fifteen (15) days after presentment of a bill for the same. Expense incurred by the City as herein provided, and damage incurred through the Contractor's fault, shall be documented by the City.
- 16.2 The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to the City.

**17. SURVEYS**

17.1 Surveys to determine locations of construction, grading, utilities, and on and off site work shall be provided by, and paid for by, the City. Contractor should review plans and specifications for further field verification of existing conditions.

**18. EXCISE TAXES**

18.1 If under Federal Excise Tax Law any transaction hereunder constitutes a sale on which a Federal Excise Tax is imposed and the sale is exempt from such excise tax because it is a sale to a state or local government for its exclusive use, the City, upon request, will execute a certificate of exemption which will certify (1) that the City is a political subdivision of the state for the purpose of such exemption and (2) that the sale is for the exclusive use of the City. No excise tax for such materials shall be included in any bid price.

**19. PATENTS, ROYALTIES, AND INDEMNITIES**

19.1 The Contractor shall hold the City, its officers, agents, consultants and employees harmless from liability of any nature or kind, including cost and expense, for or on account of any patented or un-patented invention, process, article, or appliance manufactured or used in the performance of this Contract, including its use by the City, unless otherwise specifically required by the Contract.

**20. SHOP DRAWINGS**

20.1 The Contractor shall check and verify all field measurements and shall submit with such promptness as to cause no delay in his/her own work or in that of any other Contractor or Subcontractor, copies checked and approved by him/her of all shop or setting drawings, schedules, and materials list required for the work of various trades. The Architect shall review such schedules and drawings only for conformance with design concept of project and compliance with information given in Contract documents. The Contractor shall make any corrections required by the Architect, and file with him/her corrected copies, and furnish such other copies as may be needed for construction. The Architect's review of such drawings or schedules shall not relieve the Contractor from responsibility for deviations from drawings or specifications unless he/she has, in writing, called the Architect's attention to such deviations at time of submission and secured his/her written approval nor shall it relieve him/her from responsibility for errors of any sort in shop drawings or schedules. No charge is allowed for shop drawings or Architect's required revisions thereto. Refer to specifications for additional information.

**21. SAMPLES**

21.1 The Contractor shall furnish all samples as required in specifications together with catalogs and other supporting data required by the Architect. This provision shall not authorize any extension of time for performance. The Architect will review such samples only for conformance with design concept of work and for

compliance with information given in Contract. Work shall be in accordance with approved samples. Refer to specifications for additional information.

**22. PROTECTION OF WORK AND PROPERTY - (Also see specifications for additional information)**

- 22.1** The Contractor shall be responsible for all damages to persons or property that occur as a result of his/her fault or negligence in connection with the prosecution of this Contract and shall be responsible for the proper care and protection of all materials delivered on work performed until completion and final acceptance by the City. All work shall be solely at the Contractor's risk. He/she shall adequately protect adjacent property from settlement or loss of lateral support as provided by law and Contract. The Contractor shall take all necessary precautions for safety of employees on the work and shall comply with all applicable safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to premises where work is being performed. He/she shall erect and properly maintain at all times, as required by conditions and progress of work, all necessary safeguards, signs, barriers, lights, and watchmen for protection of workers and the public and shall post danger signs warning against hazards created by such features in the course of construction. He/she shall designate a responsible member of his/her organization on the work, whose duty shall be prevention of accidents. Name and position of person so designated shall be reported to the City by the Contractor.
- 22.2** In an emergency affecting safety of life or of work or of adjoining property, the Contractor, without special instruction or authorization from the Architect or the City, is hereby permitted to act, at his/her discretion, to prevent such threatened loss or injury, and he/she shall so act, if instructed by the Architect or the City. Any compensation claimed by the Contractor on account of emergency work shall be determined by mutual agreement.
- 22.3** The Contractor shall provide such heat, covering, and enclosures as are necessary to protect all work, materials, equipment, appliances, and tools against damage by weather conditions. This includes without limitation, portable heaters to assist in drying to protect and maintain schedule.
- 22.4** The Contractor shall take adequate precautions to protect existing sidewalks, curbs, pavements, utilities, adjoining property, and structures, and to avoid damage thereto, and repair any damage thereto caused by construction operations. All costs for these repairs/replacements will be borne by the Contractor.
- 22.5** The Contractor shall:
- 22.5.1** Arrange work to cause minimum amount of inconvenience and danger to the public or others in the vicinity of the construction area. See specifications for additional requirements.
- 22.5.2** Provide substantial barricades around any shrubs or trees indicated to be preserved.
- 22.5.3** Deliver materials to building area over route designated by the City.

