

**CITY OF MERCED
DEPARTMENT OF ENGINEERING**

CALIFORNIA

DESIGN-BUILD CONTRACT

FOR

PROJECT NUMBER CP240052

COMMUNITY PARK 42 PLAYGROUND

Matthew Serratto - Mayor

Sarah Boyle – Mayor Pro-Tempore

Daren Dupont – Council Member

Mike Harris – Council Member

Ronnie De Anda – Council Member

Shane Smith – Council Member

Fue Xiong– Council Member

D. Scott McBride – City Manager

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Daryl Jordan, PE – City Engineer

DESIGN-BUILD CONTRACT

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DESIGN-BUILD CONTRACT

THIS DESIGN-BUILD CONTRACT ("Contract" or "Agreement") entered into on _____, 2025 ("Execution Date") by and between the CITY OF MERCED, a California chartered municipal corporation ("City"), PlayCore Wisconsin, Inc., dba GameTime, a Design-Build Entity ("DBE" or "Design-Build Team" or "DBT"), is made with reference to the following:

RECITALS:

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. DBE is a Wisconsin Corporation] duly organized and in good standing in the State of California. DBE represents that it is duly licensed by the State of California and has the background, knowledge, experience and expertise to perform the obligations set forth in this Design-Build Contract.
- C. On **8/16/2024**, City issued a Request for Proposals ("RFP") to DBEs for the COMMUNITY PARK 42 PLAYGROUND ("Project"). In response to the RFP, DBE submitted a proposal ("Proposal").
- D. City and DBE desire to enter into this Design-Build Contract to provide the Design-Build Services for the Project, and other such services as identified in the Contract Documents for the Project upon the following terms and conditions.

NOW THEREFORE, in consideration of the mutual promises and undertakings hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed by and between the undersigned parties as follows:

SECTION 1 INCORPORATION OF RECITALS AND DEFINITIONS.

1.1 Recitals.

All of the recitals are incorporated herein by reference.

1.2 Definitions.

Capitalized terms shall have the meanings set forth in the RFP, this Design-Build Contract and/or in the General Conditions. If there is a conflict between the definitions in the RFP, this Design-Build Contract or in the General Conditions, the definitions in this Design-Build Contract shall prevail.

SECTION 2 THE PROJECT, OWNER'S PROJECT CRITERIA, AND DBE'S REVISED FEE SCHEDULE.

- 2.1 **Project.** The Project is the COMMUNITY PARK 42 PLAYGROUND, located at southeast corner of Mission Ave and Tyler Road in Merced, CA.

SECTION 3 THE CONTRACT DOCUMENTS.

3.1 List of Documents.

The Contract Documents (sometimes collectively referred to as "Agreement" or "Contract") consist of the following documents which are hereby incorporated into this Design-Build Contract by reference.

- 1) Change Orders
- 2) Field Orders

- 3) Design-Build Contract
- 4) RFP Addenda
- 5) Special Provisions
- 6) General Conditions
- 7) Approved Design Documents (to be developed by DBE)
- 8) Bridging Documents
- 9) Performance and Payment Bonds
- 10) Instructions to Proposers
- 11) Request for Proposals (RFP)
- 12) DBE's Proposal/Non-Collusion Affidavit
- 13) Reports listed in the Contract Documents
- 14) Public Works Department's Standard Drawings and Specifications (most current version at time of Proposal)
- 15) Utilities Department's Water, Gas, Wastewater, Electric Utilities Standards (most current version at time of Proposal)
- 16) City of Merced Traffic Control Requirements
- 17) City of Merced Truck Route Map and Regulations
- 18) Pre-Qualification Questionnaire

3.2 Order of Precedence.

For the purposes of construing, interpreting and resolving inconsistencies between and among the provisions of this Contract, the Contract Documents shall have the order of precedence as set forth in the preceding section. If a claimed inconsistency cannot be resolved through the order of precedence, the City shall have the sole power to decide which document or provision shall govern as may be in the best interests of the City.

SECTION 4 DBE'S DUTY.

4.1 Relationship of Trust and Confidence. DBE accepts the relationship of trust and confidence established between it and City by this Contract. DBE agrees to furnish the Design-Build Services necessary for the design and completion of the Work and agrees to furnish efficient business administration and superintendence, and to use its best efforts to complete the Work in the best and soundest way and in the most efficient and economical manner consistent with the best interest of City.

4.1.1 DBE represents that it is an independent DBE and that it is familiar with the type of Design-Build Services it is undertaking.

4.1.2 Neither DBE nor any of its agents or employees shall act on behalf of or in the name of City unless authorized in writing by City's Representative.

4.1.3 DBE shall perform its obligations with integrity, ensuring at a minimum that conflicts of interest, including but not limited to conflicts of interests on the part of the Design Professionals employed by DBE, shall be avoided.

4.2 Scope of Work. DBE shall be responsible for procuring or providing the Work for the Project consistent with the Contract Documents. DBE shall exercise reasonable skill and judgment in the procurement and provision of the Work, consistent with the applicable industry practices and the terms and conditions of the Contract Documents. DBE's Work consists of the Design and Construction Services described in section 4.3 and 4.4, below.

4.3 Design Services.

4.3.1 Architectural and Engineering Services. Architectural and engineering services must be provided by licensed, independent Design Professionals retained by DBE or by licensed employees of DBE, or as permitted by the law of the State of California. DBE may not engage the services of any Design Professional for this Project without obtaining the City's prior written approval, which approval will not be unreasonably withheld. City's approval will not be deemed to create any contractual relationship between City and any such Design Professional, except that the City must be considered a third-party beneficiary of such Design Professional's services for the Project. DBE must bind its Design Professionals in the same manner as DBE is bound to the City under this Contract, including, but not limited to, the insurance and indemnity requirements set forth herein. All Design Services must be guided by the Bridging Documents and Design Documents which are approved by City.

4.3.2 Project Schedule. Within (10) working days following full execution of the Contract, DBE must prepare and submit for City's review and approval a preliminary Project Schedule showing the timing and sequencing of the Design-Build Services required to complete the Project. Unless otherwise specified by City, the preliminary Project Schedule should include the major phases for the Design Services and for the Construction Services, including, but not limited to, completion of Design Development Documents; Construction Documents; procurement of Subcontractors; construction; final close out; as well as any other milestones applicable to this Project. The Project Schedule shall be updated for City's review and approval upon completion of each milestone included in the Project Schedule.

4.3.3 Design Development Documents. Within (20) working days following execution of the Contract, DBE shall prepare and submit for City's review and approval the Design Development Documents. The Design Development Documents must be based on the Bridging Documents, as may be modified by the use permit from or design approvals by City, but must further define the Project, including drawings and outline specifications fixing and describing the Project size, character and site relationships, and other appropriate elements describing the structural, architectural, mechanical and electrical systems. The Design Development Documents shall include, as applicable, plans, sections and elevations; criteria and sizing of major components; equipment sizes and capacities and approximate layouts, including required spaces and clearances; typical details; materials selections and general quality levels. When submitting the Design Development Documents, the DBE shall identify in writing, for City's approval, all material changes and deviations that have taken place since approval of the Bridging Documents and the Project Schedule. Two printed sets and one reproducible set of Design Development Documents must be provided to the City.

4.3.4 Construction Documents. Within (30) working days following City's approval of the Design Development Documents, DBE must prepare and submit for City's review and approval, Construction Documents setting forth in detail the quality levels of and the requirements for construction of the Project, and consisting of drawings and specifications that comply with applicable codes, laws, and regulations in effect at the time of their preparation at the location of the Project. The Construction Documents must also include all necessary bid and contract documents for procuring and providing the Construction Services, all of which are subject to approval by City and its legal counsel. When submitting the Construction Documents, the DBE shall identify in writing all for City's approval, all material changes and deviations that have taken place since approval of the Design Development Documents and Project Schedule. Two printed sets and one reproducible set of Construction Documents must be provided to the City.

4.3.5 Ownership of Documents.

4.3.5.1 Ownership of Tangible Documents. Provided City has fulfilled its payment obligations under the Contract Documents, City shall receive ownership of the property rights, except for copyrights, of all documents, drawings, specifications, electronic data and information prepared, provided or procured by DBE, as part of the Design Services.

4.3.5.2 Use of Documents in Event of Termination. In the event of a termination of this Contract, City shall have the right to use, to reproduce, and to make derivative works of the Design Documents to complete the Project, regardless of whether there has been a transfer of copyright to City.

4.3.5.3 City's Use of Documents After Completion of Project. After completion of the Project, City may reuse, reproduce or make derivative works from the Design Documents solely for the purposes of maintaining, renovating, remodeling or expanding the Project.

4.3.5.4 City's Indemnification for Use of Design Services. City recognizes that in the event of an early termination of the Contract, whether for convenience or for cause, DBE will not have the opportunity to finish or to finalize its Design Services. Therefore, if Owner uses the unfinished Design Services, in whole or in part, City shall defend, indemnify, and hold harmless DBE from and against any and all claims, damages, liabilities, losses, and expenses, including attorneys' fees, arising out of or resulting from the use or alteration of the Design Services, to the fullest extent permitted by applicable law.

4.3.5.5

4.3.5.6 DBE shall obtain from its Subcontractors and Design Professionals rights and rights of use that correspond to the rights given by DBE to City in this Contract and DBE shall provide evidence that such rights have been secured.

4.4 Construction Services.

4.4.1 DBE shall provide all labor, materials, equipment and services necessary to perform and timely complete the Construction Services in strict accordance with the Contract Documents, including the City approved Construction Documents, and in an economic and efficient manner in the best interests of City.

4.4.2 DBE is responsible for supervising and directing all aspects of the Work to facilitate the efficient and timely completion of the Work. DBE is solely responsible for, and required to exercise full control over, construction means, methods, techniques, sequences, procedures, and coordination of all portions of the Work, except to the extent that the Contract Documents provide other specific instructions.

4.4.3 DBE shall provide sufficient and competent Subcontractors, administration, staff, and skilled workforce necessary to perform and timely complete the Work in accordance with the Contract Documents.

4.4.4 DBE shall, at all times during performance of the Work, provide a qualified full-time superintendent, acceptable to City, and assistants, as necessary, who must be physically present at the Project site while any aspect of the Work is being performed.

4.4.5 DBE must, at all times, ensure that the Work is performed in a good workmanlike manner and in full compliance with the Contract Documents and all applicable laws, regulations, codes, standards, and permits.

4.4.6 DBE is solely responsible to City for the acts or omissions of any party or parties performing portions of the Work or providing equipment, materials or services for or on behalf of DBE or its Subcontractors.

4.4.7 DBE shall promptly correct, at DBE's sole expense, any Work that is deficient or defective in workmanship, materials, and equipment.

4.4.8 DBE shall keep such full and detailed accounts as may be necessary for proper financial management under this Contract. City shall be afforded access to all DBE's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to Change Order work performed on the basis of actual cost. DBE shall preserve all such records for a period of three years after the Final Payment or longer where required by law.

4.4.9 DBE shall provide periodic written reports to City on the progress of the Work in such detail as is required by City and as agreed to by City and DBE.

4.5 DBE's Subcontractors.

4.5.1 All Work which is not performed by DBE with its own duly licensed forces shall be performed by Subcontractors. DBE must provide each Subcontractor with a complete set of the Construction Documents and any approved modifications thereto.

4.5.2 DBE shall require every Subcontractor and material supplier to be bound to the provisions of the Contract Documents as they apply to the Subcontractor's or material supplier's portion(s) of the Work, and to likewise bind their Subcontractors or material suppliers. City reserves the right to reject any Subcontractor or material supplier based upon City's reasonable belief that the Subcontractor or material supplier is not adequately qualified, or whose performance is unacceptable to the City, or who has a history of unacceptable performance on other public works projects. Nothing in these Contract Documents creates a contractual relationship between a Subcontractor or material supplier and City, but City shall be deemed to be a third-party beneficiary of the contract between DBE and each Subcontractor.

4.5.3 All Subcontractors bidding on contracts for the Work shall be afforded the applicable protections contained in the Subletting and Subcontracting Fair Practices Act (Public Contract Code Section 4100 et seq.).

4.6 Coordination of Work. City reserves the right to perform or to have performed other work on or adjacent to the Project site while the Work is being performed. DBE is responsible for coordinating its Work with other work being performed on or adjacent to the Project site, and shall avoid hindering, delaying, or interfering with the work of other contractors. To the full extent permitted by law, DBE shall hold harmless and indemnify City against any and all claims to the extent arising from or related to DBE's reasonably avoidable, negligent, or willful hindrance of, delay to, or interference with the work of another contractor or City's own forces.

4.7 DBE's Representative. DBE shall designate a person who shall be DBE's authorized representative, subject to City's approval, which shall not unreasonably be withheld.

SECTION 5 PROJECT TEAM.

In addition to DBE, City has retained, or may retain, a Design Consultant or other consultants and contractors to provide professional and technical consultation for the design and construction of the Project. The Contract requires that DBE operate efficiently, effectively, and cooperatively with City as well as all other members of the Project Team and other contractors retained by City to construct other portions of the Project.

SECTION 6 TIME OF COMPLETION.

6.1 Time Is of Essence.

Time is of the essence with respect to all time limits set forth in the Contract Documents.

6.2 Commencement of Work.

DBE shall commence the Design-Build Services on the date(s) specified in City's Notice to Proceed.

6.3 Contract Time.

The Design-Build Services must begin on the date specified on the City's Notice to Proceed and shall be completed within **100** working days after the commencement date specified in City's Notice to Proceed.

By executing this Design-Build Contract, DBE expressly waives any claim for delayed early completion.

6.4 Liquidated Damages.

Pursuant to Public Contract Code Section 7203, if DBE fails to achieve Final Completion of the entire Work within the Contract Time, including any approved extensions thereto, City may assess liquidated damages on a daily basis for each day of Unexcused Delay in achieving Final Completion, based on the amount of Five Hundred Dollars (\$500) per day, or as otherwise specified in the Special Provisions. Liquidated damages may also be separately assessed for failure to meet milestones specified elsewhere in the Contract Documents applicable to the Work, regardless of impact on the time for achieving Final Completion. The assessment of liquidated damages is not a penalty but considered to be a reasonable estimate of the amount of damages City will suffer by delay in completion of the Work. The City is entitled to set off the amount of liquidated damages assessed against any payments otherwise due to DBE, including, but not limited to, setoff against release of retention. If the total amount of liquidated damages assessed exceeds the amount of unreleased retention, City is entitled to recover the balance from DBE or its sureties. Beneficial occupancy or use of the Project in whole or in part prior to Final Completion, shall not operate as a waiver of City's right to assess liquidated damages.

6.4.1 Other Remedies.

City is entitled to any and all available legal and equitable remedies City may have where City's Losses are caused by any reason other than DBE's failure to meet milestones specified in the Contract Documents, including failure to achieve Substantial Completion or Final Completion of the entire Work within the Contract Time. Notwithstanding anything herein to the contrary, neither City nor DBE shall be liable to the other for any consequential Losses or damages, whether arising in contract, warranty, tort (including active and passive negligence), strict liability, or otherwise, including, but not limited to, losses of use, profits, business, reputation, or financing.

6.5 Adjustments to Contract Time.

The Contract Time may only be adjusted for time extensions approved by City and memorialized in a Change Order approved in accordance with the requirements of the Contract Documents.

SECTION 7 COMPENSATION TO DBE.

7.1 Contract Sum.

DBE shall be compensated for satisfactory completion of the Work in compliance with the Contract Documents the Contract Sum of **Four Hundred Fifty Nine Thousand Twenty One Dollars And Twenty Nine Cents** (\$459,021.29) subject to equitable adjustments as expressly permitted by the Contract Documents.

☒ [This amount includes the Base Proposal]

7.2 Full Compensation.

The Contract Sum shall be full compensation to DBE for all Work provided by DBE and, except as otherwise expressly permitted by the terms of the Contract Documents, shall cover all Losses arising out of the nature of the Work or from the acts of the elements or any unforeseen difficulties or obstructions which may arise or be encountered in performance of the Work until its Acceptance by City, all risks connected with the Work, and any and all expenses incurred due to suspension or discontinuance of the Work, except as expressly provided herein. The Contract Sum may only be adjusted for Change Orders approved in accordance with the requirements of the Contract Documents.

SECTION 8 STANDARD OF CARE.

DBE agrees that the Work shall be performed by qualified, experienced and well-supervised personnel. All Work performed in connection with this Design-Build Contract shall be performed in a manner consistent with the standard of care under California law applicable to those who specialize in providing such services for projects of the type, scope and complexity of the Project.

SECTION 9 INDEMNIFICATION.

9.1 Hold Harmless.

To the fullest extent permitted by law, DBE shall protect, indemnify, defend and hold harmless City, its Council members, officers, employees and agents (each an "Indemnified Party") from and against any and all demands, claims, or liabilities of any nature, including death or injury to any person, property damage or any other loss, including all costs and expenses of whatever nature including attorney's fees, experts fees, court costs and disbursements ("Claims") to the extent resulting from the negligence, recklessness, or willful misconduct of the DBE, its officers, employees, agents or contractors under this Agreement, regardless of whether or not it is caused in part by an Indemnified Party.

Notwithstanding the above, nothing in this section shall be construed to require DBE to indemnify an Indemnified Party from Claims arising from the active negligence, sole negligence, or willful misconduct of an Indemnified Party.

DBE shall pay City for any costs City incurs to enforce this provision.

Pursuant to Public Contract Code Section 9201, City shall timely notify DBE upon receipt of any third-party claim relating to the Contract.

9.2 Survival.

The acceptance of DBE's services and duties by City shall not operate as a waiver of the right of indemnification. The provisions of this Section 9 shall survive the expiration or termination of this Agreement.

SECTION 11 INSURANCE AND BONDS.

Within ten (10) business days following issuance of the Notice of Award, DBE shall provide City with evidence satisfactory to the City that DBE has obtained insurance and has sufficient bonding capacity to provide Performance and Payment Bonds satisfying all requirements in Article 11 of the General Conditions. A payment bond, performance bond, guaranty and all insurance required for this contract must be filed with the contract documents and approved by the City Attorney before the Contractor enters upon performance of the Work.

SECTION 12 PROHIBITION AGAINST TRANSFERS.

City is entering into this Design-Build Contract in reliance upon the stated experience and qualifications of the DBE and its Design Professionals and Subcontractors as set forth in DBE's Proposal. Accordingly, DBE shall not assign, hypothecate or transfer this Design-Build Contract or any interest therein directly or indirectly, by operation of law or otherwise without the prior written consent of City. Any assignment, hypothecation or transfer without said consent shall be null and void and shall be deemed a substantial breach of contract and grounds for default in addition to any other legal or equitable remedy available to the City.

The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of DBE or of any general partner or joint venturer or syndicate member of DBE, if the DBE is a partnership or joint venture or syndicate or co-tenancy, shall result in changing the control of DBE, shall be construed as an assignment of this Design-Build Contract. Control means more than fifty percent (50%) of the voting power of the corporation or other entity.

SECTION 13 NOTICES.

13.1 Method of Notice.

All notices, demands, requests or approvals to be given under this Design-Build Contract shall be given in writing and shall be deemed served on the earlier of the following:

- (i) On the date delivered if delivered personally;
- (ii) On the third business day after the deposit thereof in the United States mail, postage prepaid, and addressed as hereinafter provided;
- (iii) On the date sent if sent by facsimile transmission;
- (iv) On the date sent if delivered by electronic mail; or
- (v) On the date it is accepted or rejected if sent by certified mail.

13.2 Notice Recipients.

All notices, demands or requests (including, without limitation, Change Order Requests and Claims) from DBE to City shall include the Project name and the number of this Design-Build Contract and shall be addressed to City at:

To City: City of Merced
City Clerk
678 W. 18th Street
Merced, CA 94303

Copy to: City of Merced
Engineering Department
678 W. 18th Street
Merced, CA 95340
Attn: Alivia Alfaro

In addition, copies of all Claims by DBE under this Design-Build Contract shall be provided to the following:

Merced City Attorney's Office
678 W. 18th Street
Merced, California 94340

All Claims shall be delivered personally or sent by certified mail.

13.3 Change of Address.

In advance of any change of address, DBE shall notify City of the change of address in writing. Each party may, by written notice only, add, delete or replace any individuals to whom and addresses to which notice shall be provided.

SECTION 14 DEFAULT.

14.1 Notice of Default.

In the event that City determines, in its reasoned discretion, that DBE has failed or refused to perform any of the obligations set forth in the Contract Documents or is in breach of any provision of the Contract Documents, City may give written notice of default to DBE in the manner specified for the giving of notices in the Design-Build Contract, with a copy to DBE's performance bond surety.