22.5.4 Take preventive measures to eliminate objectionable dust. Comply with all local dust control regulations.

23.5.4.1 Take preventative measures to control erosion and flow of rain water.

22.5.5 Confine his/her apparatus, the storage of materials, and the operations workers to limits indicated by law, ordinances, permits, or directions of the Architect and shall not unreasonably encumber premises with materials, and enforce all instructions of the City and the Architect regarding signs, advertising, fires, danger signals, barricades, and smoking and require that all persons employed on work comply with all regulations while on construction site.

22.5.6 Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by an approved civil engineer at no cost to the City.

22.5.7 Protect all site utility installations, including, without limitation, manholes, valve stacks, fire hydrants, catch basins, risers, and cleanouts. Use a minimum of 3- (4' min) heavy metal sign/snow poles 4' above ground. Paint tops with iridescent paint and tie together with caution tape. Continually maintain.

### 23. LAYOUT AND FIELD ENGINEERING

23.1 All field engineering required for laying out this work and establishing grades for earthwork and construction operations shall be furnished by the Contractor at his/her expense. Such work shall be done by a qualified civil engineer approved by the City. Any required "as-built" drawings of site development shall be prepared by the approved civil engineer. All monuments will be set by field engineer. Field Engineer will certify all grading, pad elevations and structure locations as each element is completed. See specifications for additional information.

### 24. CUTTING AND PATCHING

24.1 The Contractor shall do all cutting, fitting, or patching of work as required to make its several parts come together properly and fit it to receive or be received by work of other Contractors showing upon, or reasonably implied by, the drawings and specifications for the completed structure, and he/she shall make good after them as the Architect may direct.

24.2 The Contractor shall not endanger any work by cutting, excavating, or otherwise altering work and shall not cut or alter work of any other Contractor save with consent of the Architect.

25. **CLEANING UP**

25.1 The Contractor at all times shall keep premises free from debris such as waste, rubbish, and excess materials and equipment caused by their work; debris under, in, or about the premises. Upon completion of work, he/she shall clean, without limitation, interior and exterior of building including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal projections, and any areas where debris has collected so surfaces are free from foreign material or discoloration; he/she shall clean and polish all glass, plumbing fixtures, and finish hardware and similar finish surfaces and equipment and remove temporary fencing, barricades, planking and construction toilet and similar temporary facilities from site.

26. **ACCESS TO WORK**

26.1 The City and its representatives shall at all times have access to work wherever it is in preparation or progress. The City is to be given key(s) to enclosure and construction trailer/office and storage bins if paid for materials are stored in said bins.

26.2 The Contractor shall provide safe and proper facilities for such access so that the City's representatives may perform their functions under the Contract.

27. **TESTS AND INSPECTIONS - (Also see specifications for additional information)**

27.1 If the Contract, the City's instructions, laws, ordinances, or any public authority requires any work to be specially tested or approved, the Contractor shall give notice in accordance with such authority of its readiness for observation or inspection at least two (2) working days prior to requiring tests. If inspection is by authority other than the City, the Contractor shall inform the City of date fixed for such inspection. Required certificates of inspection shall be secured by the Contractor. Observations by the City shall be promptly made, and where practicable at source of supply. If any work should be covered up without approval or consent of the City, it must, if required by the City, be uncovered for examination and satisfactorily reconstructed at the Contractor's expense in compliance with the Contract. Costs of tests of any materials found to be not in compliance with the Contract shall be paid for by the Contractor. See specifications for other Contractor construction costs and required inspections.