14.2 Opportunity to Cure Default.

Except for emergencies, DBE shall cure any default in performance of its obligations under the Contract Documents within ten (10) Days (or such shorter time as City may reasonably require) after receipt of written notice. However, if the breach cannot be reasonably cured within such time, DBE will commence to cure the breach within ten (10) Days (or such shorter time as City may reasonably require) and will diligently and continuously prosecute such cure to completion within a reasonable time, which shall in no event be later than ten (10) Days after receipt of such written notice.

SECTION 15 CITY'S RIGHTS AND REMEDIES.

15.1 Remedies Upon Default.

If DBE fails to cure any default of this Design-Build Contract within the time period set forth above in Section 14, then City may pursue any remedies available under law or equity, including, without limitation, the following:

15.1.1 Delete Certain Services.

City may, without terminating the Design-Build Contract, delete certain portions of the Work, reserving to itself all rights to Losses related thereto.

15.1.2 Perform and Withhold.

City may, without terminating the Design-Build Contract, engage others to perform the Work or portion thereof that has not been adequately performed by DBE and withhold the cost thereof to City from future payments to DBE, reserving to itself all rights to Losses related thereto.

15.1.3 Suspend The Design-Build Contract.

City may, without terminating the Design-Build Contract and reserving to itself all rights to Losses related thereto, suspend all or any portion of this Design-Build Contract for as long a period of time as City determines, in its sole discretion, in which event City shall have no obligation to adjust the Contract Sum or Contract Time, and shall have no liability to DBE for damages if City directs DBE to resume Work.

15.1.4 Terminate the Design-Build Contract for Default.

City shall have the right to terminate this Design-Build Contract, in whole or in part, upon the failure of DBE to promptly cure any default as required by Section 14. City's election to terminate the Design-Build Contract for default shall be communicated by giving DBE a written notice of termination in the manner specified for the giving of notices in the Design-Build Contract. Any notice of termination given to DBE by City shall be effective immediately, unless otherwise provided therein.

15.1.5 Invoke the Performance Bond.

City may, with or without terminating the Design-Build Contract and reserving to itself all rights to Losses related thereto, exercise its rights under the Performance Bond.

15.1.6 Additional Provisions.

All of City's rights and remedies under this Design-Build Contract are cumulative and shall be in addition to those rights and remedies available in law or in equity. Designation in the Contract Documents of certain breaches as material shall not waive the City's authority to designate other breaches as material nor limit City's right to terminate the Design-Build Contract or prevent the City from terminating the Agreement for breaches that are not material. City's determination of whether there has been noncompliance with the Design-Build Contract so as to warrant exercise by City of its rights and remedies for default under the Design-Build Contract, shall be binding on all parties. No termination or action taken by City after such termination shall prejudice any other rights or remedies of City provided by law or equity or by the Contract Documents upon such termination; and City may proceed against DBE to recover all liquidated damages and Losses suffered by City.

15.2 Delays by Sureties.

Time being of the essence in the performance of the Work, if DBE's surety fails to arrange for completion of the Work in accordance with the Performance Bond, within seven (7) calendar days from the date of the notice of termination, DBE's surety shall be deemed to have waived its right to complete the Work under the Contract, and City may immediately make arrangements for the completion of the Work through use of its own forces, by hiring a replacement DBE, or by any other means that City determines advisable under the circumstances. DBE and its surety shall be jointly and severally liable for any additional cost incurred by City to complete the Work following termination. In addition, City shall have the right to use any materials, supplies, and equipment belonging to DBE and located at the Worksite for the purposes of completing the remaining Work.

15.3 Damages to City.

15.3.1 For DBE's Default.

City will be entitled to recovery of all Losses under law or equity in the event of DBE's default under the Contract Documents.

15.3.2 Compensation for Losses.

In the event that City's Losses arise from DBE's default under the Contract Documents, City shall be entitled to deduct the cost of such Losses from monies otherwise payable to DBE. If the Losses incurred by City exceed the amount payable, DBE shall be liable to City for the difference and shall promptly remit same to City.

15.4 Suspension by City

15.4.1 Suspension for Convenience.

City may, at any time and from time to time, without cause, order DBE, in writing, to suspend, delay, or interrupt the Design-Build Services in whole or in part for such period of time, up to an aggregate of fifty percent (50%) of the Contract Time. The order shall be specifically identified as a Suspension Order by City. Upon receipt of a Suspension Order, DBE shall, at City's expense, comply with the order and take all reasonable steps to minimize costs allocable to the Work covered by the Suspension Order. During the Suspension or extension of the Suspension, if any, City shall either cancel the Suspension Order or, by Change Order, delete the Design-

Build Services covered by the Suspension Order. If a Suspension Order is canceled or expires, DBE shall resume and continue with the Work. A Change Order will be issued to cover any adjustments of the Contract Sum, or the Contract Time necessarily caused by such suspension. A Suspension Order shall not be the exclusive method for City to stop the Work.

15.4.2 Suspension for Cause.

In addition to all other remedies available to City, if DBE fails to perform or correct work in accordance with the Contract Documents, City may immediately order the Work, or any portion thereof, suspended until the cause for the suspension has been eliminated to City's satisfaction. DBE shall not be entitled to an increase in Contract Time or Contract Sum for a suspension occasioned by DBE's failure to comply with the Contract Documents. City's right to suspend the Work shall not give rise to a duty to suspend the Work, and City's failure to suspend the Work shall not constitute a defense to DBE's failure to comply with the requirements of the Contract Documents.

15.5 Termination Without Cause.

City may, at its sole discretion and without cause, terminate this Design-Build Contract in part or in whole upon written notice to DBE. Upon receipt of such notice, DBE shall, at City's expense, comply with the notice and take all reasonable steps to minimize costs to close out and demobilize. The compensation allowed under this Paragraph 15.5 shall be the DBE's sole and exclusive compensation for such termination and DBE waives any claim for other compensation or Losses, including, but not limited to, loss of anticipated profits, loss of revenue, lost opportunity, or other consequential, direct, indirect or incidental damages of any kind resulting from termination without cause. Termination pursuant to this provision does not relieve DBE or its sureties from any of their obligations for Losses arising from or related to the Design-Build Services performed by DBE.

15.5.1 Compensation.

Following such termination and within forty-five (45) Days after receipt of a billing from DBE seeking payment of sums authorized by this Paragraph 15.5.1, City shall pay the following to DBE as DBE's sole compensation for performance of the Work:

1. **For Services Performed.** The amount of the Contract Sum allocable to the portion of the Work properly performed by DBE as of the date of termination, less sums previously paid to DBE, plus direct costs and expenses reasonably attributable to such termination, including, by way of example, amounts due in settlement of terminated agreements with subcontractors, design consultants, and suppliers.
2. **For Close-out Costs.** If termination is effective after the Construction Services have commenced on the site, reasonable costs of DBE and its Subcontractors:
 - (i) Demobilizing and
 - (ii) Administering the close-out of its participation in the Project (including, without limitation, all billing and accounting functions, not including attorney or expert fees) for a period of no longer than thirty (30) Days after receipt of the notice of termination.
3. **For Fabricated Items.** Previously unpaid cost of any items delivered to the Project Site which were fabricated for subsequent incorporation in the Work.
4. **Profit Allowance.** An allowance for profit calculated as four percent (4%) of the sum of the above items, provided DBE can prove a likelihood that it would have made a profit if the Design-Build Contract had not been terminated.
5. **Emergency Termination.** The compensation provided in this provision does not apply to termination for emergency pursuant to Section 2.6 of the General Conditions.

15.5.2 Subcontractors.

DBE shall include provisions in all of its subcontracts, purchase orders and other contracts permitting

termination for convenience by DBE on terms that are consistent with this Design-Build Contract and that afford no greater rights of recovery against DBE than are afforded to DBE against City under this Section.

15.6 DBE's Duties Upon Termination.

Upon receipt of a notice of termination for default or for convenience, DBE shall, unless the notice directs otherwise, do the following:

- (i) Immediately discontinue the Work to the extent specified in the notice;
- (ii) Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Work that is not discontinued;
- (iii) Provide to City a description in writing, no later than fifteen (15) days after receipt of the notice of termination, of all subcontracts, purchase orders and contracts that are outstanding, including, without limitation, the terms of the original price, any changes, payments, balance owing, the status of the portion of the Design-Build Services covered and a copy of the subcontract, purchase order or contract and any written changes, amendments or modifications thereto, together with such other information as City may determine necessary in order to decide whether to accept assignment of or request DBE to terminate the subcontract, purchase order or contract; and
- (iv) Thereafter do only such Work as may be necessary to preserve and protect Design- Build Services already in progress and to protect materials, plants, and equipment on the Project Site or in transit thereto.

Upon termination, whether for cause or for convenience, the provisions of the Contract Documents remain in effect as to any Claim, indemnity obligation, warranties, guarantees, submittals of As-Built Documents, instructions, or manuals, or other such rights and obligations arising prior to the termination date.

SECTION 16 DBE'S RIGHTS AND REMEDIES.

16.1 DBE's Remedies.

DBE may terminate this Design-Build Contract only upon the occurrence of one of the following:

16.1.1 For Work Stoppage.

The Work is stopped for sixty (60) consecutive Days, or more than one hundred twenty (120) Days during the duration of the Project, through no act or fault of DBE, any Subcontractor, or any employee or agent of DBE or any Subcontractor, due to issuance of an order of a court or other public authority other than City having jurisdiction or due to an act of government, such as a declaration of a national emergency making material unavailable. This provision shall not apply to any work stoppage resulting from the City's issuance of a suspension notice issued either for cause or for convenience.

16.1.2 For City's Non-Payment.

If City does not pay DBE undisputed sums within ninety (90) Days after receipt of notice from DBE, DBE may terminate the Design-Build Contract (30) days following a second notice to City of DBE's intention to terminate the Design-Build Contract.

16.2 Damages to DBE.

In the event of termination for cause by DBE, City shall pay DBE the sums provided for in Paragraph 15.5.1 above. DBE agrees to accept such sums as its sole and exclusive compensation and agrees to waive any claim for other compensation or Losses, including, but not limited to, loss of anticipated profits, loss of revenue, lost opportunity, or other consequential, direct, indirect and incidental damages, of any kind.

SECTION 17 ACCOUNTING RECORDS.

17.1 Financial Management and City Access.

DBE shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Design-Build Contract in accordance with generally accepted accounting principles and practices. City and City's accountants during normal business hours, may inspect, audit and copy DBE's records, books, estimates, take-offs, cost reports, ledgers, schedules, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project. DBE shall retain these documents for a period of three (3) years after the later of (i) Final Payment or (ii) final resolution of all Contract Disputes and other disputes, or (iii) for such longer period as may be required by law.

17.2 Compliance with City Requests.

DBE's compliance with any request by City pursuant to this Section 17 shall be a condition precedent to filing or maintenance of any legal action or proceeding by DBE against City and to DBE's right to receive further payments under the Contract Documents. City may enforce DBE's obligation to provide access to City of its business and other records referred to in Section 17.1 for inspection or copying by issuance of a writ or a provisional or permanent mandatory injunction by a court of competent jurisdiction based on affidavits submitted to such court, without the necessity of oral testimony.

SECTION 18 INDEPENDENT PARTIES.

Each party is acting in its independent capacity and not as agents, employees, partners, or joint ventures of the other party. City, its officers or employees shall have no control over the conduct of DBE or its respective agents, employees, subconsultants, or Subcontractors, except as herein set forth.

SECTION 19 NUISANCE.

DBE shall not maintain, commit, nor permit the maintenance or commission of any nuisance in connection in the performance of services under this Design-Build Contract.

SECTION 20 PERMITS AND LICENSES.

Except as otherwise provided in the Special Provisions and Bridging Documents, The DBE shall provide, procure and pay for all licenses, permits, and fees, required by the City or other government jurisdictions or agencies necessary to carry out and complete the Work. Payment of all costs and expenses for such licenses, permits, and fees shall be included in one or more Proposal items. No other compensation shall be paid to the DBE for these items or for delays caused by non-City inspectors or conditions set forth in the licenses or permits issued by other agencies.

SECTION 21 WAIVER.

A waiver by either party of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.

SECTION 22 GOVERNING LAW AND VENUE.

22.1 Governing Law and Venue.

This Design-Build Contract shall be construed in accordance with and governed by the laws of the State of California, without regard to conflict of law provisions, and venue shall be in a court of competent jurisdiction in the County of Merced, California, and no other place.

22.2 Compliance with Laws.

DBE shall comply with all applicable federal and California laws and city laws, including, without limitation, ordinances and resolutions, in the performance of work under this Design-Build Contract.

SECTION 23 COMPLETE AGREEMENT.

This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and contracts, either written or oral. This Agreement may be amended only by a written instrument, which is signed by the parties.

SECTION 24 SURVIVAL OF CONTRACT.

The provisions of the Design-Build Contract which by their nature survive termination or expiration of the Design-Build Contract or Final Completion, including, without limitation, all warranties, indemnities, payment obligations, and City's right to audit DBE's books and records, shall remain in full force and effect after Final Completion or any termination or expiration of the Design-Build Contract.

SECTION 25 PREVAILING WAGES.

☐ **This Project is not subject to prevailing wages and related requirements.** DBE is not required to pay prevailing wages and meet related requirements under the California Labor Code and California Code of Regulations in the performance and implementation of the Project if the Contract:

- (1) is not a public works contract;
- (2) is for a public works construction project of \$25,000 or less, per California Labor Code Sections 1782(d)(1), 1725.5(f) and 1773.3(j); or
- (3) is for a public works alteration, demolition, repair, or maintenance project of \$15,000 or less, per California Labor Code Sections 1782(d)(1), 1725.5(f) and 1773.3(j).

Or

☒ **This Project is subject to prevailing wages and related requirements as a "public works" under California Labor Code Sections 1720 et seq. and related regulations.** DBE is required to pay general prevailing wages as defined in California Labor Code Section 1773.1 and Subchapter 3, Title 8 of the California Code of Regulations Section 16000 et seq., as amended from time to time. Pursuant to Labor Code Section 1773, the City has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification,

or type of worker needed to execute the contract for this Project from the State of California Department of Industrial Relations ("DIR"). Copies of these rates may be obtained at the Purchasing Department office. The general prevailing wage rates are also available at the DIR, Division of Labor Statistics and Research, website (see e.g. <http://www.dir.ca.gov/DLSR/PWD/index.htm>) as amended from time to time. DBE shall ensure that copies of the general prevailing wage rates are posted at all Project job sites and shall pay the adopted prevailing wage rates as a minimum. DBE shall comply with all applicable provisions of Division 2, Part 7, Chapter 1 of the California Labor Code (Labor Code Section 1720 et seq.), including, but not limited to, Sections 1720, 1725.5, 1771, 1771.1, 1771.4, 1773.2, 1774, 1775, 1776, 1777.5, 1782, 1810, 1813 and 1815, and all applicable implementing regulations, including but not limited to Subchapter 3, Title 8 of the California Code of Regulations Section 16000 et seq. (8 CCR Section 16000 et seq.), as amended from time to time.

SECTION 26 NON APPROPRIATION.

This Agreement is subject to the fiscal provisions of the Charter of the City of Merced and the Merced Municipal Code. This Agreement will terminate without any penalty (a) at the end of any fiscal year in the event that the City does not appropriate funds for the following fiscal year for this event, or (b) at any time within a fiscal year in the event that funds are only appropriated for a portion of the fiscal year and funds for this Design-Build Contract are no longer available. This section shall take precedence in the event of a conflict with any other covenant, term, condition, or provision of this Agreement.

SECTION 27 AUTHORITY.

The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

SECTION 28 COUNTERPARTS

This Agreement may be signed in multiple counterparts, which, when executed by all the parties, shall together constitute a single binding agreement.

SECTION 29 SEVERABILITY.

In case a provision of this Design-Build Contract is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected.

SECTION 30 STATUTORY AND REGULATORY REFERENCES.

With respect to any amendments to any statutes or regulations referenced in these Contract Documents, the reference is deemed to be the version in effect on the date that the Contract was awarded by City, as may be subsequently amended from time to time, unless otherwise required by law.

SECTION 31 WORKERS' COMPENSATION CERTIFICATION.

Contractor shall secure the payment of workers' compensation to its employees as provided in Labor Code Sections 1860 and 3700.

Pursuant to Labor Code Section 1861, by signing this Contract, DBE thereby certifies as follows:

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

SECTION 32 DIR REGISTRATION AND OTHER REQUIREMENTS.

32.1 General Notice to DBE.

City requires DBE and its listed Subcontractors to comply with all applicable requirements of the California Labor Code including but not limited to Labor Code Sections 1720 through 1861, and all applicable related regulations, including but not limited to Subchapter 3, Title 8 of the California Code of Regulations Section 16000 et seq., as amended from time to time. Additional information regarding public works and prevailing wage requirements is available on the DIR web site (see e.g. <http://www.dir.ca.gov>) as amended from time to time.

32.2 Labor Code section 1771.1(a).

City provides notice to DBE of the requirements of California Labor Code section 1771.1(a), which reads:

"A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."

32.3 DIR Registration Required.

City will not accept a bid proposal from or enter into this Design-Build Contract with DBE without proof that DBE and its Subcontractors are registered with the California Department of Industrial Relations ("DIR") to perform public work, subject to limited exceptions.

32.4 Posting of Job Site Notices; Compliance Monitoring.

City gives notice to DBE and its Subcontractors that DBE is required to post all job site notices prescribed by law or regulation and DBE is subject to compliance monitoring and enforcement by DIR.

32.5 Payroll Records.

Contractor shall furnish certified payroll records directly to the Labor Commissioner (DIR) in accordance with Subchapter 3, Title 8 of the California Code of Regulations Section 16461 (8 CCR Section 16461).

City requires DBE and its Subcontractors to comply with the requirements of Labor Code section 1776, including but not limited to:

- (i) Keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by, respectively, DBE and its Subcontractors, in connection with the Project.

- (ii) The payroll records shall be verified as true and correct and shall be certified and made available for inspection at all reasonable hours at the principal office of DBE and its Subcontractors, respectively.
- (iii) At the request of City, acting by its Project Manager, DBE and its Subcontractors shall make the certified payroll records available for inspection or furnished upon request to the City's Project Manager within ten (10) days of receipt of City's request.
 - ☐ City requests DBE and its Subcontractors to submit the certified payroll records to the City's Project Manager at the end of each week during the Project.
- (iv) If the certified payroll records are not provided as required within the 10-day period, then DBE and its Subcontractors shall be subject to a penalty of one hundred dollars (\$100.00) per calendar day, or portion thereof, for each worker, and City shall withhold the sum total of penalties from the progress payment(s) then due and payable to DBE. This provision supplements the provisions of Section 15 (City Rights and Remedies) hereof.
- (v) Inform the City's Project Manager of the location of DBE's and its Subcontractors' payroll records (street address, city and county) at the commencement of the Project, and also provide notice to the City's Project Manager within five (5) business days of any change of location of those payroll records.

32.6 Employment of Apprentices.

Contractor shall comply with the statutory requirements regarding employment of apprentices including without limitation Labor Code Section 1777.5. The statutory provisions will be enforced for penalties for failure to pay prevailing wages and for failure to comply with wage and hour laws.

33 Listing of Exhibits and Documents Incorporated Herein.

Exhibit A – Owner's Project Criteria
Exhibit B – Scope of Services
Exhibit C – Insurance
Exhibit D -- DBE's Bid Proposal
Exhibit E – Special Conditions
Exhibit F – Certification Labor Code Section 1861
Exhibit G– Public Works Contractor Registration Certification
Exhibit H -- Payment And Performance Bonds
Appendix

**SIGNATURE PAGE FOR CONSTRUCTION CONTRACT
BETWEEN THE CITY OF MERCED
AND GAMETIME, A PLAYCORE COMPANY**

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the
_____ day of _____, 2024.

CITY OF MERCED

GameTime, a Playcore Company

By: _____
D. Scott McBride
City Manager

By:  _____

Printed Name: Clint Whiteside

ATTEST:

Title: Director of Sales

By: _____
Deputy City Clerk

Address: 150 PlayCore Drive S.E.

(SEAL)

Fort Payne, AL 35967

Phone: (800) 633-2394

Fax: _____

Email: Clint.Whiteside@gametime.com

Taxpayer ID No.: 39-1720480

Vendor No.: _____


ACCOUNT DATA:

Project No.: CP240052

Project Account Number(s) / Amount:

APPROVED AS TO FORM:

By: _____
M. Venus Rodriguez
Finance Officer Verification

By:  _____
Craig J. Cornwell
City Attorney

**CITY OF MERCED
DESIGN-BUILD
GENERAL CONDITIONS**

**GENERAL CONDITIONS
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ARTICLE 1 – PRELIMINARY PROVISIONS

1.1 DEFINITIONS

Terms appearing in the Contract Documents with initial capitalization shall have the meanings set forth below:

1.1.1 **ACCEPTANCE:** The point after Final Completion when DBT has fully performed all of the requirements of the Contract Documents and the Work is accepted by City in writing.