27.2 Where such inspection and testing are to be conducted by an independent laboratory or agency, such materials or samples of materials to be tested shall be selected by such laboratory or agency, or the City's representative, and not by the Contractor.

27.3 The Contractor shall notify the City a sufficient time (minimum two days) in advance of manufacture of materials to be supplied by him/her under the Contract, which must, by terms of the Contract be tested or observed, in order that the City may arrange for testing of same at source of supply. Any materials shipped by the Contractor from source of supply prior to having satisfactorily passed such testing and inspection, or prior to receipt of notice from said representative that such testing and inspection will not be required, shall not be incorporated in work

without prior approval of the City and subsequent testing and inspections.

**28. MATERIALS**

**28.1** No materials, supplies, or equipment for work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest herein or in any part thereof is retained by seller or supplier. The Contractor warrants good title to all material, supplies, and equipment installed or incorporated in work and agrees upon completion of all work to deliver premises, together with all improvements and appurtenances constructed or places thereon by him, to the City free from any claim, liens, or charges. He/she further agrees that neither he/she nor any person, firm or corporation furnishing any materials or labor for any work covered by this Contract shall have any right to lien upon premises or any improvement or appurtenance thereon, except that the Contractor may install metering devices or other equipment of utility companies or of political subdivisions title to which is commonly retained by utility company or political subdivision. In event of installation of any such metering device or equipment, the Contractor shall advise the City as to owner thereof. Nothing contained in this article, however, shall defeat or impair right to persons furnishing material or labor under any bond given by the Contractor for their protection or any rights under any law permitting such persons to look to funds due the Contractor in hands of the City, and this provision shall be inserted in all subcontracts and material Contracts and notice of its provisions shall be given to all persons furnishing material for work when no formal Contract is entered into for such material.

**29. SUBSTITUTIONS**

**29.1** In the event the Contractor furnishes material, process, or article more expensive than that specified, difference in cost of such material, process, or article so furnished shall be borne by the Contractor. City and Architect must approve all substitutions. Substitutions will not be allowed after 35 days after award of contract.

**29.2** See Specifications for Substitution Procedures.

**30. ON AND OFF SITE WORK**

**30.1** The requirements of Standard Specifications for Public Works Construction, Latest Edition, part 2, 3, 4, 5 and 6 (part 1 is specifically excluded) apply to the project and are incorporated herein by this reference.

**31. SUBMISSION OF BIDS; AGREEMENT TO ASSIGN**

**31.1** In accordance with Section 4552 of the Government Code, the bidders shall conform to the following requirements. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body 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 purchase of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the

*WSL*

bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder.

**32. TRAVEL AND SUBSISTENCE PAYMENTS**

**32.1** As required by Section 1773.8 of the California Labor Code, the Contractor shall pay travel and subsistence payments to each worker needed to execute the work, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with this Section.

**32.2** To establish such travel and subsistence payments, the representative of any craft, classification, or type of workman needed to execute the contracts shall file with the Department of Industrial Relations fully executed copies of collective bargaining agreements for the particular craft, classification or type of work involved. Such agreements shall be filed within 10 days after their execution and thereafter shall establish such travel and subsistence payments whenever filed 30 days prior to the call for bids.

**33. PROTECTION OF WORKERS IN TRENCH EXCAVATIONS**

**33.1** As required by Section 6705 of the California Labor Code and in addition thereto, whenever work under the Contract involves the excavation of any trench or trenches 5 feet or more in depth, the Contractor shall submit for acceptance by the City or by a registered civil or structural engineer, employed by the City, to whom authority to accept has been delegated, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation, of such trench or trenches. If such plan varies from the shoring system standards established by the Construction Safety Orders of the Division of Industrial Safety, the plan shall be prepared by a registered civil or structural engineer employed by the Contractor, and all costs therefore shall be included in the price named in the Contract for completion of the work as set forth in the Contract. Nothing in this Section shall be deemed to allow the use of a shoring, sloping, or other protective system less effective than that required by the Construction Safety Orders. Nothing in this Section shall be construed to impose tort liability on the City, the Engineer, nor any of their officer, agents, consultants, representatives, or employees. All plans, processing and shoring costs are the contractor's responsibility. This also applies to any shoring required.