1.1.2 **ADDENDA, ADDENDUM:** Written or graphic information (including, without limitation, Drawings or Special Provisions and technical specifications) prepared and issued by City Engineer prior to the deadline for submission of Proposals, which modify or interpret the Request for Proposals by additions, deletions, clarifications or corrections.

1.1.3 **AGREEMENT:** The Design-Build Contract and all Contract Documents incorporated therein; also referenced as the “Contract.”

1.1.4 **ALLOWABLE COSTS:** Actual and direct costs for performing Extra Work, including labor, materials, supplies, and equipment, as further specified herein, in Article 7 – Changes.

1.1.5 **ALLOWANCE:** An amount included in the Request for Proposals that may or may not be included in the Project, or for portions of the Work where the amount or scope of the Work cannot be ascertained at the time of Proposal submissions.

1.1.6 **ALTERNATE(S):** Those portions of the Proposal setting forth the price(s) for optional or alternative items not covered by the Base Proposal.

1.1.7 **APPLICABLE CODE REQUIREMENTS:** All applicable federal, state and municipal laws, statutes, building codes, ordinances and regulations of governmental authorities having jurisdiction over the Project, Work, Site, DBT or City.

1.1.8 **APPLICATION FOR PAYMENT:** An itemized application for payment prepared and submitted by DBT for review and approval by City, which is prepared, submitted and accompanied by supporting documentation in accordance with the requirements of the Contract Documents.

1.1.9 **APPROVE, APPROVED or APPROVAL:** Whether capitalized or not capitalized, shall mean, unless otherwise stated, either an express approval contained in a written statement signed by the approving authorized individual or deemed approved in accordance with the terms, conditions and procedures set forth in the Contract Documents. All such approvals by or on behalf of City (including, without limitation, approvals by Construction Manager) may be granted or withheld in the sole discretion of City.

1.1.10 **AS-BUILT DOCUMENTS:** The Project Drawings showing the condition of the Work as actually built, including, without limitation, the locations of mechanical, electrical, plumbing, HVAC or similar portions of the Work that are shown diagrammatically in the Contract Documents approved by City. These documents must be maintained by DBT on the Site and delivered, along with an electronic version of the set, to City upon Final Completion.

1.1.11 **BASE PROPOSAL PRICE:** The sum stated in the Proposal to provide the Design-Build Services, exclusive of any Alternate(s).

1.1.12 **BENEFICIAL OCCUPANCY:** City's right, at its option and convenience, to occupy or otherwise make use of all or any part of the Work prior to either Substantial Completion, Final Completion, or Acceptance.

1.1.13 **BRIDGING DOCUMENTS:** The preliminary design or performance specifications and drawings plans, if any, provided by the City's Design Consultant and hereby made part of the Contract Documents.

1.1.14 **CERTIFICATE FOR PAYMENT:** The form for approval by the Construction Manager of DBT's Application for Payment.

1.1.15 **CHANGE:** Additions, deletions, or other modifications to the Work, which may or may not involve Extra Work and which may or may not involve an adjustment (increase or decrease) to the Contract Sum or the Contract Time under the terms of the Contract Documents.

1.1.16 **CHANGE ORDER:** A duly authorized written instrument signed by City, or by City and DBT, which operates to amend the scope of Work, and which may also amend the Contract Sum or the Contract Time.

1.1.17 **CHANGE ORDER REQUEST:** DBT's written request for a Change Order.

1.1.18 **CITY:** City of Merced, a California chartered municipal corporation.

1.1.19 **CITY ENGINEER:** City Engineer of City of Merced or its designee.

1.1.20 **CLAIM:** A separate written demand by DBT for an extension of the Contract Time, and/or for payment of money or damages arising from Work done by, or on behalf of DBT which has been prepared and submitted in compliance with the Contract Documents.

1.1.21 **CLIENT DEPARTMENT:** Department or Division of City of Merced identified as the end user of the facilities.

1.1.22 **COMPENSABLE DELAY:** A Delay for which DBT may be entitled under the Contract Documents to both an extension of the Contract Time and an adjustment of the Contract Sum for additional compensation.

1.1.23 **CONSTRUCTION DOCUMENTS:** The final Design Documents prepared by DBT and approved by City for construction of the Work on the Project.

1.1.24 **CONSTRUCTION MANAGER:** The City designated employee, project manager or an individual, partnership, corporation, joint venture or other legal entity under contract with City to perform construction management services for the Project. The term "Construction Manager" means Construction Manager or Construction Manager's authorized representative.

1.1.25 **CONSTRUCTION SCHEDULE:** The Approved graphical representation of DBT's as-planned schedule for performance of the Work, and all Approved updates thereto, prepared in accordance with the requirements of the Contract Documents and that provides for Substantial Completion of the Work within the Contract Time.

1.1.26 **CONSTRUCTION SERVICES:** All of the labor, equipment, materials, and services required in Task 4 of the Scope of Services, Exhibit B, to construct the Work in accordance with the Approved Construction Documents, including, but not limited to all services required to be performed or customarily provided by a licensed general contractor, and excluding Design Services.

1.1.27 **CONTRACT:** The Design-Build Contract and all Contract Documents incorporated therein; also referenced as the "Agreement".

1.1.28 **CONTRACT DISPUTE:** A dispute arising out of or related to the Design-Build Contract or the interpretation, enforcement or breach thereof, except as specified in Article 4 herein.

1.1.29 **CONTRACT DISPUTE RESOLUTION PROCESS:** The process of resolution of Contract Disputes, and, upon election of City, disputes as set forth in Article 4 of these General Conditions.

1.1.30 **CONTRACT DOCUMENTS:** This term shall be as defined in Section 3 of the Design-Build Contract.

1.1.31 **CONTRACT SUM:** The total amount of compensation stated in the Design-Build Contract that is payable to DBT for the performance of the Work in accordance with the Contract Documents, including adjustments made by Change Order.

1.1.32 **CONTRACT TIME:** The total number of days set forth in the Design-Build Contract within which Substantial Completion of the Work must be achieved by DBT, including any adjustments of time (increases or decreases) made by Change Order.

1.1.33 **CONTRACTOR MARKUP:** The markup that the DBT or Subcontractor may make on Extra Work that it performs with its own forces. A fixed sum calculated as ten percent (10%) of applicable Allowable Costs incurred by DBT or Subcontractor for performing Extra Work with its own forces, which is deemed to be full compensation for DBT's or Subcontractor's indirect costs associated with Extra Work, including, overhead, profit, and other indirect costs not included in the Allowable Costs. Contractor Markup is separate from and does not include Subcontractor Markup as defined herein.

1.1.34 **DAY:** Whether capitalized or not, unless otherwise specifically provided, means calendar day, including weekends and legal holidays.

1.1.35 **DEFECTIVE WORK:** Work by DBT that is unsatisfactory, faulty, omitted, incomplete, deficient or does not conform to the Applicable Code Requirements, the Contract Documents, the directives of City or the requirements of any inspection, reference standard, test, code or approval specified in the Contract Documents.

1.1.36 **DELAY:** Whether capitalized or not, includes any circumstances involving disruption, hindrance, or interference in the performance of the Work within the Contract Time.

1.1.37 **DELETED WORK:** Work that is eliminated due to a Change in the Work requested by City or DBT for which City is entitled to a deductive adjustment in the Contract Sum.

1.1.38 **DESIGN-BUILD ENTITY or DBE (or DESIGN-BUILD TEAM or DBT):** As defined on page 1, paragraph 1, of this CONTRACT, the partnership, corporation or other legal entity that will provide both the Design Services and the Construction Services for the Project under this Contract.

1.1.39 **DESIGN CONSULTANT:** The individual(s) or firm(s) under contract with City to provide preliminary design or engineering services for the Project and responsible for preparing the Bridging Documents for the Project. The term "Design Consultant" means Design Consultant or Design Consultant's authorized representative but does not mean the architect of record or engineer of record for the Project.

1.1.40 **DESIGN DEVELOPMENT DOCUMENTS:** The Design Documents prepared by DBT and approved by City for preparation of the final Construction Documents.

1.1.41 **DESIGN DOCUMENTS:** The plans and specifications developed by DBT as part of the Design Services, including, collectively, the Design Development Documents and Construction Documents.

1.1.42 **DESIGN PROFESSIONAL:** An architect, engineer, landscape architect or land surveyor licensed and in good standing under the applicable provisions of the Business and Professions Code, who is retained by DBT to provide Design Services for the Project.

1.1.43 **DESIGN SERVICES:** All services necessary to complete Tasks 1, 2, and 3, as set forth in the Scope of Services, Exhibit B, to design the Work in conformance with the Owner's Project Criteria and within the Contract Sum, including, but not limited to all services required to be provided by or under the direction of a Design Professional, and excluding the Construction Services.

1.1.44 **DRAWINGS:** The graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the Work, generally including plans, elevations, subparagraphs, details, schedules and diagrams. The term "Drawings" may be used interchangeably with "Plans."

1.1.45 **ESCROW AGENT:** A state or federally chartered bank in the State of California which holds securities pursuant to an escrow agreement as set forth in Section 9.5 of these General Conditions.

1.1.46 **EXCUSABLE DELAY:** A Delay for which DBT may be entitled under the Contract Documents to an extension of time, but not compensation.

1.1.47 **EXISTING IMPROVEMENTS:** All improvements located on the Site as of the date of execution of the Design-Build Contract, whether above or below the surface of the ground, including but not limited to existing buildings, utilities, infrastructure improvements and other facilities.

1.1.48 **EXTRA WORK:** Additional Work or costs due to a Change in the Work that is not described in or reasonably inferable from the Contract Documents which may be the basis for an adjustment of the Contract Sum and/or the Contract Time under the terms of the Contract Documents. Extra Work shall not include additional Work or costs arising from DBT's failure to perform any of its duties or obligations under the Contract Documents.

1.1.49 **FIELD ORDER:** A written instrument signed by the City or its Construction Manager that authorizes and directs performance of the Work described therein, and which may or may not include adjustments (increase or decrease) to the Contract Sum and/or Contract Time.

1.1.50 **FINAL COMPLETION:** Full completion of all Work required by the Contract Documents, including all punch list items, and submission of Record Documents, all to City's satisfaction.

1.1.51 **FINAL PAYMENT:** Final payment of the Contract Sum following Final Completion, including release of undisputed retention, less any amounts withheld or offset pursuant to the Contract Documents, including, but not limited to, liquidated damages, unreleased stop notices, amounts subject to setoff, and up to 150% of unresolved third-party claims for which DBT is required to indemnify City, and up to 150% of any amounts in dispute as authorized by Public Contract Code Section 7107.

1.1.52 **FRAGNET:** A "Fragnet", sometimes referred to as "time impact analysis," is a contemporaneous, fragmentary scheduling network, which graphically identifies the sequencing of all critical and non-critical new activities and/or activity revisions affected by a Change Order or Delay, with logic ties to all affected existing activities noted on the Construction Schedule. Its objective is to isolate and quantify any time impact of a specific issue, determine and demonstrate any such specific Delay in relation to past and/or other current Delays and to provide a method for incorporating adjustments to the Contract Time into the Construction Schedule.

1.1.53 GENERAL CONDITIONS: That portion of the Contract Documents relating to the administrative procedures to be followed by DBT in carrying out the Work.

1.1.54 HAZARDOUS SUBSTANCES: Refers to, without limitation, the following: any chemical, material or other substance defined as or included within the definition of hazardous substances, hazardous materials, hazardous wastes, extremely hazardous substances, toxic substances, toxic material, restricted hazardous waste, special waste, universal wastes or words of similar import under any Environmental Law.

1.1.55 LOSSES: Any and all losses, costs, liabilities, Claims, damages, liquidated damages, actions, judgments, settlements, expenses, fines and penalties. "Losses" do not include attorneys' fees.

1.1.56 NOTICE OF AWARD: Written notice issued by City notifying DBT of issuance of the Design-Build Contract.

1.1.57 NOTICE TO PROCEED: Written notice issued by City to DBT to begin the Design-Build Services.

1.1.58 PERFORMANCE BOND, PAYMENT BOND: The performance and payment bonds to be provided by DBT for the Construction Services.

1.1.59 PLANS: The graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, subparagraphs, details, schedules and diagrams. The term "Plans" may be used interchangeably with "Drawings."

1.1.60 PRE-CONSTRUCTION MEETING: A meeting held with the Project Team prior to beginning construction in order to review Contract Documents and clarify roles, responsibilities and authority of the Project Team.

1.1.61 PROJECT: The total design and construction of the public improvement(s) specified in the RFP, of which the Work provided by DBT under the Contract Documents may be the whole or part and which may include work performed by City's own forces or by Separate Contractors.

1.1.62 PROJECT TEAM: Collectively, the DBT, City, Design Consultant, Construction Manager and other consultants and Contractors providing professional and technical consultation for the design and construction of the Project.

1.1.63 PROPOSAL: A written proposal submitted by DBE to City for the Project in response to City's Invitation for Proposals.

1.1.64 PROPOSER: An individual or entity that submits a Proposal.

1.1.65 RECORD DOCUMENTS: The term "Record Documents" refers to, collectively, the As-Built Documents, warranties, guarantees and other documents required to be submitted by DBT as a condition of Final Completion.

1.1.66 REQUEST FOR INFORMATION: A written instrument, prepared by DBT, which requests an interpretation or clarification in the Design-Build Services or a response to a question concerning the Design-Build Services. A Request for Information does not entitle DBT to an adjustment in the Contract Sum unless it requires Extra Work and DBT requests and is entitled to such an adjustment in accordance with the provisions of the Contract Documents.

1.1.67 REQUEST FOR INFORMATION RESPONSE: A written instrument, usually prepared by the Design Consultant, which sets forth an interpretation or clarification or a response to a DBT question concerning the Design-Build Services.

1.1.68 REQUEST FOR PROPOSALS or RFP: The City's formal, written request for Design-Build Services for the Project and the Contract Documents provided with or incorporated into the RFP.

1.1.69 SCHEDULE OF VALUES: A detailed, itemized breakdown of the Contract Sum, which provides for a fair and reasonable allocation of the dollar values to each of the various parts of the Design-Build Services.

1.1.70 SEPARATE CONTRACTOR: A person or firm under separate contract with City or other entity performing other Work at the Site.

1.1.71 SITE: The physical site located within City where the Project is to be constructed, including all adjacent areas for staging, storage, parking and temporary offices.

1.1.72 SPECIAL PROVISIONS: The portions of the Contract Documents consisting of additional written requirements for materials, equipment, standards, skill, quality for the Design-Build Services. These provisions may also contain amendments, deletions or additions to the General Conditions.

1.1.73 STATEMENT OF CONTRACT DISPUTE: The DBT's written statement prepared in accordance with Article 4 of these General Conditions required as a condition of its initiating the Contract Dispute Resolution Process set forth in the Design-Build Contract.

1.1.74 SUBCONTRACTOR: A person or firm that has a contract with a DBT to perform a portion of the Work. The term "Subcontractor" includes suppliers and vendors and is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. "Subcontractor" includes Subcontractors of any tier.

1.1.75 SUBCONTRACTOR MARKUP: The markup the Contractor may make on Extra Work performed by a Subcontractor. A fixed sum calculated as fifteen percent (15%) of the Subcontractor's Allowable Costs incurred by Subcontractor for performing Extra Work, which is deemed to be full compensation for DBT's indirect costs for having the Extra Work performed by the Subcontractor, including, overhead, profit, and other indirect costs not included in Allowable Costs. Subcontractor Markup is made on the Subcontractor's incurred Allowable Costs only, which is separate from and does not include Contractor Markup as defined herein, made by the Subcontractor.

1.1.76 SUBMITTALS: All shop drawings, samples, exemplars, product data and other submittals required to be submitted to the City by DBT under the Contract Documents.

1.1.77 SUBSTANTIAL COMPLETION, SUBSTANTIALLY COMPLETE: As determined by City, the point at which the Work is sufficiently complete to be occupied and utilized by City for its intended purpose, and DBT has fulfilled its obligations under the Contract Documents, except for minor punch list items which do not impair City's ability to so occupy and utilize the Project.

1.1.78 SUPERINTENDENT: The person appointed by DBT, subject to approval by City, to supervise and coordinate DBT's own forces and Subcontractors in all aspects of the Construction Services.

1.1.79 UNEXCUSED DELAY: Any Delay in the path of activities that is critical to Substantial Completion of the Work within the Contract Time and which Delay is not attributable to DBT. An Unexcused Delay shall not entitle DBT to either an extension of the Contract Time or an adjustment of the Contract Sum. To the extent an Unexcused Delay is concurrent with an Excused Delay, the Excusable Delay shall be conclusively deemed an Unexcused Delay.

1.1.80 WORK: All labor, materials, equipment, services, permits, fees, licenses and taxes, and all other things necessary for DBT to perform the Design and Construction Services in accordance with the Contract Documents, including, without limitation, any changes or additions requested by City. The Work may constitute the whole or part of the Project.

1.2 OWNERSHIP AND USE OF DOCUMENTS

1.2.1 All originals, copies and electronic forms of Plans and Drawings, technical specifications, (including, without limitation, the Bridging Documents) shall not be used by DBT, or any Subcontractor, for any purpose other than providing the Design-Build Services for the Project. DBT and Subcontractors are granted a limited license, revocable at will by City, to use and reproduce applicable portions of the Contract Documents appropriate to and for providing Design-Build Services under the Contract Documents; provided however, that such use shall not reduce City's rights to use and ownership of the documents.

1.2.2 DBT shall keep on the Site of the Project, at all times, a complete set of City approved, permitted Contract Documents for use by City.

1.2.3 Proposed Changes or refinements and clarifications to the Approved Construction Documents will be provided to DBT in the form of reproducible prints. DBT shall, at its own expense and without adjustment to the Contract Sum, reproduce and distribute such prints as are necessary for the complete pricing of the Change and for performance of the Work.

1.2.4 DBT shall include a provision in all contracts with Subcontractors who perform Work on the Project, protecting and preserving City's rights to ownership and use of documents as set forth in this Section 1.2.

1.3 INTERPRETATION OF CONTRACT DOCUMENTS

1.3.1 The Contract Documents are complementary and what is required by one shall be as binding as if required by all.

1.3.2 In general, the Drawings will show dimensions, positions, and type of construction to be completed; and the Special Provisions and technical specifications will define materials, quality and standards. Any Work called for on the Drawings and not mentioned in the Special Provisions and technical specifications, or vice versa, shall be performed as though fully set forth in both. Work not particularly detailed, marked or specified, shall be the same as similar parts that are detailed, marked or specified.

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

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

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

1.3.6 Any cross-references indicated between various subparagraphs or Drawings and Documents are provided for the DBT's convenience and shall not be all-inclusive.

1.3.7 Unless specifically noted to the contrary, all Work, equipment, casework, mechanical, electrical and similar devices of whatever nature in the Contract Documents shall be completely installed, hooked-up, made operational and made functional for the purpose such are intended, and all costs therefore are included in the Contract Sum.

1.3.8 Figured dimensions on scale Drawings and on full size Drawings shall govern over scale Drawings without figured dimensions. The Drawings shall not be scaled to determine dimensions, and (except in the case of diagrammatic Drawings) shall be calculated from figures shown on the Drawings. Obvious discrepancies between scale and figured dimensions, unless marked "not to scale," must be brought to the Construction Manager's attention before proceeding with the Work affected by the discrepancy.

1.3.9 If there is a conflict between any of the Contract Documents, DBT shall immediately bring such conflict to the attention of City, whose decisions regarding such conflict shall be final and binding as to the requirements of the Contract Documents. In the event of any conflicts between or among the Applicable Code Requirements, the more stringent shall govern. In the event a conflict between any of the Contract Documents is not resolved by the order of precedence established in the Contract Documents, the highest standard of quality and skill, the most stringent requirements, and the most specific provision of the Contract Documents shall govern and shall be required in the performance of the Design-Build Services.

1.3.10 The general character of the Design-Build Services is shown in the Contract Documents, but Changes, modifications, clarifications and refinements may be made in details when needed to more fully explain the Work. Provided that they are a logical evolution of the Bridging Documents that were provided with the Request for Proposals or were reasonably inferable as necessary to provide a completed and fully operational system, facility or structure, the same shall be considered part of the scope of the Design-Build Services to be provided without adjustment in the Contract Sum or the Contract Time.

1.3.11 Where on any Drawing a portion of the Work is drawn out and the remainder is indicated in outline, the drawn-out parts shall apply also to all other like portions of the Work.

1.3.12 DBT will provide all necessary labor, equipment, transportation and incidentals required to complete the Design-Build Services, even if the Contract Documents do not describe the Work in complete detail.

1.3.13 Drawings and diagrams for mechanical, plumbing and electrical Work shall be considered as diagrammatic only and shall not to be used for any structural guidance or physical layout, unless specifically detailed or dimensioned, and DBT shall be responsible to provide any and all numbers and lengths of mechanical, plumbing or electrical fittings, wire, conduit, connections, attachments or similar materials needed to complete the Work, at no adjustment to the Contract Sum or Contract Time, whether or not they exceed the numbers of such pieces or the lengths indicated by the Drawings.

1.3.14 City, in its reasoned discretion, will interpret the Contract Documents and make the determination of whether or not DBT has fulfilled the requirements of the Contract Documents. Such interpretations and decisions of City shall be final and, if DBT disagrees with that interpretation and/or decision, it may submit a claim in accordance with Article 4.

ARTICLE 2 –CITY’S RIGHTS AND OBLIGATIONS

2.1 INFORMATION AND SERVICES PROVIDED BY CITY

2.1.1 Except as otherwise provided in the Special Provisions and Bridging Documents, DBT shall obtain and pay for any permits, easements and governmental approvals, including City building and related permits, for the use or occupancy of permanent structures required in connection with the Design-Build Services.

2.1.2 Requests for Information Responses, Approvals and decisions required of City, Design Consultant or Construction Manager under the Contract Documents shall be provided by the Construction Manager to DBT upon request in a timely manner in order to avoid unreasonable Delay in the orderly and sequential progress of the Design-Build Services. Notwithstanding the foregoing, failure by City, Design Consultant, Construction Manager or City’s other consultants to provide Request for Information Response, Approvals or decisions shall not be considered as a basis for DBT to seek adjustment in the Contract Time until ten (10) Days after DBT has delivered written notice to City and to the person from whom such information, Approval or decision is requested, including the following:

(i) The notice must include the following statement: “You are hereby notified that certain information, approval or decision described herein has not been provided in accordance with Paragraph 2.1.2 of the General Conditions and if not provided within ten (10) Days from this notice may result in additional cost or a request for time extension due to Delay.”

(ii) A detailed description of the information, approval or decision required, accompanied by copies of DBT’s prior written request(s).

(iii) The date by which the information, approval or decision must be received so as to not result in Delay to the Project, which shall in no event be earlier than ten (10) Days after the date of City’s receipt of such notice.

2.1.3 City’s failure to provide the requested information, approval or decision within ten (10) days following receipt of the above notification will not entitle DBT to an increase in the Contract Sum or Contract Time unless the delay was unreasonable under the circumstances and DBT requests an increase in the Contract Sum and/or Contract Time by submitting a Change Order Request in compliance with Article 7 herein. DBT will not be entitled to an increase in the Contract Time if the City’s delay in responding was 1) reasonable under the circumstances, 2) caused by DBT’s failure to timely or properly submit its request for information, or 3) the requested information was already provided or available to the DBT.

2.2 ACCESS TO PROJECT SITE

City will make available, no later than the commencement date designated in the current construction Schedule accepted by City, the lands and facilities upon which the Work is to be performed, including such access and other lands and facilities designated in the Contract Documents, for use by DBT.

2.3 CITY'S RIGHT TO STOP THE WORK

If DBT fails to correct Defective Work as required by Section 12.2 of these General Conditions, fails to perform the Work in accordance with the Contract Documents, or violates any Applicable Code Requirement, City may, without terminating the Contract, direct DBT to stop the Work, or any portion thereof, until the cause for such order has been eliminated by DBT. DBT shall not be entitled to any adjustment of Contract Time or Contract Sum as a result of any such order. City shall have no duty or responsibility to DBT or any other party to exercise the right to stop the Work.

2.4 CITY'S RIGHT TO CARRY OUT THE WORK

If, due to the fault of DBT or those for whom DBT is responsible, DBT fails to carry out the Work in accordance with the Contract Documents, fails to provide sufficient labor, materials, equipment, tools and services to maintain the Construction Schedule, or otherwise fails to comply with any requirement of the Contract Documents, and fails within the time specified in the Contract Documents, after receipt of notice from City to promptly commence and thereafter diligently continue to completion the correction of such failure, City may, without prejudice to other remedies City may have and without terminating the Contract, correct such failure at DBT's expense. In such case, City shall be entitled to deduct from payments then or thereafter due DBT the cost of correcting such failure, including compensation for the additional services and expenses of City and City's consultants made necessary thereby. If payments then or thereafter due DBT are not sufficient to cover such amounts, DBT shall pay the additional amount to City.

2.5 ACCESS TO MUNICIPAL SERVICE CENTER

For all Projects which require DBT access to City's Municipal Service Center (MSC), all DBTs shall provide and all DBT's personnel shall at all times display, in the form of badges, identification which shall include the DBT's name, the employee's name, City's Project Managers name and telephone number, and the name and number of the Project being performed. Badge identification information shall correspond with information contained in the bearer's driver license or with other City approved identification. Any discrepancies, or failure of DBT's personnel to display proper identification, will in result their removal from the Project, or in refusal of access to the MSC.

2.6 EMERGENCY TERMINATION OF CONTRACT

The Design-Build Contract is subject to termination as provided by Section 4410 and Section 4411 of the Government Code of the State of California, being portions of the Emergency Termination of Public Contract Act of 1949. In the event that the Design-Build Contract is terminated pursuant to said section, compensation to the DBT shall be determined on the basis of the reasonable value of the Work completed, including preparatory work. As an exception of the foregoing, in the case of any fully completed separate item or portion of the work for which there is a separate unit or contract price, the unit or contract price shall control.

ARTICLE 3 – DBT’S RIGHTS AND OBLIGATIONS

3.1 REVIEW OF THE SITE, CONTRACT DOCUMENTS AND FIELD CONDITIONS

3.1.1 DBT warrants that it is satisfied as to character, quality, and quantities of surface and subsurface materials or obstacles to be encountered insofar as reasonably ascertainable from a careful inspection of the Site (including, without limitation, Existing Improvements on the Site) and from the geological investigation reports, data and similar information, if any, made available to DBT by City. Any failure by DBT to take such information or conditions into consideration will not relieve DBT from responsibility for estimating the difficulty and cost of successfully completing the Work within the Contract Sum and Contract Time.

3.1.2 DBT warrants and represents that it has carefully reviewed the Proposal and Contract Documents prior to submitting its Proposal and executing the Contract. The DBT shall not be entitled, and conclusively waives any right, to an adjustment in the Contract Sum or Contract Time for any additional or unforeseen costs or Delay in the performance of Work due to conditions in Contract Documents constituting errors, omissions, conflicts, ambiguities, lack of coordination or noncompliance with Applicable Code Requirements, if such conditions were either discovered by DBT or could have been reasonably discovered by DBT or its Subcontractors in the exercise of care and diligence in the review of the Contract Documents, subject to the limitations of Public Contract Code Section 1104.

3.1.3 If DBT discovers what it perceives to be errors, omissions, conflicts, ambiguities, lack of coordination or noncompliance with Applicable Code Requirements in the Contract Documents, then DBT shall, within five (5) days of discovery, notify City or the Construction Manager in writing stating both of the following:

- (i) A detailed description of the conditions discovered.
- (ii) DBT’s request for clarification, further details or correction of the Contract Documents.

Failure by DBT to provide written notice within the period of time required shall result in DBT waiving any right to adjustment in the Contract Sum or Contract Time on account thereof.

3.1.4 If DBT believes it is entitled to an adjustment of the Contract Sum or Contract Time for Extra Work based upon additional written or verbal instructions, information, or direction from City, Design Consultant, or Construction Manager, it may submit a Change Order Request pursuant to Article 7 of the General Conditions within ten (10) days of receipt of such instructions, information, or direction.

3.1.5 The DBT shall take field measurements of the existing field conditions verified. DBT shall carefully compare the field conditions with the Contract Documents and other information known to DBT before commencing the Work. DBT shall promptly report in writing to the Construction Manager any errors, inconsistencies, or omissions the DBT discovers.

3.1.6 If DBT performs any portion of the Work which it knows, or in the exercise of care and diligence should have known, involves an error, omission, conflict, ambiguity, lack of coordination or noncompliance with Applicable Code Requirements, without notifying and obtaining the written Approval of City or before obtaining a written clarification, interpretation, instruction or decision from Construction Manager, then any Work that is performed that is not in conformance with the clarifications, interpretation, instruction or decision of City, Design Consultant or Construction Manager shall be removed or replaced and DBT shall be responsible for the resultant Losses with no adjustment in the Contract Sum or Contract Time.

3.1.7 Existing improvements at the Site, for which no specific description is made on the Drawings, but which could be reasonably assumed to interfere with the satisfactory completion of the Work, shall be removed and disposed of by DBT, but only upon the specific direction and control of City. Without limitation to the foregoing, and notwithstanding any information provided by City pertaining to groundwater elevations and/or geological and soils conditions encountered, it is understood that it is DBT's responsibility to determine and allow for the elevation of groundwater, and the geological and soils conditions at the date of performance of the Work.

3.2 SUPERVISION AND CONSTRUCTION PROCEDURES

3.2.1 DBT shall supervise, coordinate and direct the Construction Services using DBT's best skill and attention and shall provide supervision sufficient to assure proper coordination and timely completion of the Work. DBT and its subcontractors shall be solely responsible for and have control over construction means, methods, techniques, safety, sequences, procedures and the coordination of all portions of the Work.

3.2.2 DBT shall be responsible for the accurate layout of all portions of the Work and shall verify all dimensions on the Drawings and shall report to City any discrepancies before proceeding with related Work.

3.2.3 DBT may be assigned working space adjacent to the Site, and all field offices, materials and equipment shall be kept within this area. DBT shall be responsible for leaving the space in as good condition as DBT found it, or restoring it to the condition it was in prior to DBT commencing the Work.

3.2.4 DBT shall be responsible to City for acts and omissions of DBT's agents, employees, and Subcontractors, and their respective agents and employees. Unless otherwise stated in or a contrary intention is reasonably inferable from the Contract Documents, references to DBT, when used in reference to an obligation bearing upon performance of the Project, shall be deemed to include DBT's Subcontractors.

3.3 RESPONSIBILITY FOR THE WORK

3.3.1 DBT shall be in charge of and responsible for all portions of the Work of the Contract, and shall be responsible for conforming such portions to the requirements of the Contract Documents and readying such portions to receive subsequent Work.

3.3.2 DBT shall at all times maintain good discipline and order among its employees and Subcontractors. DBT shall provide competent, fully qualified personnel to perform the Work, and shall ensure that each Subcontractor engaged on the Site arranges the storage of materials and equipment and performance of its Work so as to interfere as little as possible with Separate Contractors or other persons engaged in work for City on the Site.

3.3.3 During the installation of Work, DBT shall insure that existing facilities, fences, and other structures are all adequately protected. Upon Final Completion of all Work, all facilities that may have been damaged due to the fault of DBT or those for whom DBT is responsible shall be restored to a condition acceptable to City.

3.3.4 DBT is responsible for the security of the Site and all Work provided under the terms of this Contract, as well as all Work provided by Separate Contractors that occurs on the Site at any time prior to Final Completion and Acceptance of the Work by City.

3.4 LABOR, WORKMANSHIP, MATERIALS AND MANUFACTURED ITEMS

DBT shall provide and pay for all 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. Unless otherwise provided in the Contract Documents or otherwise Approved by the Construction Manager, all articles, equipment and materials incorporated in the Work shall be new, of good quality, undamaged and not defective.

3.5 DBT'S WARRANTY

3.5.1 In addition to the guarantee to repair referenced in Article 12 and any specific warranty mentioned in the Project specifications, DBT warrants to City that all materials and equipment used in or incorporated into the Work will be of good quality, new and free of liens, Claims and security interests of third parties; that all labor, installation, materials and equipment used or incorporated into the Work will be of good quality and free from defects; and that the Work will conform with the requirements of the Contract Documents and Applicable Code Requirements. If required by City, DBT shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Manufactured items installed in the Work and not specifically covered in the Contract Documents are to be installed in strict accordance with manufacturers' current printed instructions.

3.5.2 All materials to be incorporated in the Work shall be protected from damage during delivery, storage, and handling, and after installation until Acceptance of the Work, and DBT shall, without charge to City, be responsible for all damage to the materials or the Work due to DBT's failure to provide such proper protection.

3.6 CONSTRUCTION METHODS AND PROCEDURES

3.6.1 The methods and procedures adopted by DBT and its subcontractors shall be such as to secure a quality of Work satisfactory to City and to enable completion of the Work in the time agreed upon. If at any time such methods and procedures appear inadequate due to the fault of DBT, City may order DBT to improve the character or increase efficiency, and DBT shall conform to such order; but the failure of City to order such improvement of methods or increase of efficiency will not relieve DBT from its obligation to perform the Work in accordance with the Contract Documents or within the Contract Time.

3.6.2 If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, DBT shall be fully and solely responsible for the Site safety for implementing such means, methods, techniques, sequences or procedures. If DBT determines that such means, methods, techniques, sequences or procedures may not be safe, DBT shall give written notice to City and shall not proceed with that portion of the Work without further written instruction by City.

3.7 TAXES

3.7.1 DBT and Subcontractors are responsible for paying all sales, consumer, business license, use, income and payroll, and similar taxes for the Work or portions thereof provided by DBT and Subcontractors.

3.7.2 All DBTs and Subcontractors for Design-Build Contracts equal to or greater than \$5 million dollars shall be required to obtain a sub permit with the California Board of Equalization for a direct allocation of any and all applicable use tax to the City of Merced, where the jobsite is located. DBT and applicable Subcontractors shall apply for and comply with all of the conditions of the sub permit pursuant to Section 260.020 of the California State Board of Equalization, Chapter 2, "Compliance Policy and Procedures Manual: Registration, subchapter DBTs," as may be amended from time to time.

3.8 LEGAL REQUIREMENTS

3.8.1 DBT shall perform the Work in accordance with all Applicable Code Requirements, even though such requirements are not specifically referenced in the Contract Documents.

3.8.2 When the Work required by the Contract Documents is in conflict with any Applicable Code Requirement, DBT shall notify Construction Manager and shall not proceed with the Work until Construction Manager provides direction to the DBT.

3.9 PROJECT STAFF

3.9.1 DBT shall employ a complete and competent project staff for the duration of the Construction Services, which shall include separate individuals designated to act as Superintendent, project manager, project engineer(s) and administrative assistant(s), plus such other persons necessary to diligently prosecute the Work. DBT shall not replace the designated Superintendent or project manager without a minimum seven (7) Day written notice. Any Project staff member and any replacement member shall be subject to the approval of City, which may be granted or withheld in its sole discretion. Upon notice from City requesting replacement of any Project staff member who is unsatisfactory to City, DBT shall in a timely manner, but in no event longer than three (3) Days after notification, replace such member with a competent member satisfactory to City. Failure by DBT to comply with the provisions of this Paragraph shall entitle City, at its option exercised in its sole discretion, to terminate the Contract or suspend the Work until DBT complies with this Paragraph. All costs or damages associated with such termination or suspension shall be borne by DBT, without adjustment in the Contract Sum or Contract Time.

3.9.2 The Superintendent shall be at the Site at all times during the performance of the Work. The Superintendent shall represent DBT and communications given to and acknowledged by the Superintendent shall be binding on DBT. Further, communications issued by or received from the Superintendent shall be deemed as binding on DBT. The Superintendent must be able to read, write and communicate fluently in English.

3.10 SCHEDULES REQUIRED OF DBT

DBT shall submit a preliminary Construction Schedule to City in a form approved by the Construction Manager at the Pre-Construction Meeting.

3.10.2 Updated Construction Schedules shall be submitted in the form and frequency required by the Construction Manager.

3.10.3 The Construction Schedule and Construction Schedule updates shall meet the following requirements:

1. Schedules must be suitable in format and clarity for monitoring progress of the Work and shall utilize the critical path method of scheduling.
2. Schedules must provide necessary data about the timing for City's decisions and City-furnished items.
3. Schedules must be in sufficient detail to demonstrate adequate planning and staffing for the Work.
4. Schedules must represent a practical plan to complete the Work within the Contract Time. If at any time during the Work, any activity is not completed by its latest scheduled completion date, DBT shall notify the Construction Manager within five (5) Days of DBT's plans to reorganize the work force to return to the schedule and prevent Delays on any other activity.
5. An updated Construction Schedule shall be submitted with each progress payment request, but no less frequently than monthly, and shall include all of the following:
 - (i) A written narrative report detailing the actual progress of the Work as of the date of submission;
 - (ii) The expected progress of the Work as of such date according to the approved Construction Schedule;
 - (iii) The reasons for any variance between the approved Construction Schedule and the updated Construction Schedule; and
 - (iv) If required, DBT's recovery plan for placing the Work back on Schedule, at DBT's expense.

Failure to timely comply with the above requirements may be grounds for rejection of a request for extension of time.

3.10.4 DBT shall plan, develop, supervise, control and coordinate the performance of the Work so the progress, sequence and timing of the Work conform to the current accepted Construction Schedule. DBT shall continuously obtain from Subcontractors information and data about the planning for and progress of the Work, the ordering and fabrication of materials, required Submittals, and the delivery of equipment, shall coordinate and integrate such information and data in updated Construction Schedules and Record Documents, and shall monitor the progress of the Work and the delivery of equipment. DBT shall act as the expediter of potential and actual delays, interruptions, hindrances or disruptions for its own forces and those forces of Subcontractors, regardless of tier. DBT shall cooperate with City in the development of the Construction Schedule and updated Construction Schedules.

3.10.5 City's review, comments, requests for revisions, or acceptance of any schedule or scheduling data shall not:

- (i) Relieve DBT from its sole responsibility for the feasibility of the schedule and to plan for, perform, and complete the Work within the Contract Time;

- (ii) Transfer responsibility for any schedule from DBT to City; nor
- (iii) Imply City's agreement with any assumption upon which such schedule is based or any matter underlying or contained in such schedule.

3.10.6 Failure of City to discover errors or omissions in Construction Schedules that it has reviewed or Approved, or to inform DBT that DBT, Subcontractors, or others are behind schedule, or to direct or enforce procedures for complying with the Construction Schedule, shall not relieve DBT from its sole responsibility to perform and complete the Work within the Contract Time and shall not be a cause for an adjustment of the Contract Time or the Contract Sum.

3.10.7 DBT shall cooperate with and coordinate its Construction Schedule with work of City and City's Separate Contractors.

3.11 DOCUMENTS AND SAMPLES AT PROJECT SITE

3.11.1 DBT shall maintain one (1) set of As-Built Documents at the Site, which shall be kept up to date on a daily basis during the performance of the Work. All performed changes, deletions or additions in the Work from that shown in the Contract Documents shall be recorded accurately and completely in the Record Documents. Upon Final Completion and as a condition to Final Payment, each sheet of the As-Built Documents and other Record Documents shall be signed and attested to by the DBT's Superintendent as being complete and accurate.

3.11.2 DBT shall, at all times during performance of the Work, also maintain the following at the Site:

- (i) The latest updated Construction Schedule approved by City;
- (ii) Shop Drawings, product data, and samples; and
- (iii) All other required Submittals.

At all times during the course of the Project, these documents shall be available to City, the Construction Manager and the Design Consultant to audit, excerpt, or copy as they see fit. Upon Final Completion or termination of the Design-Build Contract, these documents shall be delivered to City in the format requested by the City.

3.11.3 It shall be the responsibility of DBT to maintain a current and complete record of all Changes performed during the progress of the Project construction. The record shall be in the form of a complete set of prints of the As-Built Documents on which daily recordings are made by DBT, indicating in detail and dimension each variation from the original set of Contract Documents for all of the Work. At the completion of construction, DBT shall, as a requirement of the Final Completion of the Work, certify that to the best of its knowledge, the As-Built Documents are true and accurate, and that the indications thereon represent all Changes performed during the construction of the Project. At Final Completion, the As-Built and other Record Documents shall become the property of City.

3.11.4 DBT, in concert with the Design Consultant and the Construction Manager, shall review DBT's As-Built Documents for conformance with all current Changes prior to presenting its monthly Application For Payment. The monthly progress payment statement will not be accepted or processed by City unless the As-Built Documents are current and complete, and Approved by City.

3.11.5 At Final Completion, the DBT shall provide the fully As-Built Documents to the City. These As-Built Documents will become the permanent property of City at Final Completion. If the As-Built Documents are prepared on a computer, then the revised computer files shall also be provided to City in the file format specified by City.