CITY OF AGOURA HILLS  
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CITY OF AGOURA HILLS  
SUBSTITUTION TRANSMITTAL AND WARRANTY

Date: \_\_\_\_\_

To: City of Agoura Hills  
Project

Project Name: Agoura Hills Recreation Center Site Rehabilitation

Product: \_\_\_\_\_

Specified Item: \_\_\_\_\_  
Section Page Paragraph Description

As an equivalent to the above, the undersigned proposes to provide the following:

\_\_\_\_\_  
(describe substitution)

which we warrant is the equivalent, or better, of the specified product in every respect, except as may be listed herein below.

We further affirm the following statements:

1. The proposed substitution does not affect dimensions shown on Drawings.
2. The undersigned will pay for all changes to the building design, including engineering design, detailing and construction costs caused by the requested substitution.
3. The proposed substitution will have no adverse affect on other trades, the construction schedule, or specified warranty requirements.
4. Maintenance service parts will be locally available for the proposed substitution.
5. This substitution is necessary because: \_\_\_\_\_  
\_\_\_\_\_
6. The cost of this substitution (compared to the original item) is no less than product originally specified.

The following elements of the proposed substitution differ from the specified item:

(List as applicable. State "none" if no differences.)

Enclosed is the following supporting documentation:

(List as applicable)

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
(Manufacturer/Supplier/Other)

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
(Subcontractor)

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
(Contractor)

RFI/RFC No. \_\_\_\_\_

Date: \_\_\_\_\_

CITY OF AGOURA HILLS

REQUEST FOR INFORMATION/CLARIFICATION

Project: Agoura Hills Recreation Center Site Rehabilitation Project

Contractor: \_\_\_\_\_

To: \_\_\_\_\_

Attention: \_\_\_\_\_

CLARIFICATION OR INFORMATION REQUESTED: FILL IN ALL SECTIONS

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date Reply is Needed: \_\_\_\_\_ Additional Pages attached?  
\_\_\_\_\_

By: \_\_\_\_\_ Title: \_\_\_\_\_

Reply

\_\_\_\_\_  
\_\_\_\_\_

Additional Pages attached? \_\_\_\_\_

By: \_\_\_\_\_ Title: \_\_\_\_\_

The information provided in this RFI/RFC reply is to answer questions only with reference to interpretation of the Contract Documents. This is not a request for, nor an authorization for extra work or a time extension of the contract period.

c: Construction Manager

WSL

CITY OF AGOURA HILLS  
CHANGE ORDER REQUEST (C.O.R.)

Request #: \_\_\_\_\_ Date: \_\_\_\_\_

The following change(s) is/are hereby requested for adjustment consideration to the contract agreement. All work as part of this change order request shall be in conformance with the contract documents and specifications.

Description of Change: \_\_\_\_\_  
\_\_\_\_\_

Why is Change Requested: \_\_\_\_\_  
\_\_\_\_\_

Contractor(s) Performing Change: \_\_\_\_\_

Additional Time Requested (if any): \_\_\_\_\_ Calendar Day(s)

Contract Adjustment Requested: (Add/Deduct): \_\_\_\_\_  
\_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

The foregoing contract adjustment requested includes all applicable state sales tax(s), bonds, insurance and proportionally all other costs and incidentals, including but not limited to additional permits, fees, special inspections and labor and materials to provide the work.

CONTRACTOR SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

Contractor's Name/Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Telephone: \_\_\_\_\_

Note: This is a request for change only. Final approval will only be by executed change order.

CITY OF AGOURA HILLS

CHANGE ORDER FORM

CHANGE ORDER NO. \_\_\_\_\_

TO: \_\_\_\_\_  
(Project Title)

CONTRACTOR: \_\_\_\_\_

All work involved in this Change Order shall conform with the Specifications, Drawings, General Provisions, Special Provisions and the Contract.

The following change(s) are hereby made to the Contract:

<u>Item</u>	<u>Reference</u>	<u>Description</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Both contractor and owner hereby agree and acknowledge that execution of this change order constitutes a mutual accord and satisfaction as to the work and/or time extension covered herein and contractor specifically waives and releases any and all claims, rights, or interest, including but not limited to, those for impact, disruptions, loss of efficiency, ripple, or other extraordinary or consequential costs arising directly or indirectly out of the work or time extension described in this change order except as specifically included herein.

The contract is amended with respect to the above only and all other terms and conditions of the original contract remain unchanged.

CITY OF AGOURA HILLS

CHANGE ORDER NO. \_\_\_\_\_

PAGE \_\_\_ OF \_\_\_

CHANGE TO CONTRACT PRICE:

Original Contract Price: \$ \_\_\_\_\_

Plus: Approved Change Orders-to-Date \$ \_\_\_\_\_

Change Order No. \_\_\_\_\_ \$ \_\_\_\_\_

Change Order No. \_\_\_\_\_ \$ \_\_\_\_\_

Change Order No. \_\_\_\_\_ \$ \_\_\_\_\_

Cost/(Credit) for this Change Order (No. \_\_\_ ) \$ \_\_\_\_\_

New Contract Price including this Change Order (No. \_ ) will be - \$ \_\_\_\_\_

CHANGE TO CONTRACT TIME:  
(Calendar Days)

Original Time Period to Complete Project: \_\_\_\_\_ Days

Prior Time Period Adjustments \_\_\_\_\_ Days

Change Order No. \_\_\_\_\_ Days

Change Order No. \_\_\_\_\_ Days

Change Order No. \_\_\_\_\_ Days

Additional time or Reduced time from this Change Order (No. \_\_\_ ) will be - \_\_\_\_\_ Days

Revised Time Period to Complete Project: \_\_\_\_\_ Days

REQUIRED APPROVALS:

Proposed by/  
Concurrence by: \_\_\_\_\_  
(Contractor) (Date)

Recommended by: \_\_\_\_\_  
(Architect) (Date)

Approved by: \_\_\_\_\_  
(Owner's Representative) (Date)

**CITY OF AGOURA HILLS**  
**REQUEST FOR QUOTATION FORM**

PROJECT:                   The Agoura Hills Recreation Center Site Rehabilitation Project  
TO (CONTRACTOR):

Please submit price quotations for the following work:

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(Support Quotation with detailed cost breakdown and back-up materials)

Reference R.F.I. No. \_\_\_\_\_ (if any)

Price Quotations needed by: \_\_\_\_\_  
(Date)

Request Submitted by: \_\_\_\_\_ Date: \_\_\_\_\_

Both the Owner and Contractor agree and acknowledge that the information requested in this Request for Quotation is for review purposes only. This Request for Quotation is not a request for, nor authorization of additional work, nor an extension of the contract period.

c: Architect  
Construction Manager

TO: **CITY OF AGOURA HILLS**  
30001 Ladyface Court  
Agoura, CA 91301

FROM:

Contractor: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Trade: \_\_\_\_\_

Person to Contract: \_\_\_\_\_

Contract: \_\_\_\_\_ Date: \_\_\_\_\_

INDUCEMENT TO MAKE FINAL PAYMENT AND CONTRACTUAL GUARANTEE

Gentlemen:

We submit that our work under the above contract has been completed and inspected.

In order to induce you to make final payment, and pursuant to the terms of the Contract and the Terms and Conditions, we do hereby submit this document as a written guarantee for material and/or labor performed under our Contract. This letter does not change or amend any other terms or conditions of the Contract.