3.12 SUBMITTALS

3.12.1 Submittals are not Contract Documents. Their purpose is to demonstrate, for those portions of the Work for which Submittals are required, how DBT proposes to conform to the information given and the design concept expressed in the Contract Documents. Prior to starting Work, DBT shall provide to City an initial schedule for submission of the Submittals for which shop drawings are required by the Contract Documents. For each required shop drawing, DBT shall provide to City the date for the drawing's intended Submittal to the Design Consultant for review. The date required for its return to avoid Delay in any activity beyond the scheduled start date shall also be given.

3.12.2 All shop drawings and other Submittals shall be provided at DBT's expense, and at the time required by the Contract Documents or requested by the Construction Manager.

3.12.3 DBT shall review, approve, and submit to the Construction Manager, all Submittals required by the Contract Documents to be submitted and reviewed by the Design Consultant. Submittals to the Construction Manager without evidence thereon of DBT's approval shall be returned, without review, for resubmission in accordance with these requirements. Submittals shall be provided within the time frame specified in the Special Provisions and technical specifications in accordance with the Construction Schedule, and in such sequence as to cause no Delay in the Work or in the activities of City or of Separate Contractors. Submittals made by DBT which are not required by the Contract Documents, may be returned without action by the Construction Manager or Design Consultant. Submittal to the Construction Manager and Design Consultant must include a statement, in writing, identifying any deviations from the Contract Documents required due to manufacturing or installation limitations contained in the Submittal.

3.12.4 All Submittals shall be submitted in two (2) sets, accompanied by letters of transmittal, and addressed to the Construction Manager for review. Unless otherwise specified in the Contract Documents, Submittals consisting of Drawings or Plans shall be in the form electronic and hard copies. The Submittal must be prepared and submitted in accordance with all applicable provisions in the Contract Documents. If the Submittal involves a request for substitution of materials, the request shall be clearly identified on the Submittal that it is a "Request for Substitution." Unless so clearly marked, Submittals shall not be considered as a request for substitution. The Construction Manager shall return to DBT marked-up prints. Submittals shall include all relevant catalog sheets, material lists, manufacturer's brochures, technical bulletins, specifications, diagrams, or product samples, necessary to describe a system, product, or item. The letter of transmittal shall include a list of the accompanying documents and the numbers of the sheets submitted. All sheets shall be marked with the name of the Project and the name of DBT, shall be numbered consecutively, and shall be referenced to the sheets or paragraphs of the Contract Documents, referenced by sheet or subparagraph affected. Submittals shall be combined for singular assemblies, items or materials.

3.12.5 No Work requiring a Submittal shall be performed by DBT until the Submittal has been reviewed and approved by City, Construction Manager or Design Consultant, as appropriate, and the Design Consultant has documented the exceptions noted on the Submittal. DBT shall allow twenty (20) Days for review of timely and complete Submittals. Once the Submittal is returned to DBT by the Construction Manager with a statement that it has been reviewed and no exceptions are taken or further action requested, such Work shall be performed in accordance with the Submittal and the Contract Documents.

3.12.6 DBT's Submittals represent that DBT has determined or verified materials and field measurements and conditions related thereto and that it has checked and coordinated the information contained within such Submittals with the requirements of the Contract Documents and Submittals for related Work.

3.12.7 If DBT discovers any conflicts, omissions or errors in Submittals, DBT shall notify the Construction Manager and receive instruction before proceeding with the affected Work.

3.12.8 DBT shall remain solely responsible, notwithstanding City, Construction Manager or Design Consultant's review or approval of Submittals, for deviations (including, without limitation, those arising from standard shop practice) from the Contract Documents, unless DBT has specifically informed City, Construction Manager or Design Consultant in writing of such deviation at the time of transmitting the Submittal and City, Construction Manager or Design Consultant has given written approval of such deviation. No adjustment in the Contract Sum or Contract Time shall be permitted with respect to any such deviations that are noted in writing by DBT and as to which City, Construction Manager or Design Consultant takes no exception or approves.

3.12.9 After review of DBT's Submittals by City, Construction Manager or Design Consultant, as appropriate, the Construction Manager will transmit to DBT one set of Submittals. If the Submittals are found to be incomplete or incorrect, DBT shall resubmit after corrective action has been taken. DBT shall reimburse City, or City may withhold from payments due DBT, sums owing by City for any fees charged by City, Construction Manager or Design Consultant or City's other consultants for more than two (2) reviews of a Submittal, or for accelerated review in a shorter time than set forth in the approved Construction Schedule, if requested by DBT or caused by late Submittals by DBT. The return of a Submittal due to failure to comply with the Contract Documents or for correction or additional information shall be considered a review.

3.12.10 Review of Submittals by City, Construction Manager or Design Consultant will be general and for conformance with design intent, and shall not relieve DBT from the responsibility for proper fitting and construction of the Work, nor from furnished materials and Work required by the Contract which may not be indicated on the reviewed Submittals.

3.12.11 Submittals shall be in English, be of good quality, and be of a size and scale to clearly show all necessary details. Submittals shall show in detail the size, sections and dimensions of all members; the arrangement and construction of all connections, joints and other pertinent details; and all holes, straps and other fittings required by other Separate Contractors for attaching their Work. When required by City, Construction Manager or Design Consultant, engineering computations shall be submitted. DBT shall be responsible for delivering duplicates of Submittals to all other persons whose Work is dependent thereon.

3.12.12 DBT shall, at all times, maintain at the Site a complete file of all City, Construction Manager or Design Consultant-reviewed Submittals.

3.13 TRADE NAMES, SUBSTITUTIONS

3.13.1 Any request for substitution of "or equal" items by the DBT shall be made within 35 days of award of the contract, unless otherwise specified in these Contract Documents, and shall be governed by Public Contract Code Section 3400.

3.13.2 If City accepts for use in the Project a substitute material or process which in the opinion of City, Construction Manager or Design Consultant is not the equal of that specified, a Change Order shall be issued issuing a credit to City for the difference in value.

3.13.3 Substitutions by DBT that are incorporated into the Work without the prior review and Approval by City, Construction Manager or Design Consultant in accordance with the requirements of the Contract Documents shall be deemed to be Defective Work.

3.13.4 The specified completion time shall not be affected by any circumstance developing from the substitution provisions of this Section.

3.14 DAILY REPORTS BY DBT

3.14.1 At the end of each working day, DBT shall submit a daily report to the Construction Manager (on a form provided by or accepted by the Construction Manager) listing:

- (i) Labor - Names of workers, classification, hourly rates and hours worked.
- (ii) Material - Description and list of quantities of materials used.
- (iii) Equipment - Type of equipment, size, identification number, and hours of operation, including loading and transportation, if applicable.
- (iv) Inspection and Testing Activities - Name, City or company and items involved.
- (v) Areas of Work - The areas of the Site on which Work was performed and a detailed description of the stage, status and progress of the Work in each such area at the beginning and end of the day.
- (vi) Accidents, Delays, Defective Work - Description in detail of any injuries to workers, accidents, Delays, or Defective Work that were encountered.
- (vii) Other Services and Expenditures - Description in such detail as City may require of other services and expenditures.

3.14.2 Reports by Subcontractors that comply with the requirements of this Section 3.14 shall also be submitted to the Construction Manager through DBT at the end of each working day.

3.14.3 Submission of daily reports by DBT and Subcontractors performing Work on the Site shall be a condition precedent to DBT's right to payment under the Contract.

3.14.4 Facts, notice or information contained in daily reports of DBT or its Subcontractors, whether known or not known to City or Construction Manager, shall under no circumstances be considered evidence of compliance by DBT with any of the specific written notice requirements of the Contract Documents.

3.15 CUTTING AND PATCHING

3.15.1 DBT shall do all cutting, fitting, or patching of the Work required to make all parts of the Work join properly and to allow the Work to join the work of Separate Contractors shown in, or reasonably implied by, the Contract Documents.

3.15.2 DBT shall not endanger the Work, the Project, Existing Improvements, or adjacent property by cutting, digging, or otherwise. DBT shall not cut or alter the work of any Separate Contractor without the prior written consent of City.

3.15.3 In all cases, cutting shall be performed under the supervision of competent workers skilled in the applicable trade and shall cause the openings to be cut as small as possible to minimize unnecessary damage.

3.16 ACCESS TO THE WORK

3.16.1 City, Construction Manager, Design Consultant, their consultants and other persons authorized by City shall at all times have access to the Work wherever it is in preparation or progress. DBT shall provide safe and proper facilities for such access and for inspection.

3.16.2 City may, at any time, and from time to time during the performance of the Work, enter the Project for the purpose of installing any necessary other work by City labor or other contracts or for any other purpose. DBT shall cooperate with City and not interfere with other work being done by or on behalf of City.

3.17 ROYALTIES AND PATENTS

DBT shall pay all royalties and license fees required for the performance of the Work. DBT shall immediately notify City if it learns of any circumstances that may constitute an infringement of patent rights and shall defend and indemnify City and the members of the Project Team in accordance with the indemnity requirements of the Design-Build Contract against Losses, liabilities, suits or Claims resulting from DBT's or any Subcontractor's or infringement of patent rights.

3.18 PERMITS AND LICENSES

The DBT shall comply with all provisions of any permits necessary to accomplish the Work as specified in this Contract. DBT shall obtain and be responsible for the cost of all permits and applications required by the Contract Documents for the Work.

3.19 DIFFERING SITE CONDITIONS

3.19.1 This provision is applicable if the Project involves digging trenches or other excavations that extend deeper than four (4) feet below the surface. DBT shall promptly, and before the following conditions are disturbed, provide written notice to City if the DBT finds any of the following conditions:

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

3.19.2 City shall promptly investigate any of the above the conditions and if City finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in DBT's cost of, or the time required for, performance of any part of the Work, shall issue a Change Order under the procedures described in the Contract Documents that equitably adjusts the Contract Time and Sum. The City may, acting in its sole discretion, extend the applicable deadline for submitting a Change Order Request when it is based upon differing conditions subject to Public Contract Code Section 7104.

3.19.3 In the event that a dispute arises between the City and the DBT regarding any of the matters specified in subsection 3.19.1, above, DBT shall not be excused from any scheduled completion date provided for in the Contract Documents but shall proceed with all Work to be performed under the Contract. DBT shall retain any and all rights provided either by the Contract or by law which pertain to the resolution of disputes between DBT and City.

3.20 INSPECTIONS

3.20.1 In order to allow for inspection by City and other agencies, or any inspection required elsewhere in the Special Provisions and technical specifications, DBT shall notify City in writing three (3) Days in advance of the permanent concealment of any materials or Work.

3.20.2 Whenever DBT desires to carry on the Construction Services of this Design-Build Contract at hours other than those specifically required by the City or 8:00 AM to 6:00 PM, Monday through Friday or from 9:00 AM to 5:00 PM on Saturdays, it shall request authorization in writing from City for such Work at least twelve (12) Days in advance and, if approved to proceed, DBT agrees to pay the costs incurred by the City to provide inspectors during these times and the costs incurred for the Construction Manager, Design Consultant and/or other City consultants whose presence at the Site is necessary.

3.20.3 If any Work is concealed or performed without the prior notice specified above, then the Work shall be subject to such tests or exposure as may be necessary to prove to City that the materials used and the Work done are in conformity with the Contract Documents. All labor and equipment necessary for exposing and testing shall be furnished by DBT at its expense. DBT shall replace, at its own expense and without reimbursement by City, any materials or Work damaged by exposure and any faulty materials or work evidenced by such exposure or testing and shall be responsible for any Delay caused thereby.

3.20.4 When, in order to comply with the intent of the Contract Documents, inspection must be made at the plant or mill of the manufacturer or fabricator of material or equipment, DBT shall notify City a sufficient length of time in advance to allow for arrangements to be made for such inspection. If required testing and/or inspection must be conducted at a location more than one hundred (100) miles from the Site, DBT shall be responsible for the additional travel costs required for testing and/or inspection at such location.

3.20.5 Any inspection or approval by any representative or agent of City will not relieve DBT of the responsibility of incorporating into the Work only those materials which conform to the Contract Documents, and any nonconforming materials shall be removed from the Site whenever identified, at DBT's sole expense.

3.20.6 When DBT believes it has achieved either Substantial or Final Completion of the Work, DBT shall notify City and the Construction Manager in writing and request a Substantial or Final Completion inspection of the Work. City, Design Consultant and Construction Manager will make such inspection as soon thereafter as possible.

3.21 STOP NOTICES

DBT must promptly pay its Subcontractors in accordance with the subcontract requirements and California prompt payment statutes. If any stop notice or other claim is served, filed or recorded in connection with the Work, City shall have the option, in its sole discretion, to permit DBT immediately and at its own expense obtain a bond executed by a good and sufficient surety, in accordance with Civil Code section 9364, in a sum equal to one hundred twenty-five percent (125%) of the amount of such stop notice or claim. Such bond shall guarantee the payment of any amounts which the claimant may recover on the stop notice or claim, together with the claimant's costs of suit in any action to enforce such stop notice or claim if the claimant recovers therein. This remedy shall be in addition to all other rights and remedies of City under the Contract Documents and applicable law, including, without limitation, the right to withhold funds from sums due to DBT. **DBT shall timely notify City of DBT's receipt of any stop notice or other third-party claim, valid or invalid, relating to the Contract Documents.**

3.22 PARKING

DBT shall provide and maintain suitable parking areas, for use by all construction workers and others performing work or furnishing services in connection with the Project, as required to avoid any need for parking personal vehicles where they may interfere with public traffic, construction activities or public parking. The Construction Manager shall approve the location of all off-site parking in the City.

3.23 USE OF THE PROJECT SITE AND CLEAN UP

3.23.1 DBT shall confine operations at the Site to areas permitted by Applicable Code Requirements and the Contract Documents. DBT shall not encumber the Site with materials or equipment so that Separate Contractors' work is hindered or impeded due to such encumbrances.

3.23.2 DBT shall, during performance of the Work, keep the Site and surrounding area free from the accumulation of excess dirt, dust, waste materials, water and rubbish caused by DBT or any Subcontractors. DBT shall continuously and daily remove all excess dirt, waste material, water and rubbish caused by DBT and all tools, equipment, machinery and surplus materials from the Site and surrounding area at end of each day. Adequate cleanup will be a condition for progress payments.

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

3.23.4 Upon Final Completion of the Work, DBT shall remove all construction facilities, appurtenances, tools, material and other articles from the Site. The entire area, including all fixed equipment, floors, surfaces and hardware shall be cleaned and restored to their original condition in accordance with the Special Provisions and technical specifications.

3.23.5 In addition to water sprinkling, temporary enclosures and anti-dust sweeping compounds should be used to limit dust and dirt rising and to keep the Site clean.

3.23.6 Construction materials shall be neatly stacked by DBT when not in use. Loose materials, whether on the Site or in transit, shall be covered to prevent dust. DBT shall promptly remove splattered concrete, asphalt, oil, paint, corrosive liquids and cleaning solutions from the affected surfaces to prevent marring or other damage to the Work.

3.23.7 Volatile wastes shall be properly stored in covered metal containers and removed daily. All other trash receptacles shall be promptly emptied when full.

3.23.8 DBT shall promptly and legally transport and dispose of removed and demolished items and waste materials not identified to be recycled or reused in compliance with local ordinances and anti-pollution laws. No rubbish or waste materials shall be burned, buried, or otherwise disposed of on the Site.

3.23.9 The DBT shall provide sanitary facilities at the Site, which shall be of reasonable capacity, properly maintained throughout the construction period, and obscured from public view to the greatest practical extent. DBT shall require all personnel to use the sanitary facilities. Sanitary facilities shall be on a portable trailer and shall be removed from the Site at the end of each workday. For sewer lining projects, DBT shall provide additional sanitary facilities on a portable trailer to be used by the residents during lining installation (one sanitary facility per each 30 meters [100 feet]). DBT shall remove the sanitary facilities as soon as relief holes are cut and notices of completion are delivered.

3.24 ENVIRONMENTAL CONTROLS

Full compensation for conforming to the requirements of this Section shall be considered as included in the prices paid for the various contract items of Work involved and no additional compensation will be allowed.

3.24.1 AIR POLLUTION CONTROL. DBT shall comply with all air pollution control rules, regulations, ordinances and statutes which apply to any work performed pursuant to the Contract, including rules promulgated by the Bay Area Air Quality Management District, the California Department of Public Health or any other applicable agency. In the absence of any applicable air pollution control rules, regulations, ordinances or statutes governing solvents, all solvents, including but not limited to the solvent portions of paint thinners, curing compounds, parts cleaners and degreasers and liquid asphalt used on the Project shall comply with the applicable material requirements of the Bay Area Air Quality Management District. All containers of paint thinner, curing compound parts cleaners and degreasers or liquid asphalt shall be labeled to indicate that the contents fully comply with said requirements. Material to be disposed of shall not be disposed of onsite (i.e. used up inappropriately or burned). Compressed gases contained within cylinders or aerosol cans shall never be released for any purpose other than that intended by the manufacturer.

1. **Mold.** The DBT shall take steps to prevent mold from developing on the Site or being released into the air and shall promptly decontaminate any areas of mold that develop.
2. **VOC's.** Only construction materials that emit low levels of volatile organic compounds (VOC) shall be used within indoor areas. Adequate ventilation of packaged dry products shall be used prior to installation. DBT is responsible to ventilate the building during the application of wet products (e.g., paints, glues, sealants), which release their highest levels of VOC's during the curing period immediately after the application. Also, wet products shall be applied before installing materials that act as "sinks" such as carpets, fabric, ceiling tiles, movable partitions, furniture, etc. in order to reduce the chance of the "sinks" absorbing contaminants and slowly releasing them into the building over time.
3. **Off-Gassing.** DBT is responsible for identifying specific materials that require more complex ventilation to accelerate off-gassing. In addition to paints, glues and sealants, those materials that generally require temporary ventilation include, without limitation: composite wood products, plastics, waterproofing, insulation, fireproofing, caulking, acoustical ceilings, resilient flooring and wood preservatives.

4. **Barriers.** Barriers shall be used to prevent the migration of airborne pollutants from areas under construction and to mitigate any construction noise that may disrupt occupant activities. If effective controls for pollution emissions cannot be practically implemented, activities involving significant airborne pollutants shall be scheduled during off-hours at DBT's expense. The Site shall be ventilated with fresh outside air during and immediately after the noxious activity.
5. **Exhaust.** DBT shall install temporary exhaust systems in construction areas to prevent contaminated air from entering the building's return-air system, including, without limitation:
 - (i) Removing windows in a space.
 - (ii) Using available or dedicated exhaust systems (e.g., kitchen or toilet exhaust) that are not tied into the building's overall return-air system.
6. **Treated wood waste (TWW).** TWW is any wood treated with preserving chemicals that protect the wood from insect attack or fungal decay (typically railroad ties, power poles, or bollards) shall be managed by DBT to minimize dust generation. DBT shall never grind TWW and shall be properly dispose TWW at a permitted TWW disposal facility. If DBT size-reduces the TWW then DBT shall collect all dust generated for proper offsite disposal.
7. **Contaminated Soil Removal.** Unless approved by the City, contaminated soils that are being removed shall be loaded directly into truck trailers that shall transport the soils directly to disposal facilities and not stockpiled onsite or elsewhere. If the City approves the temporary stockpiling of soils onsite, then DBT shall cover the soil with visqueen (or other suitable material) within 1 hour.

The building shall be flushed with full outdoor air for seven (7) Days prior to occupancy. Full capacity of the HVAC system shall be used for at least 2.5 ACH (air changes per hour), provided by temporary fans. During this time, the interiors shall be thoroughly cleaned, the HVAC ducts vacuumed, and air and HVAC system filters replaced.