We are aware that our guarantee is from the date of completion and acceptance of all work under this Contract and recordation of notice of completion until the date that is one year thereafter. The date of this document is not the start of the guarantee period.

We will perform emergency repairs within 24 hours of notification and normal service calls for repairs within 72 hours of notifications.

For Emergency Calls - Phone No.: \_\_\_\_\_

For Normal Repair Service Calls: \_\_\_\_\_

Signed: \_\_\_\_\_

Company: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

GUARANTEE AND INDEMNIFICATION

Project: The Agoura Hills Recreation Center Site Rehabilitation Project

We hereby guarantee that the \_\_\_\_\_, which we have installed and/or work as installed, will fulfill the requirements included in the specifications. The undersigned agrees to repair or replace, at no cost to City, any or all of such work, together with any other adjacent work which may be displaced in connection with such replacement that may prove to be defective workmanship or material with a period of one year from the date of recordation of Notice of Completion of the above-mentioned structure by the City of Agoura Hills, ordinary wear and tear and unusual abuse or neglect expected.

In the event of the undersigned's failure to comply with the above mentioned conditions within a reasonable period of time, as determined by the City, but no later than thirty (30) days after being notified in writing by the City, the undersigned authorizes the City to proceed to have said defects repaired and made good at the expense of the undersigned, which will pay the costs and charges therefore upon demand, including reasonable attorney's fees and costs.

Furthermore, we will indemnify, defend (with an attorney approved by the City Attorney) and hold harmless the City and its officials, employees and agents against any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to the Project or its workmanship or materials, irrespective of fault or negligence of Contractor, its officials, employees or agents in connection with the performance of this Project, including without limitation the payment of all consequential damages, attorneys' fees, and other related costs and expenses, during the one year of the guarantee.

\_\_\_\_\_  
Subcontractor or General Contractor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Subcontractor or General Contractor

\_\_\_\_\_  
Date

Countersigned:

\_\_\_\_\_  
General Contractor if for Subcontractor

Representatives to be contacted to service subject to terms of contract.

Name: \_\_\_\_\_



Address: \_\_\_\_\_

\_\_\_\_\_

Telephone #: \_\_\_\_\_

Notary:

GENERAL RELEASE AGREEMENT

This General Release Agreement is made and entered into by and between the **CITY OF AGOURA HILLS**, ("CITY") and \_\_\_\_\_ ("Releasing Party"), as of this \_\_\_\_ day of \_\_\_\_\_, 2013.

RECITALS

1. City and Releasing Party previously entered into a written contract (the "Contract") described as follows: Contract for The Agoura Hills Recreation Center Site Rehabilitation.

2. Concurrently with the execution hereof, Releasing Party has delivered to City a/an (Unconditional) (Conditional) Waiver and Release Upon Final Payment applicable to all remain amounts owing to Releasing party under the contract. (STRIKE AS APPLICABLE)

NOW, THEREFORE, for valuable consideration, receipt of which is hereby acknowledged by Releasing Party, Releasing Party does hereby fully and generally release and discharge City of and from any and all claims, demands, actions, causes of actions, liabilities, damages, costs and expenses of all kinds and descriptions and whether known or unknown including, without limitation, any thereof arising directly or indirectly out of the Contract. Releasing Party hereby acknowledges that this release is a General Release relating to any and all claims whether known or unknown. In this regard, Releasing party hereby waives all rights which Releasing Party may have under California Civil Code Section 1542, which Section provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM/HER MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

In witness thereof, City and Releasing Party have executed this General Release Agreement.

CITY OF AGOURA HILLS

By: \_\_\_\_\_

Title: \_\_\_\_\_

RELEASING PARTY:

By: \_\_\_\_\_

Title: \_\_\_\_\_

CONDITIONAL WAIVER AND RELEASE  
UPON PROGRESS PAYMENT  
[Civil Code 3262(d)(1)]

Upon receipt of the undersigned of a check from

\_\_\_\_\_ (Maker of Check)

in the sum of \$ \_\_\_\_\_ (Amount of Check)

payable to \_\_\_\_\_ (Payee or Payees of Check)

and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien, stop notice, or bond right the undersigned has on the job of \_\_\_\_\_ (Owner)

located at \_\_\_\_\_ (Job Description)

to the following extent.