3.24.3 WATER POLLUTION CONTROL.

1. DBT shall at a minimum use applicable Best Management Practices listed in the California Stormwater Quality Association Construction Handbook <http://www.cabmphandbooks.com/Construction.asp> to prevent the pollution of storm drains and watercourses by discharges of materials other than uncontaminated storm water. Prohibited discharges include storm water runoff discharges that may threaten to cause pollution, contamination or nuisance, sanitary waste, sediment and debris from erosion and other substances resulting from construction activities. Sanitary wastes will not be permitted to enter any storm drain or watercourse and must be routed to the sanitary sewer system. No sediment, debris or construction materials will be permitted to enter sanitary sewers.
2. DBT shall provide effective and continuous control of water pollution, including Work in small or multiple units, on an out of phase schedule or with modified construction procedures. DBT shall determine which methods are most effective in achieving control of water pollution as a result of DBT's operations. DBT shall coordinate water pollution control work with all other Work performed by DBT and Separate Contractors.
3. Before starting any Work on the Project, DBT shall submit to the Construction Manager for acceptance a Storm Water Pollution Prevention Plan (SWPPP) for effective control of storm water pollution. Such plan shall show the schedule and detailed description for the storm water pollution prevention and erosion control work or practices included in the Design-Build Contract and for all storm water pollution control measures which DBT proposes to employ in connection with construction of the Work to minimize the effects of their operations upon storm drains, adjacent streams, and other bodies of water. DBT shall not perform any clearing and grubbing or earthwork on the Project, other than that specifically authorized in writing by the Construction Manager, until such SWPPP has been approved by a City representative or the Construction Manager. DBT shall revise and bring up to date said SWPPP at any time the Construction Manager makes written request for such revisions.
4. City shall not be liable to DBT for failure to accept all or any portion of any originally submitted or revised SWPPP, or for any Delays to the Work due to DBT's failure to submit an acceptable SWPPP. DBT assumes sole responsibility for all costs associated with treatment of storm water polluted as a result of DBT's Site activities, whether treatment is initiated by DBT or City.
5. DBT may request the Construction Manager to waive the requirement for submission of a written SWPPP when the nature of DBT's operation is such that pollutant discharge or soil erosion is not likely to occur. Waiver of this requirement will not relieve DBT from responsibility for compliance with the other provisions of this Section. Waiver of the requirement for a written SWPPP will not preclude City requiring submittal of a SWPPP at a later time if the Construction Manager deems it necessary because of the effect of DBT's operations.
6. Where erosion damage which will cause storm water pollution is probable due to the nature of the material or the season of the year, DBT's operation shall be so scheduled that permanent erosion control features will be installed concurrently with or immediately following grading operations.
7. All storm water pollution control work required elsewhere in the Contract Documents which may be accomplished under the various contract items of Work will be measured and paid for as provided in said items of Work elsewhere in these Contract Documents.

3.24.4 URBAN RUNOFF. At a minimum, the following specific Best Management Practices which address the potential pollution impacts of urban runoff shall apply to all projects undergoing construction in City. The Best Management Practices listed below (in addition to those listed in the technical specifications) are required by City, and shall apply at the time of demolition of an existing structure or commencement of construction until receipt of a certificate of occupancy or certificate of completion:

1. Sediment and construction waste from construction sites and parking areas shall not leave the Site.
2. Any sediments or other construction materials which are tracked off the Site shall be removed the same day. Straw wattles or another temporary sediment barrier shall be installed around the perimeter of the Site to prevent the sediment from leaving the Site.
3. On an emergency basis only, plastic covering may be utilized to prevent erosion of an otherwise unprotected area, along with runoff devices to intercept and safely convey the runoff.
4. Excavated soil shall be located on the Site in a manner that eliminates the possibility of sediment running into the street, storm drains, water bodies, or adjoining properties. Material stockpiles shall be covered within 1 hour of stockpiling the material until the material is either used or removed.
5. No washing of construction vehicles shall be allowed on or adjacent to the Site.
6. Drainage controls shall be utilized as needed, depending on the extent of proposed grading and topography of the Site, including, but not limited to the following: (i) detention ponds or sedimentation ponds; and (ii) dikes, berms or ditches; and (iii) down drains, chutes or flumes.

3.24.5 STORM WATER POLLUTION PREVENTION DURING ROADWORK. To avoid storm water pollution, DBT shall plan roadwork and pavement construction as follows:

1. Apply concrete, asphalt, and seal coat during dry weather to prevent contaminants from contacting storm water runoff.
2. Cover storm drain inlets and manholes when paving or applying seal coat, slurry seal, fog seal, etc.
3. Always park paving machines over drip pans or absorbent materials.
4. When making saw-cuts in pavement, use as little water as possible. Cover each catch basin completely with filter fabric during the sawing operation. Shovel or vacuum the slurry residue from the pavement and remove from the Site.

3.24.6 STORMWATER POLLUTION. To avoid stormwater pollution, DBT shall plan roadwork and pavement construction as follows:

1. Apply concrete, asphalt, and seal coat during dry weather to prevent contaminants from contacting stormwater runoff.
2. Cover storm drain inlets and personnel access holes when paving or applying seal coat, slurry seal, fog seal, etc.

3. Always park paving machines over drip pans or absorbent materials, since they tend to drip continuously.
4. When making saw-cuts in pavement, use as little water as possible. Cover each catch basin completely with filter fabric during the sawing operation and contain the slurry by placing straw bales, sand bags, or gravel dams around the catch basin. After the liquid drains or evaporates, shovel or vacuum the slurry residue from the pavement or gutter and remove from the Site.

3.24.7 DRAINAGE CONTROL. DBT shall provide for the drainage of storm water and such water as may be applied or discharged on the Site in performance of the Work. Drainage facilities shall be adequate to prevent damage to the Work, Site and adjacent property. Also drainage facilities shall be constructed to minimize the potential pollution to the ocean.

Existing drainage channels and conduits shall be cleaned, enlarged or supplemented as necessary to carry all increased runoff attributable to DBT's operations. Dikes shall be constructed as necessary to divert increased runoff from entering adjacent property (except in natural channels), to protect City's private property and utility owner's facilities and the Work, and to direct water to drainage channels or conduits. Retention of drainage on the Site shall be provided as necessary to prevent downstream flooding.

3.24.8 DUST CONTROL. As elsewhere provided herein, the DBT shall be responsible for all dust alleviation and control measures necessary and required for the public safety and convenience during the life of the contract. The DBT shall use reclaimed water to control dust from unpaved surfaces as needed on a daily basis or as directed by the Construction Manager. The water shall be applied at a limited rate so as to avoid the creation of runoff from the site. The DBT shall not use water to flush down paved or impervious surfaces as a means of dust control. Paved or impervious surfaces shall be swept with a street sweeper as needed to control dust on the site. Compensation for water applied as alleviation and/or prevention of dust nuisance and street sweeping shall be considered as included in the prices paid for the various contract items of work and no additional allowance will be made therefore.

3.24.9 SPECIAL HAZARDOUS SUBSTANCES AND PROCESSES. DBT shall comply with the provisions of all applicable hazardous materials Standards including but not limited to California Code of Regulations (CCR) Title 8, Chapter 4, Group 16 (Cal OSHA Control of Hazardous Substances), CCR Title 22, Division 4.5, (hazardous waste management standards), California Health & Safety Code Division 20, Section 6.5 (hazardous waste control), California Fire Code, Code of Federal Regulations (CFR) 49 (DOT regulations), CFR 40, Part 60 (U.S. hazardous waste standards) and applicable sections of the Merced Municipal Code. DBT shall at all times maintain an inventory of hazardous materials stored onsite and all applicable Material Safety Data Sheets (MSDSs) available for review by the City.

For City-generated hazardous waste removal, the City will take full generator status for the hazardous wastes as described under CCR 22. The City will obtain any EPA Identification numbers for the project and will sign each manifest as the generator before the material is transported. DBT shall fully manage the hazardous wastes for the City including the removing, storing, transporting and disposing of the hazardous wastes. For construction activities that remove existing hazardous wastes, such as, asbestos removal, contaminated soil removal, lead paint removal or other contamination abatement projects, DBT shall develop a hazardous materials management plan (HMMP). The HMMP shall contain sufficient information that shall demonstrate how the DBT will remove, secure and store, transport to a permitted disposal facility. DBT shall submit the HMMP to the City for approval. At a minimum, the HMMP shall include:

- Project map that shall show hazardous waste removal areas, storage areas (including all fencing, gates, locks, structures etc;
- Hazardous waste expected inventory including quantities and types of wastes;
- Security program – how the DBT will keep hazardous materials secure from public contact;

- Monitoring and inspection program;
- Inventory of emergency equipment onsite;
- Transportation Plan includes how the DBT plans to package and transport the hazardous wastes;
- Disposal facility name and location;
- Any other information that would reasonably describe DBT hazardous waste removal, storage and disposal plans.

City has the sole right to reject the hazardous waste transporter and/or disposal facility from DBT's consideration.

Hazardous wastes that are generated from DBT's activities while completing the Work (i.e. equipment maintenance fluids, empty oil or solvent drums, etc. shall be the sole responsibility of the DBT who is the generator of the wastes under the Hazardous Waste Generator Regulations CCR Title 22. Wastes must be handled, recycled or disposed of in the United States.

To the fullest extent permitted by law, City shall indemnify, defend, and hold harmless DBE from and against any and all claims, Losses, damages, liabilities, and expenses, including reasonable attorneys' fees and expenses, arising out of or resulting from the presence, removal, or remediation of hazardous waste at the Project site, unless and to the extent (i) such waste was introduced to the site by DBE or those for whom DBE is responsible or (ii) such claims, Losses, damages, liabilities, and expenses resulted from the negligent acts or omissions of DBE or those for whom DBE is responsible.

3.24.10 SOUND CONTROL.

1. DBT shall comply with the City's noise ordinances set forth the Merced Municipal Code, except as modified in the Special Provisions and technical specifications.
2. Each internal combustion engine used for any purpose on the Site or otherwise within the City of Merced shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the Project without said muffler. This requirement in no way relieves DBT from responsibility for complying with local ordinances regulating noise level.
3. The noise level requirement shall apply to all equipment on the Work or related to the job, including but not limited to trucks, transit mixers or transient equipment that may or may not be owned by DBT. The use of loud sound signals shall be avoided in favor of light warnings except those required by safety laws for the protection of personnel.
4. Prior to starting construction, all equipment to be used on the Project shall be inspected and tested for compliance with the requirements of this Project. Sound blankets or other sound mitigation equipment approved by the Construction Manager shall be required to bring equipment into compliance with the requirements of this Project.

3.25 TEMPORARY WATER, LIGHT AND POWER

Water for any purpose shall be obtained by DBT, at its expense, from City. DBT is to contact the Construction Manager for a phone number and contact person. In no case may DBT obtain water from unmetered fire hydrants. The costs of obtaining water shall be included in the prices paid for the various contract items of work included and no additional compensation will be allowed therefore, unless otherwise specified in the Contract Documents. The City imposes a penalty for taking water from an unmetered fire hydrant. The penalty shall be deducted from the payment due DBT. DBT shall purchase power from the City, at DBT's expense.

3.26 CITY TRUCK ROUTE ORDINANCE

The DBT and any Subcontractors or suppliers shall at all times comply with the requirements of the City of Merced Truck Route Ordinance set forth in Chapter 10.40 of the Merced Municipal Code.

3.27 UNFAIR BUSINESS PRACTICES CLAIMS

DBT offers and agrees to assign to City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15), or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code) arising from purchases of goods, services, or materials pursuant to the Contract Documents. This assignment shall be made and become effective at the time City tenders Final Payment to DBT, without further acknowledgment by the parties. DBT shall incorporate this provision in all Subcontractor contracts.

3.28 EXISTING UTILITIES

3.28.1 Prior to the start of any grinding or any excavation, the DBT shall be responsible for notifying Underground Services Alert (USA) 800-227-2600 at least 5 days prior to beginning underground work so that existing utilities can be marked in the field. The DBT is responsible for the location of all utilities, both public and private. DBT shall give specific address for grinding or excavation location. Each location shall be marked by the DBT in the field with white paint.

3.28.2 The DBT shall acknowledge that the marking of underground utilities is only approximate, and he shall take all reasonable precautions to avoid damaging these utilities.

3.28.3 All Underground Services Alert marking shall be removed by the DBT. Any utilities damaged or altered in any way during the performance of the Work under this contract shall be promptly reported to the Engineer and shall be restored to their original condition at the DBT's expense to the extent the damage was due to the fault of the DBT or those for whom DBT is responsible.

3.28.4 If the DBT comes into contact with any existing utilities during his operations, he shall notify the Engineer before proceeding with the work involved.

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

ARTICLE 4 – ADMINISTRATION OF THE CONTRACT

4.1 CONTRACT ADMINISTRATION BY CITY, DESIGN CONSULTANT AND CONSTRUCTION MANAGER

4.1.1 City and the Construction Manager will provide administration of the Construction Contract as provided in the Contract Documents.

4.1.2 Except where provided for in the Contract Documents, no actions taken by City, Construction Manager or Design Consultant shall relieve DBT of its obligations described in the Contract Documents.

4.1.3 The Construction Manager will be present on the Site during the performance of the Work primarily for the purposes of providing administration, inspection and expediting communications between City, Design Consultant and DBT.

4.1.4 Neither City, Design Consultant nor Construction Manager will have control over, will be in charge of, or will be responsible for construction means, methods, techniques, safety, sequences or procedures or for safety precautions and programs in connection with the Work, all of which are the sole responsibility of DBT.

4.1.5 Unless otherwise provided in the Contract Documents or when direct communications have been specifically authorized, communications between DBT and City or Design Consultant shall be in writing through Construction Manager. Communications by DBT or Subcontractors and with Separate Contractors shall be through the Construction Manager. DBT shall not rely on oral or other non-written communications.

4.1.6 Based on the Construction Manager's Site visits and evaluations of DBT's Applications For Payment, the Construction Manager will review and recommend to City for City approval the amounts, if any, due DBT.

4.1.7 Construction Manager will make recommendations to City to reject the Work, or any portion thereof, which does not conform to the Contract Documents. City alone shall have the authority to stop the Work or any portion thereof. Whenever City considers it necessary or advisable, City will have the authority to require additional inspection or testing of the Work in accordance with the Contract Documents, whether or not such Work is fabricated, installed or completed. However, no authority of City conferred by the Contract Documents, nor any decision made in good faith either to exercise or not exercise such authority, nor any recommendation by the Construction Manager, shall give rise to a duty or responsibility of City or the Construction Manager to DBT or its Subcontractors.

4.1.8 Construction Manager's authority includes, but is not limited to the following:

1. Conduct or direct inspections to determine suitability of the Project or portion thereof for Beneficial Occupancy.
2. Assist City in determining the dates of Substantial Completion and Final Completion;
3. Review any records, written warranties and related documents required by the Contract Documents and assembled by DBT; and
4. Make recommendations to City for issuance of Final Payment upon DBT's compliance with the requirements of the Contract Documents.

4.1.9 City, with the assistance of recommendations from the Design Consultant and/or Construction Manager, shall be the ultimate interpreter of the requirements of the Contract Documents and the judge of performance thereunder by DBT. Such decisions by City will be final and binding upon DBT.

4.2 CLAIMS

4.2.1 Public Contract Code Section 9204. Public Contract Code Section 9204 ("Section 9204") sets forth certain pre-litigation claims procedures for public works projects that City is required to include in its Contract Documents. In summary, Section 9204 requires public entities to respond to claims within 45 days, to meet and confer if requested by the contractor, to promptly pay undisputed amounts, and to mediate unresolved claims prior to litigation, absent a mutual waiver of mediation. It expressly provides for the submission of subcontractor "pass-through" claims and allows public entities to prescribe reasonable additional change order, claim, and dispute resolution procedures and requirements, so long as the additional provisions do not conflict with or otherwise impair the timeframes and procedures set forth in Section 9204. The requirements of Section 9204 are incorporated and included in the following provisions, which also include reasonable additional procedures.

4.2.2 Scope and Authority. This Section 4.2 applies to any Claim, as defined in Section 1.1.20, above, arising from or related to the Contract or performance of the Work. It is intended to provide the exclusive procedures for submission and resolution of Claims of any amount and applies in addition to the provisions of Public Contract Code Section 9204, and Public Contract Code Sections 20104 et seq., which are incorporated by reference herein and included in these provisions.

4.2.3 Accrual of Claim. A Claim accrues and arises upon issuance of a written decision by the City or Construction Manager denying, in whole or in part, a Change Order Request, which was previously submitted in compliance with these Contract Documents. A Claim that demands an extension of time or an increase in the Contract Sum does not accrue unless DBT has previously submitted such demand(s) in a Change Order Request.

4.2.4 Claims Submission Requirements and Deadlines. All Claims must be submitted in writing by registered mail or certified mail with return receipt requested. Except for Claims disputing the amount of Final Payment, all Claims and all supporting documentation and certifications, as further detailed below, must be filed within fourteen (14) Days following the date that City notified DBT in writing that a request for a change in the Contract Time or Contract Price, duly submitted in compliance with the Contract Documents, has been rejected in whole or in part; any Claim which is not submitted prior to Final Payment is deemed waived. A Claim disputing the amount of Final Payment must be submitted within fourteen (14) Days of the effective date of Final Payment. Strict compliance with these Claim submission deadlines is necessary to ensure that any dispute may be mitigated as soon as possible, and to facilitate cost-efficient administration of the Project. **Any Claim that is not submitted within the specified deadlines will be deemed waived by DBT.**

4.2.5 Supporting Documentation. A Claim submittal must include the following:

1. A statement that it is a Claim, clearly specifying the amount requested (with respect to Claims for payment), and/or the number of days requested (with respect to Claims for an extension of the Contract Time);
2. A detailed description of the act, error, omission, Differing Site Condition, event or other circumstance giving rise to the Claim; and
3. A statement demonstrating that a Change Order Request was submitted in a timely manner as required by Section 7.2 of these General Conditions, along with a copy of the Change Order Request and the City's written rejection of the subject Claim.
4. All documents necessary to substantiate the Claim, including, without limitation:
 - (i). A detailed cost breakdown in the form required for submittal of Change Order Requests, and subject to the limitations described in Article 7, below.
 - (ii). Copies of actual job cost records demonstrating that the costs have been incurred.
 - (iii). If the Claim is based on an error, omission, conflict or ambiguity in the Contract Documents: (i) a sworn statement by DBT and any Subcontractor involved in the Claim, to the effect that the error, omission, conflict or ambiguity was not discovered prior to submission of the Proposal, and (ii) if not discovered, a statement demonstrating that the error, omission, conflict or ambiguity could not have been discovered by DBT, its Subcontractor(s) or in exercise of the degree of care required of them under the Contract Documents for review of the Contract Documents prior to submission of the Proposal.

5. If the Claim involves a request for adjustment of the Contract Time, written documentation demonstrating that DBT has complied with the requirements of the Contract Documents pertaining to proving the right to an extension of time and demonstrating that DBT is entitled to an extension of time under the Contract Documents.
6. A written certification signed by a responsible managing officer of DBT's organization, who has the authority to sign subcontracts and purchase orders on behalf of DBT and who has personally investigated and confirmed the truth and accuracy of the matters set forth in such certification, in the following form:

I hereby certify under penalty of perjury under the laws of the State of California that I am a managing officer of _____ and that I have reviewed the Claim presented herewith on DBT's behalf and/or on behalf of and that the following statements are true and correct.

(i) The facts alleged in or that form the basis for the Claim are true and accurate; and,

(ii) DBT does not know of any facts or circumstances, not alleged in the Claim, that by reason of their not being alleged render any fact or statement alleged in the Claim materially misleading; and,

(iii) DBT has, with respect to any request for money or damages alleged in or that forms the basis for the Claim, reviewed the job cost records (including those maintained by DBT and by any Subcontractor of any Tier, that is asserting all or any portion of the Claim) and confirmed with reasonable certainty that the Losses or damages suffered by DBT and/or such Subcontractor were in fact suffered in the amounts and for the reasons alleged in the Claim; and,

(iv) DBT has, with respect to any request for extension of time or claim of Delay, disruption, hindrance or interference alleged in or that forms the basis for the Claim, reviewed the job schedules (including those maintained by DBT and by any Subcontractor involved in the Claim) and confirmed on an event-by-event basis that the delays or disruption suffered by DBT and /or such Subcontractor were in fact experienced for the durations, in the manner, and with the consequent effects on the time and/or sequence of performance of the Work, as alleged in the Claim; and,

(v) DBT has not received payment from City for, nor has DBT previously released City from, any portion of the Claim.

(vi) DBT understands that submission of a Claim which has no basis in fact or which DBT knows to be false may violate the False Claims Act (Government Code Section 12650 et seq.).

Signature: _____

Name: _____

Title: _____

Company: _____

Date: _____

4.2.6 Strict Compliance Required. No Claim may be asserted unless DBT has strictly complied with the requirements of Section 4.2 of these General Conditions, which shall be considered conditions precedent to DBT's rights to assert the Claim and to initiate the Contract Dispute Resolution Process set forth below with respect to such Claim.

4.2.7 No Work Delay. Notwithstanding the submission of any Claim or the existence of any dispute regarding any Claim, unless otherwise directed by City, DBT shall not delay, slow or stop performance of the Work, but shall diligently proceed with performance in accordance with the Contract Documents and City will continue to make payments as required by the Contract Documents.