This release covers a progress payment for labor, services, equipment or material furnished to

\_\_\_\_\_ (Your Customer)

through \_\_\_\_\_ (Date)

only, and does not cover any retentions retained before or after the release date: extras furnished before the release date for which payment has not been received: extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment. Before any recipient of this document relies on it, said party should verify evidence of payment to the undersigned.

Dated: \_\_\_\_\_ (Company Name)

By: \_\_\_\_\_ (Title)

NOTE: This form complies with the requirements of Civil Code Section 3262(d)(1). It is to be used by a party who applies for a progress payment when the progress payment check has not yet cleared the bank.

UNCONDITIONAL WAIVER AND RELEASE

140

WSE

**UPON PROGRESS PAYMENT**  
[Civil Code 3262(d)(2)]

The undersigned has been paid and has received a progress payment in the sum of

\$ \_\_\_\_\_ for labor, services, equipment or material

furnished to \_\_\_\_\_  
(Your Customer)

on the job of \_\_\_\_\_  
(Owner)

located at \_\_\_\_\_  
(Job Description)

and does hereby release any mechanic's lien, stop notice, or bond right that the undersigned has on the above referenced job to the following extent.

\_\_\_\_\_ (Your Customer)

through \_\_\_\_\_ (Date)

only, and does not cover any retentions retained before or after the release date: extras furnished before the release date for which payment has not been received: extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment.

Dated: \_\_\_\_\_ (Company Name)

By: \_\_\_\_\_ (Title)

**NOTICE TO PERSONS SIGNING THIS WAIVER: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.**

NOTE: This form complies with the requirements of Civil Code Section 3262(d)(2). It is to be used to release claims to the extent that a progress payment has actually been received by the releasing party.

**CONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT**  
[California Civil Code 3262(d)(3)]

Upon receipt by the undersigned of a check from \_\_\_\_\_

In the sum of \$ \_\_\_\_\_ payable to \_\_\_\_\_

And when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien, stop notice or bond right the undersigned has on the job of

\_\_\_\_\_  
(Owner)

located at \_\_\_\_\_  
(Job Description)

This release covers the final payment to the undersigned for all labor, services, equipment or material furnished on the job, except for disputed claims for additional work in the amount of \$ \_\_\_\_\_. Before any recipient of this document relies on it, the party should verify evidence of payment to the undersigned.

Dated: \_\_\_\_\_  
(Company Name)

By: \_\_\_\_\_  
(Title)

NOTE: This form of release complies with the requirements of Civil Code Section 3262(d)(3). It is not effective until the check that constitutes final payment has been properly endorsed, and has cleared the bank.



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CITY OF AGOURA HILLS  
CITY MANAGER'S OFFICE

SCOPE OF WORK

FOR

THE AGOURA HILLS RECREATION CENTER SITE  
REHABILITATION PROJECT

AGOURA HILLS, CALIFORNIA

**THROUGHOUT THESE DOCUMENTS "CITY," AND "OWNER"  
SHALL MEAN THE CITY OF AGOURA HILLS, CALIFORNIA**

*WGL*



### Scope of Work

Modification of access road on property, new grading with surface improvement of drive aisle and parking lot, site drainage, site retaining walls, landscaping and hardscaping, partial demolition and remodel of existing structures and addition of new structures for a new recreation center with meeting rooms, classrooms, multi-purpose rooms and associated support spaces including a warming kitchen, office spaces and storage spaces. *This bid covers phase 1 of the project only, which excludes the classroom/art room wing of the project.*

See also the bid alternate plans on the following pages. Full size copies of these plans are also part of the set of drawings.