4.2.8 City Response. City shall respond in writing within forty-five (45) Days of receipt of the Claim with a written statement identifying which portion(s) of the Claim are disputed or undisputed, unless the 45 Day period is extended by mutual agreement of City and DBT or as otherwise allowed under Public Contract Code Section 9204. However, if City determines that the Claim is not adequately documented, City may first request in writing, within thirty (30) days of receipt of the Claim, additional information or documentation supporting the Claim, or relating to defenses to the Claim that City may have against the Claim, in which case City shall respond to the Claim within forty-five (45) Days after receipt of the further information or documentation. If DBT fails to submit the additional documentation to City within fifteen (15) Days of receipt of City's request, the Claim will be deemed waived. If City Council authorization is necessary for City to respond to a Claim, City will respond within three (3) Days following the Council's consideration of the Claim, which shall be scheduled in accordance with Section 9204.

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

4.2.10 Payment on Undisputed Portion. Any payment due on an undisputed portion of the Claim shall be paid within 60 Days after the City issues its written response.

4.2.11 Meet and Confer. If DBT disputes City's response, or if City fails to respond within the prescribed time set forth above, DBT may so notify City and demand a meet and confer conference for settlement of the issues in dispute, in writing sent by registered mail or certified mail, return receipt requested, within fifteen (15) Days of City's response or within fifteen (15) Days of City's failure to respond. If DBT fails to dispute City's response within the specified time, DBT's Claim shall be deemed waived.

1. **Schedule Meet and Confer.** Upon receipt of the demand to meet and confer, City will schedule the meet and confer conference to be held within 30 days, or later if needed to ensure the mutual availability of each of the individuals that each party requires to represent its interests at the meet and confer conference.
2. **Location for Meet and Confer.** The meet and confer conference will be scheduled at a location at or near City's principal office.
3. **Written Statement After Meet and Confer.** Within ten (10) working days after the meet and confer has concluded, City will issue a written statement identifying which portion(s) of the Claim remain in dispute, if any.
4. **Submission to Mediation.** If the Claim or any portion remains in dispute following the meet and confer conference, within ten (10) working days after the City issues the written statement identifying any portion(s) of the Claim remaining in dispute, the disputed portion(s) will be submitted for nonbinding mediation, as set forth below.

4.2.12 Mediation. Within ten (10) working days after the City issues the written statement identifying any portion(s) of the Claim remaining in dispute following the meet and confer, City and Contractor will mutually agree to a mediator and mediation process, consistent with and as provided under Public Contract Code section 9204. Mediation will be scheduled to ensure the mutual availability of the selected mediator and all of the individuals that each party requires to represent its interests. All discussions that occur during the mediation and all documents prepared solely for the purpose of the mediation shall be confidential and privileged pursuant to California Evidence Code Sections 1119 and 1152. The parties will share the costs of mediation equally, except costs incurred by each party for its representation by legal counsel or any other consultants.

4.2.13 The Claim procedures set forth herein do not apply to the following:

- (i) Penalties or forfeitures prescribed by statute or regulation imposed by a governmental agency.
- (ii) Tort claims for personal injury or death.
- (iii) False claims liability under California Government Code Section 12650, et seq.
- (iv) Defects in the Work first discovered by City after Final Payment by City to DBT.
- (v) Stop notices.
- (vi) The right of City to specific performance or injunctive relief to compel performance of any provision of the Contract Documents.

4.2.14 If the Claim is not fully resolved during the meet and confer conference or through mediation, as to those portions of the Claim which remain in dispute, DBT may commence the Contract Dispute Resolution Process set forth below by filing a Statement of Contract Dispute with the City within thirty (30) Days following the meet and confer conference if the parties have mutually waived mediation or within thirty (30) Days following the mediation result. If DBT fails to submit a Statement of Contract Dispute within the applicable thirty (30) Day period, City's last written response will become final and binding upon DBT, and DBT shall be deemed to have waived and release any further right to pursue the Claim.

4.3 RESOLUTION OF CONTRACT DISPUTES.

Contract Disputes shall be resolved by the parties in accordance with the Contract Dispute Resolution Process set forth in this Section 4.3 of the General Conditions in lieu of any and all rights under the law that either party have its rights adjudged by a trial court or jury. All Contract Disputes shall be subject to the Contract Dispute Resolution Process set forth in this Section 4.3, which shall be the exclusive recourse of DBT and City for such Contract Disputes.

4.3.1 Non-Contract Disputes. Contract Disputes shall not include any of the following:

- (i) Penalties or forfeitures prescribed by statute or regulation imposed by a governmental agency;
- (ii) Third party tort claims for personal injury, property damage or death relating to any Work performed by DBT or its Subcontractors or Sub-Subcontractors of any tier;
- (iii) False claims liability under California Government Code Section 12650, et. seq.;
- (iv) Defects in the Work first discovered by City after Final Payment by City to DBT;
- (v) Stop notices; or
- (vi) The right of City to specific performance or injunctive relief to compel performance of any provision of the Contract Documents.

4.3.2 Litigation, City Election.

Matters that do not constitute Contract Disputes shall be resolved by way of an action filed in the Superior Court of the State of California, County of Merced, and shall not be subject to the Contract Dispute Resolution Process. However, the City reserves the right, in its sole and absolute discretion, to treat such disputes as Contract Disputes. Upon written notice by City of its election as provided in the preceding sentence, such dispute shall be submitted by the parties and finally decided pursuant to the Contract Dispute Resolution Process in the manner as required for Contract Disputes, including, without limitation, City's right under Paragraph 4.3.5 to defer resolution and final determination until after Final Completion of the Work.

4.3.3 Submission of Contract Dispute.

1. By DBT.

DBTs may commence the Contract Dispute Resolution Process upon conclusion of the Claims process set forth in Section 4.2 above. DBT shall submit a written Statement of Contract Dispute (as set forth below) to City within thirty (30) Days after conclusion of meet and confer process or mediation, as applicable, set forth in Section 4.2. Failure by DBT to submit its Statement of Contract Dispute in a timely manner shall result in City's decision by City on the Claim becoming final and binding. DBT's Statement of Contract Dispute shall be signed under penalty of perjury and shall state with specificity the events or circumstances giving rise to the Contract Dispute, the dates of their occurrence and the asserted effect on the Contract Sum and the Contract Time. The Statement of Contract Dispute shall include adequate supporting data to substantiate the disputed Claim, in compliance with the Change Order Request requirements set forth herein.

2. By City.

City's right to commence the Contract Dispute Resolution Process shall arise at any time following City's actual discovery of the circumstances giving rise to the Contract Dispute. City may also assert a Contract Dispute in response to a Contract Dispute asserted by DBT. A Statement of Contract Dispute submitted by City shall state the events or circumstances giving rise to the Contract Dispute, the dates of their occurrence and the damages or other relief claimed by City as a result of such events.

3. Contract Dispute Resolution Process.

The parties shall utilize each of the following steps in the Contract Dispute Resolution Process in the sequence they appear below. Each party shall participate fully and in good faith in each step in the Contract Dispute Resolution Process, and good faith effort shall be a condition precedent to the right of each party to proceed to the next step in the process.

4.3.4 Direct Negotiations.

Designated representatives of City and DBT shall meet as soon as possible (but not later than ten (10) Days after receipt of the Statement of Contract Dispute) in a good faith effort to negotiate a resolution to the Contract Dispute. Each party shall be represented in such negotiations by an authorized representative with full knowledge of the details of the Claims or defenses being asserted by such party in the negotiations, and with full authority to resolve such Contract Dispute then and there, subject only to City's obligation to obtain administrative and/or City Council approval of any agreed settlement or resolution. If the Contract Dispute involves the assertion of a right or claim by a Subcontractor against DBT that is in turn being asserted by DBT against City ("Pass-Through Claim"), then the Subcontractor shall also have a representative attend the negotiations, with the same authority and knowledge as described above. Upon completion of the meeting, if the Contract Dispute is not resolved, the parties may either continue the negotiations or any party may declare negotiations ended. All discussions that occur during such negotiations and all documents prepared solely for the purpose of such negotiations shall be confidential and privileged pursuant to California Evidence Code Sections 1119 and 1152.

4.3.5 Deferral of Contract Disputes.

Following the completion of the negotiations required by Paragraph 4.3.4, above, all unresolved Contract Disputes shall be deferred pending Final Completion of the Project, subject to City's right, in its sole and absolute discretion, to require that the Contract Dispute Resolution Process proceed prior to Final Completion. All Contract Disputes that have been deferred until Final Completion shall be consolidated within a reasonable time after Final Completion and thereafter pursued to resolution pursuant to this Contract Dispute Resolution Process. The parties can continue informal negotiations of Contract Disputes; provided, however, that such informal negotiations shall not be alter the provision for deferring final determination and resolution of unresolved Contract Disputes until after Final Completion.

4.3.6 Mediation.

If the Contract Dispute remains unresolved after negotiations pursuant to Paragraph 4.3.4 (Direct Negotiations), above, the parties may choose, by mutual agreement, to conduct further mediation, however they shall be under no obligation to do so.

4.3.7 Binding Arbitration.

Any remaining Contract Dispute shall be submitted for binding arbitration.

1. **Process.** Any Claim submitted for binding arbitration, as set forth above, shall be determined by arbitration at the San Francisco JAMS' offices, and administered by JAMS pursuant to its Engineering and Construction Arbitration Rules & Procedures for Expedited Arbitration. Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction within Merced County, and no other place.

2. **Waiver of Jury Trial.** DBT and City each voluntarily waives its right to a jury trial with respect to any Contract Dispute that is subject to binding arbitration in accordance with the provisions of this Paragraph 4.3. DBT shall include this provision in its contracts with its Subcontractors who provide any portion of the Work.

4.3.8 Non-Waiver.

Participation in the Contract Dispute Resolution Process shall not waive, release or compromise any defense of City, including, without limitation, any defense based on the assertion that the rights or Claims of DBT that are the basis of a Contract Dispute were previously waived by DBT due to DBT's failure to comply with the Contract Documents, including, without limitation, DBT's failure to comply with any time periods for providing notice of requests for adjustments of the Contract Sum or Contract Time or for submission of Claims or supporting documentation of Claims.

ARTICLE 5 – SUBCONTRACTORS

5.1 DBT'S AWARD OF SUBCONTRACTS

5.1.1 DBT shall comply with the Subletting and Subcontracting Fair Practices Act, Public Contract Code Sections 4100 through 4114. Nothing herein shall be deemed to entitle DBT, without the written approval of City, to substitute other Subcontractors for those named in DBT's List of Subcontractors contained in the completed Proposal; and, except with such approval, no such substitution shall be made. Should DBT violate any of the provisions of the Subletting and Subcontracting Fair Practices Act, such violation shall be deemed a violation of the Design-Build Contract, entitling City, without limitation to any other rights or remedies under the law, to suspend or terminate the Design-Build Contract.

5.1.2 Except as hereinafter provided, any increase in the cost of the Work or Contract Time resulting from the replacement or substitution of a Subcontractor, shall be borne solely by DBT and without any adjustment in Contract Sum or Contract Time.

5.1.3 Where a hearing is held pursuant to the provisions of Chapter 2, Division 5, Title 1 of the Public Contract Code (commencing with Subparagraph 4100), by the awarding authority or a duly appointed hearing officer, City's representative shall prepare and certify a statement of all costs incurred by City for investigation and conduct of the hearing, including the costs of any hearing officer and reporter appointed. The statement shall then be sent to DBT who shall reimburse City for such costs. If not paid separately, such reimbursement may be deducted from any money due and owing to DBT.

5.2 SUBCONTRACTOR RELATIONS

5.2.1 Prior to the execution of each subcontract agreement, DBT shall make available to each proposed Subcontractor, copies of the Contract Documents. DBT must incorporate the terms of these Contract Documents into each subcontract, so that each Subcontractor will be bound by the terms of these Contract Documents, including, but not limited to, the provisions for dispute resolution. Within thirty (30) Days of the Notice To Proceed, DBT shall provide City with a complete listing of all Subcontractors, which shall include, but not be limited to, the Work contracted for, Subcontractor's name, address, telephone and facsimile numbers, form for doing business (i.e, sole proprietor, corporation, partnership), point-of-contact and Subcontractor's license classification and number.

5.2.2 Any part of the Work performed for DBT by a first Tier Subcontractor shall be pursuant to a written subcontract. Each such subcontract shall require that the Subcontractor:

- (i) Perform the Work in accordance with the terms of the Contract Documents.
- (ii) Assume toward DBT all the obligations and responsibilities which DBT assumes towards City by the Contract Documents.
- (iii) Preserve and protect the rights of City under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights.
- (iv) Waive all rights that the Subcontractor may have against City for damages caused by fire or other perils covered by builder's risk property insurance carried by DBT or City, except for such rights Subcontractor may have to the proceeds of such insurance held by City under Article 11 of these General Conditions.

- (v) Afford City and entities and agencies designated by City the same rights and remedies with respect to access to and the right to audit and the right to copy at City's cost all of the Subcontractor's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders and memoranda relating to the Work and requiring the Subcontractor to preserve all such records and other items for a period of at least three (3) years after Final Completion.
- (vi) Recognize the rights of City under Section 5.3 of the General Conditions, Contingent Assignment of Subcontracts, including, without limitation, City's right to elect to accept assignment of the subcontract and to retain Subcontractor pursuant to the terms of the subcontract, to complete the unperformed obligations under the subcontract and, if requested by City, to execute a written agreement on terms acceptable to City confirming that the Subcontractor is bound to City under the same terms as the subcontract.
- (vii) Submit Applications for payment, requests for Change Orders and extensions of time and Claims, and to comply with all other notice and submission requirements of the Contract Documents, sufficiently in advance to allow DBT time to comply with its obligations under the Contract Documents.
- (viii) Purchase and maintain insurance in accordance with the requirements of the Contract Documents and reserving the right to City to purchase, in its sole discretion, such insurance pursuant to a City Controlled Insurance or other form of wrap-up program.
- (ix) Provide the same defense indemnification of the City as is required of the DBT.
- (x) Agree to participate in the dispute resolution procedures specified in the Construction Contract, at the election of City.

5.2.3 DBT shall promptly, after execution, furnish to City true, complete, and executed copies of all subcontracts, and any change orders and modifications thereto. Progress payments shall not be made for items of Work for which City has not received executed subcontracts and, if applicable, Change Orders.

5.2.4 Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and City, except when, and only to the extent that, City elects to accept the assignment of the subcontract with such Subcontractor pursuant to Section 5.3, Contingent Assignment of Subcontracts. Notwithstanding the foregoing, City is deemed a third party beneficiary of each subcontract agreement.

5.2.5 City and the Construction Manager shall have the right to communicate with DBT's Subcontractors with respect to matters that are related to DBT's performance of its obligations under the Contract Documents. DBT shall be provided with a copy of all such written communications. Such communications shall not create or be interpreted as creating any contractual relationship between City or the Construction Manager and any such Subcontractor.

5.3 DBT AND SUBCONTRACTOR RESPONSIBILITY

DBT shall be responsible to City for acts and omissions of DBT's agents, employees, and of DBT's Subcontractors, and their respective agents and employees. Unless otherwise stated in or a contrary intention is reasonably inferable from the Contract Documents, references to DBT, when used in reference to an obligation bearing upon performance of the Work, shall be deemed to include DBT's Subcontractors.

ARTICLE 6 – CONSTRUCTION BY CITY OR BY SEPARATE CONTRACTORS

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

6.1.1 City reserves the right to award separate contracts for, or to perform with its own forces, construction or operations related to the Work or other construction or operations at or affecting the Site, including portions of the Work which have been deleted by modification. DBT shall cooperate with City's forces and Separate Contractors.

6.1.2 City shall provide coordination of the activities of City forces and of each Separate Contractor with the Work of DBT. DBT shall participate with City and Separate Contractors in joint review of construction schedules and Project requirements when directed to do so. DBT shall make necessary revisions to the Construction Schedule after such joint review.

6.1.3 Without limitation upon any of the rights or remedies of City under the Contract Documents or under law arising from a default by DBT, in the event that DBT fails to have personnel on Site to supervise the Work, City shall have the right, in its sole discretion, but not the responsibility, upon twenty-four (24) hours' telephonic notice to DBT, to provide such supervision on a temporary basis. DBT shall, notwithstanding City's providing such temporary supervision, remain solely responsible for all actions of its personnel and Subcontractors and shall defend and indemnify City in accordance with the Design-Build Contract against any Losses arising therefrom. City shall have the right, in its discretion, to deduct from the sums owing to DBT the reasonable cost of such temporary supervision.

6.2 MUTUAL RESPONSIBILITY

6.2.1 DBT shall be responsible for affording Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities. DBT shall schedule and coordinate its Design-Build Services with the construction and operations of Separate Contractors as required by the Contract Documents.

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

6.2.3 In the event of Delays, improperly timed activities or Defective Work by the DBT or the Separate Contractors, the costs of such occurrences shall be borne by the party responsible therefor.

6.2.4 If DBT wrongfully causes damage to completed or partially completed construction or to property of City or Separate Contractors, DBT shall promptly remedy damage as provided in Paragraph 12.2 of these General Conditions.

6.2.5 If a dispute, or other matters in question arise between DBT and a Separate Contractor, these occurrences shall be subject to the provisions of Section 4.2 and 4.3 of the General Conditions. DBT shall immediately notify the Construction Manager in writing of such occurrences.

6.3 CITY'S RIGHT TO CLEAN UP

If a dispute arises between DBT and Separate Contractors as to the responsibility under their respective contracts for maintaining the Site and surrounding areas free from waste materials and rubbish, City may clean up and allocate the cost between those firms it deems, in its sole discretion, to be responsible.

ARTICLE 7 – CHANGES

7.1 CHANGES

7.1.1 City may, at any time and without notice to DBT's sureties, order Changes in the Work without invalidating the Design-Build Contract and without relieving DBT's sureties of their obligations to City.

7.1.2 City shall receive a deductive adjustment in the Contract Sum for Changes that result in a reduction in the cost to perform the Work and shall be entitled to an adjustment reducing the Contract Time for Changes that enable the DBT to complete the Work earlier than the Contract Time.

7.1.3 Unless such rights have been waived and provided that DBT has complied with the requirements of the Contract Documents with respect to, without limitation, complete and timely submission of all notices, requests and supporting documentation, DBT shall receive an additive adjustment to the Contract Sum for Changes that increase the cost to perform the Work and/or an adjustment extending the Contract Time for Excusable Delay (subject to offset for concurrent Unexcused Delay).

7.1.4 DBT shall not be entitled to an adjustment of the Contract Sum or Contract Time for Changes that are not authorized by an Approved Change Order or Field Order signed by City or Construction Manager. All Changes in the Work that are the basis of an adjustment to the Contract Sum or Contract Time must be authorized in advance, in writing, by City or Construction Manager. Accordingly, no verbal directions, course of conduct between the parties or express or implied Acceptance of Changes or Work, and no claim that the City has been unjustly enriched (whether or not there has been such enrichment) shall be the basis for an adjustment to the Contract Sum or Contract Time if DBT has not obtained advance written authorization to perform the Change in the manner required herein. Likewise, DBT shall not be required to perform Changes in the Work unless authorized by an Approved Change Order or Field Order signed by the City or Construction Manager.

7.1.5 City or the Construction Manager may authorize and direct Changes by requesting that DBT submit a Change Order Request or by issuing a Field Order. A Field Order may be issued to direct performance of Work under the following circumstances:

1. When there is a dispute as to whether or not the Work described therein constitutes or includes a Change or Extra Work,
2. When there is a dispute regarding the basis or amount of compensation for Changed or Extra Work,
3. When there is a dispute regarding whether or how the Contract Time should be adjusted, or
4. As otherwise deemed necessary by City to ensure the timely performance of the Work and timely completion of the Project.

The purpose of a Field Order is to ensure the timely performance of the Work and timely completion of the Project, and issuance of a Field Order shall not be construed as an acknowledgment by City that the Work described constitutes a Change or Extra Work if that is in fact not the case.

7.1.6 City can make whatever Changes that it determines in its sole discretion are necessary and in its best interests and under no circumstances shall the number (individual or cumulative value) or scope of Changes become a basis for DBT to claim that the Design-Build Contract has been rescinded, terminated, abandoned or should be reformed nor shall such circumstances be the basis for DBT, or any Subcontractor to recover any compensation or damages not permitted by, or in excess of that allowed under, the Contract Documents.

7.1.7 City shall have authority to order minor Changes in the Work that do not increase the cost or time to perform the Work, and which are consistent with the intent of the Contract Documents. Such changes may be directed by a Field Order and shall be binding on City and DBT. DBT shall carry out such written orders promptly.

7.2 CHANGE ORDER REQUESTS AND CHANGE ORDERS

7.2.1 DBT may request adjustments to the Contract Sum or Contract Time or the terms of a Field Order by submitting a written Change Order Request if, and only if, DBT follows the procedures specified in the Contract Documents, including, without limitation, the procedures set forth in this Section 7.2. A Change Order Request must be submitted within fourteen (14) Days after DBT's discovery of the circumstances giving rise thereto. At the City's election, the DBT shall submit all Change Order requests on a form prepared by the City. The Change Order Request must clearly describe the circumstances that are the basis of the Change, with reference, to the particular provisions of the Contract Documents involved, and also to all other directly relevant documents, including, but not limited to, related Requests for Information and responses thereto, and Field Orders. A Change Order Request seeking an adjustment to the Contract Sum must identify the proposed basis of compensation, the amount of the requested adjustment, and a detailed breakdown of the amount requested. A Change Order Request seeking an adjustment to the Contract Time must include all information required by the Contract Documents, including, but not limited to strict compliance with Section 8.5 of the General Conditions pertaining to requests for extension of Contract Time. A request for an extension of Contract Time must be accompanied by a "Fragnet" or "time impact analysis," which identifies all critical and non-critical activities affected by the Change Order Request and showing logic ties into all existing affected activities noted on the latest approved, updated Construction Schedule. Change Order Requests must be submitted to the Construction Manager. Incomplete Change Order Requests or requests that are not submitted on the City's Change Order Request Form will be returned without review.

7.2.2 Adjustments to the Contract Sum, whether increases or decreases, shall be computed at City's sole election on the basis of one or more of the following methods:

1. Unit Pricing: Unit prices stated in the Contract Documents or agreed upon by City and DBT, which shall be deemed to include all Allowable Costs, Contractor Markup and Subcontractor Markup.
2. Lump Sum Pricing: A lump sum agreed upon by City and DBT, based on the estimated Allowable Costs, Contractor Markup, and Subcontractor Markup computed in accordance with this Section.
3. Time and Materials: Work performed on a time and materials basis shall be calculated as the sum of Allowable Costs, plus applicable Contractor Markup, as set forth herein.

The above methods are the exclusive methods for calculating adjustments to the Contract Sum. Under no circumstances will adjustment to the Contract Sum be based upon any methodology such as total cost or modified total cost methodologies that purports to calculate DBT's additional costs based on the difference between DBT's total actual Project or line item costs and its original Proposal estimate for the Project or any original Proposal estimate line item.

7.2.3 Changes involving Extra Work that City elects to have performed on a time and material basis, whether performed by DBT's forces or the forces of Subcontractors, shall be compensated by an increase in the Contract Sum based on actual Allowable Costs and applicable Markup, as set forth herein. When Work is performed on a time and material basis, by DBT or any of its Subcontractors, DBT shall submit on a daily basis to the Construction Manager daily time and material tickets which include the identification number assigned to the Change; the location and description of the Change; the classification of labor employed (and names and social security numbers if requested); the materials used; the equipment rented (not tools); and such other receipts, invoices, or other evidence of cost as the Construction Manager may require. The Construction Manager may require authentication of all time and material tickets and invoices by persons designated by the Construction Manager for such purpose. The failure of DBT to provide any required authentication shall, if City elects to treat it as such, constitute a waiver by DBT of any right to adjustment of the Contract Sum for the cost of all or that portion of the Extra Work covered by a non-authenticated ticket or subsequent invoice. The adjustment to the Contract Sum for the Extra Work will be based on the total sum of Allowable Costs for performance of that Extra Work and applicable Markup as provided herein.

7.2.4 Allowable Costs include and are limited to the sum of direct, actual costs necessarily incurred by DBT and any Subcontractors that actually perform Extra Work, and are strictly limited to the following:

1. **Labor.** The actual costs for straight-time (and the premium time portion of overtime, if approved in writing in advance by City or the Construction Manager) wages or salaries for employees performing the Extra Work, whether at the Site, or at fabrication sites off the Site, plus employer payments collectively referred to as "Fringe Benefits and Payroll Taxes," of payroll, taxes and insurance, health and welfare pension, vacation, apprenticeship funds, and other direct costs required by Federal, State or local laws, as well as assessments or benefits required by lawful collective bargaining agreements. The use of employees with a labor classification, which would increase the Allowable Costs will not be permitted unless DBT establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be payable under this Paragraph only when such costs are not included in the invoice for equipment rental.
2. **Material.** The actual cost of materials, supplies and consumable items which are required for the Work at invoice or lowest current price at which such materials are locally available and delivered to the Site in the quantities involved, including sales tax, freight and delivery. City reserves the right to approve materials and sources of supply, or to supply materials to DBT, if necessary, for the Work. No Markup shall be applied to any material provided by City. Material re-stocking charges shall be limited to 5% of the amount of material. All discounts, rebates and refunds from the sale of surplus materials and consumable items shall accrue to City, and DBT shall make provision so that they may be obtained.
3. **Tool and Equipment Rental.** Rental charges actually incurred for necessary machinery and equipment, whether owned or hired, as authorized in writing by City or the Construction Manager, exclusive of hand tools. No payment will be made for the use of tools that have a replacement value of \$500 or less. When the equipment is owned by DBT, the rental rate shall be as listed for such equipment in the California Department of Transportation publication entitled "Labor Surcharge and Equipment Rental Rates," which is in effect on the date the Work is accomplished. When equipment is not listed in said publication, the rate to be paid shall be as herein defined, or a suitable rental rate for such equipment will be established by the Construction Manager. Regardless of ownership, the rates to be used in determining equipment rental cost shall not exceed listed rates prevailing locally at equipment rental agencies or distributors at the time the work is performed. The rental rates paid shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance and

all incidentals. If equipment is used intermittently, when not in use it shall be returned to its rental source unless DBT elects to keep it at the Site at no expense to City. The reported rental time for equipment already at the Site shall be the duration of its use on the Extra Work, commencing at the time it is first put into actual operation on the Extra Work, plus the time required to move it from its previous site and back, or to a closer site.

4. **Royalties and Permits.** Costs of royalties and permits solely related to the Extra or Deleted Work.

5. **Insurance and Bonds.** Additional costs of insurance and bonds, not to exceed two percent (2%) of the total of Parts 1 through 4, above.

7.2.5 Allowable Costs shall not include any of the following, which are deemed to be included in DBT's Markup:

- (i) Superintendent(s)
- (ii) Assistant Superintendent (s)
- (iii) Project Engineer(s), Assistant Project Engineer(s).
- (iv) Project Manager(s), Assistant Project Manager(s).
- (v) Scheduler(s), Administrative Assistant(s), Health and Safety personnel.
- (vi) Estimator(s), Clerk(s), Secretary(s), Accountant(s) or any Home Office personnel.
- (vii) Drafting or detailing.
- (viii) Small tools (with a replacement value under \$500).
- (ix) Home or field office expenses, including staff, materials, and supplies.
- (x) Trailer or storage rental and expense, whether on the Site or off the Site.
- (xi) Data processing personnel and equipment.
- (xii) Site fencing.
- (xiii) Utilities, including, without limitation, gas, electric, sewer, water, telephones.
- (xiv) Telephone, cell phone, radios, computer, tablet devices, facsimile, e-mail and copier.
- (xv) Overhead, administrative, or general expenses of any kind.
- (xvi) Loss of efficiency or productivity, or other impact cost due to the effect of the Extra Work on the performance of other Work or the Work of other trades on the Project.
- (xvii) Capital expenses, including interest on capital employed in connection with Extra Work.
- (xviii) Legal costs.
- (xix) Federal, State, or local income and franchise taxes.

- (xx) Profit.
- (xxi) Costs incurred more than twenty (20) Days prior to submission of a Change Order Request seeking compensation for those costs.
- (xxii) Cost of any item not specifically and expressly included in Allowable Costs.

7.2.6 Contractor Markup for Extra Work is to be calculated as ten percent (10%) of the Allowable Costs the DBT or Subcontractor actually incurred to perform the Extra Work with its own forces. Subcontractor Markup by DBT for Extra Work performed by Subcontractor is to be calculated as fifteen percent (15%) of the total Allowable Costs the Subcontractor incurred for Extra Work. The total amount of markup for Extra Work may not exceed twenty-five percent (25%) of the total Allowable Costs.

7.2.7 Change Order Requests or requests for payment for time and material work directed by a Field Order must include a complete breakdown of actual costs, including credits, and shall itemize all Allowable Costs, subcontract costs if applicable, Contractor Markup, and Subcontractor Markup if applicable. All claimed costs must be fully documented and objectively verifiable. In connection with the foregoing, DBT must generate and maintain complete and accurate cost accounting records that will reflect:

1. The actual Allowable Costs incurred or saved for each individual item of Extra Work or Deleted Work, and
2. On an event-by-event basis, the effect of each Delay that forms the basis of any request for extension of time, regardless of scope, number, complexity, cumulative effect or time of issuance or occurrence.

7.2.8 The Contract Sum will be adjusted for direct Allowable Costs incurred due to Excusable Delay only if and to the extent allowed by the Contract for Compensable Delay. Such adjustments in the Contract Sum shall be DBT's sole and exclusive remedy and recovery for Excusable Delay, including any alleged disruption, hindrance, interference, loss of productivity, labor or material cost escalations, inefficiency, acceleration, impact costs, extended or extraordinary overhead (direct or indirect), home office overhead, or other Losses or damages due to Delay, of any kind.

7.2.9 City has the right to increase or decrease the quantity of any unit price item for which an estimated quantity is stated in the Contract Documents, and the Contract Sum will be adjusted accordingly.

7.2.10 Allowance Adjustments: An Allowance is an amount included in the Proposal for Work that may or may not be included in the Project, depending on conditions that will not become known until after Proposal time. If the Contract Sum includes an Allowance and the cost of performing the Work covered by that Allowance is greater or less than the stated amount, the Contract Sum shall be increased or decreased accordingly by the amount of the difference. The Contract Sum shall also be adjusted by the amount of any unused Allowance that was specifically and expressly included in the original Contract Sum.

7.2.11 Change Orders: Approved Change Order Requests and Changes directed by a Field Order, including adjustments to Contract Sum and Contract Price, shall be incorporated into a Change Order for approval by the City. City shall prepare each Change Order for execution by DBT and the City. Change Orders shall be in substantially the same form as Attachment B to the General Conditions. An Approved Change Order becomes binding upon City and DBT when fully executed by both parties. Full execution of a Change Order is deemed full resolution, settlement, accord and satisfaction with respect to any and all pending or future Claims for cost and extensions of time that were asserted, or that could have been asserted, in connection with the Work covered by the Change Order, whether known or unknown at the time of execution of the Change Order, and that are related to the subject matter of the Change Order, including, without limitation, all Claims, costs or damages for Delay, disruption, hindrance, interference, extended or extraordinary direct and indirect overhead, multiplicity of Changes, loss of productivity, labor or material cost escalations, inefficiency, the impact of the Change on the Work, legal expenses, consultant costs, interest, lost profits or revenue, bond or insurance costs, currency fluctuations, changes in taxes or other related Claims, costs or damages. Change Orders shall be executed by DBT in the form approved by the City Council or its authorized designee, and without any express reservation of rights by DBT to reserve for the future the right to assert or recover from City any such Claims, costs or damages.

7.2.12 If DBT fails to timely execute a Change Order, the City may unilaterally approve the Change Order to increase the Contract Sum and/or to extend the Contract Time. DBT may dispute the terms of a unilaterally-approved Change Order, in whole or in part, by submitting a Claim in accordance with the Dispute Resolution Procedures set forth herein within fourteen (14) days after the Change Order is executed by the City and delivered to DBT. If DBT fails to submit a Claim within that 14-day period, with respect to all or part of the unilaterally-approved Change Order, those portions of the Change Order which have not been disputed by timely submission of a Claim shall be deemed to have the same effect as if the Change Order was fully executed by both parties as set forth above.

7.3 FIELD ORDERS

A Field Order will include a description of the Work to be performed, and the selected basis for adjusting the Contract Sum (increase or decrease) as set forth herein (i.e., unit pricing if applicable, lump sum, or time and materials). A Field Order may or may not include the total amount of the City's proposed adjustment to the Contract Sum or Contract Time, and may also include a not-to-exceed limit for any increases to the Contract Sum. Upon receipt of a Field Order, DBT shall, within a reasonable time, proceed with the Work described in the Field Order. If DBT disputes the proposed basis or amount of adjustment to the Contract Sum or Contract Time, it may request to change the disputed portions of the Field Order by submitting a Change Order Request within fourteen (14) Days after the Field Order is executed by the City and delivered to DBT. Failure by DBT to submit a timely Change Order Request seeking modification of the terms of the Field Order shall be deemed full acceptance of and agreement to all of the terms of the Field Order, and a release and waiver of any right to subsequently dispute any or all of the terms of that Field Order. Field Orders shall be in substantially the same form as Attachment A to the General Conditions.

7.4 DISPUTES REGARDING CHANGES

No dispute, disagreement, nor failure of the parties to reach agreement regarding the amount, if any, of any adjustment to the Contract Sum or Contract Time, shall relieve DBT from the obligation to proceed with performance of the Design-Build Services, including, without limitation, performance of Work directed by a Field Order or as modified by a Change Order, promptly and expeditiously. DBT shall not delay, slow, interrupt, or suspend the performance of any Design-Build Services or any Change because of a dispute between the parties, including, but not limited to, disputes pertaining to an adjustment in the Contract Sum or Contract Time. If DBT disputes the rejection of any Change Order Request in whole or in part, DBT's exclusive remedy is to submit a Claim in compliance with the Dispute Resolution Procedures set forth in Article 4 herein.

ARTICLE 8 – CONTRACT TIME

8.1 COMMENCEMENT OF THE WORK

Commencement of the Design-Build Services shall begin on the date specified in the Notice to Proceed.

8.2 PROGRESS AND COMPLETION

8.2.1 DBT agrees that the Contract Time is reasonable for performing the Design-Build Services and that DBT is able to perform the Work within the Contract Time.

1. The Construction Schedule may reflect a period of performance that is shorter than the Contract Time; provided however, that the difference shall be deemed as float and nothing in this Paragraph or in any other provision of the Contract Documents shall be construed as creating any contractual right, express or implied, on the part of DBT to finish the Project earlier than the Contract Time and under no circumstances shall City be liable to DBT for any costs, damages or compensation due to the inability of DBT to complete the Design-Build Services earlier than the Contract Time, regardless of the cause, including, without limitation, acts or omissions (intentional or negligent) of City.
2. DBT has included in its Proposal price the costs of all DBT and Subcontractor overhead (direct and indirect) for the entire duration of the Contract Time. The above costs are included in DBT's Proposal notwithstanding DBT's anticipation of completion in fewer days than established by the Contract Time.
3. No increase in the Contract Sum shall be made or granted for Delay if DBT completes the Work before expiration of the Contract Time.
4. No reduction in the Contract Sum shall be made nor will DBT be required to remain on the Project Site if the Work is completed before expiration of the Contract Time.
5. The Construction Manager will schedule and hold weekly progress meetings and other meetings to be required by progress of the Work as determined by the Construction Manager. DBT and/or DBT's designee shall be present at each meeting. DBT may also be required to request attendance by representatives of DBT's suppliers, manufacturers and Subcontractors.

8.2.2 Except by agreement or instruction of City in writing, DBT shall not commence operations on the Site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by DBT. DBT's obligations to commence the Design-Build Services and to complete the Design-Build Services within the Contract Time shall not be changed by the effective date of such insurance.

8.2.3 DBT shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. If City determines and notifies DBT that DBT's progress is such that DBT will not complete the Design-Build Services within the Contract Time and the delay is not Excusable or Compensable, DBT shall, immediately and at no additional cost to City, take all measures necessary, including working such overtime and additional shifts, to ensure that the Work is Substantially Completed within the Contract Time. Upon receipt of such notice from City, DBT shall immediately respond in writing setting forth a detailed plan for accelerating the Work in a manner acceptable to City. Unless DBT is behind schedule due to an Excusable or Compensable Delay DBT shall not be entitled to any reimbursement or payment of costs, expenses or damages incurred as a result of an acceleration of the Work. City may also take all necessary measures to prevent the need for subsequent accelerations of the Work. DBT shall reimburse City, or City may withhold from payment due to DBT, sums expended by City to perform such measures unless DBT is behind schedule due to an Excusable or Compensable Delay.

8.2.4. During unfavorable weather, wet ground or other unsuitable construction conditions, DBT shall confine the operations to Work that will not be affected adversely by such conditions. No portion of the Work shall be constructed under conditions which would affect adversely the quality thereof or be detrimental to the quality of water discharges, unless special means or precautions are taken by DBT to perform the Work in a proper and satisfactory manner.

8.3 CONSTRUCTION HOURS

Work shall be performed during the hours of 7:00 AM to 4:00 PM Monday through Friday, unless otherwise specified in the Special Provisions or approved in writing by the City Engineer. Construction is prohibited on Sundays and holidays defined in Section 8.4 below.

8.4 HOLIDAYS

No work may be performed on the City holidays identified:

- January 1 (New Year's Day)
- Third Monday in January (Martin Luther King Day)
- Third Monday in February (Washington's Birthday)
- First Monday in April (Cesar Chavez Day)
- Last Monday in May (Memorial Day)
- June 19 (Juneteenth)
- July 4 (Independence Day)
- First Monday in September (Labor Day)
- November 11 (Veteran's Day)
- Fourth Thursday in November (Thanksgiving Day)
- Day after Thanksgiving
- December 25 (Christmas Day)

In the event that any of the aforementioned days falls on a Sunday, the following Monday shall be considered a holiday. In the event that any of the above days falls on a Saturday, then the preceding Friday shall be considered a holiday.

8.5 DELAY

8.5.1 DBT may request an extension of the Contract Time for an Excusable Delay or a Compensable Delay, subject to the following:

1. In order to avoid double counting concurrent Delays, if an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the Contract Time shall be the number of days from the commencement of the first Delay to the cessation of the Delay which ends last.
2. If an Unexcused Delay occurs concurrently with either an Excusable Delay or a Compensable Delay, the maximum extension of the Contract Time shall be the number of Days, if any, by which the Excusable Delay or the Compensable Delay exceeds the Unexcused Delay.
3. If an Unexcused Delay occurs concurrently with both an Excusable Delay and a Compensable Delay, the maximum extension of the Contract Time shall be the number of Days, if any, by which the number of Days of Excusable Delay, as determined pursuant these General Conditions, exceeds the number of Days of the Unexcused Delay.

8.5.2 As a condition precedent to DBT's right to an extension of Time adjusting the Contract Time and the Contract Sum for Compensable Delay, DBT must provide written notice to City within fourteen (14) Days of the date that DBT learned of the Delay or should have learned of the Delay in exercise of diligence and reasonable care, setting forth:

- (i) A description of the Delay;
- (ii) A statement that the Delay is critical to completion; and
- (iii) The probable effect of the Delay in terms of the number of Days' extension DBT believes are required to the Contract Time.

The written notice required by this Paragraph is necessary for City to adequately monitor the progress of the Work, to differentiate between critical and non-critical Delays, and to prioritize its actions in a manner that is appropriately targeted to mitigate the effect of Delays. Accordingly, DBT's failure to provide written notice in the manner required by this Paragraph 8.5.2 shall constitute DBT's waiver of the right to an adjustment of the Contract Sum and Contract Time on account thereby, regardless of whether the circumstances of the Delay may have been known or suspected by City or the Construction Manager and that no other form of notice (including, without limitation, meeting minutes, log entries or schedule updates) shall suffice as constituting notice to City in accordance with this Paragraph 8.5.2.

8.5.3 Adequate supporting data for a request for extension of time shall include both of the following:

- (i) All relevant scheduling data including a Fragnet, and
- (ii) A detailed, event-by-event description of the impact of each event on completion of Work. Documentary support for any related increase in the Contract Sum must include both of the following:
 - (a) A detailed cost breakdown, and
 - (b) Supporting cost data in such form and including such information and other supporting data as required for submission of Change Order Requests.

8.5.4 City may order Changes, whether or not resulting in Extra Work and regardless of the extent and number of Changes or may suspend the Work.

8.5.5 The determination of whether a Delay is an Excusable Delay, Compensable Delay or Unexcused Delay shall not be affected by the fact that any earlier Delay occurred, regardless of fault or causation.

8.5.6 All time limits stated in the Contract Documents are of the essence.

8.5.7 Excusable Delay means any Delay to the path of activities that is critical to Substantial Completion of the Work within the Contract Time caused by conditions beyond the reasonable control or foreseeability, and without the fault or negligence of DBT or its Subcontractors, such as, but not limited to: changes in the Work, pandemics, war, embargoes, fire, unavoidable casualties, unusual delays in transportation, national emergency, and stormy and inclement weather conditions. Without limitation to the foregoing, the financial inability of DBT or any Subcontractor, shall not be deemed conditions beyond DBT's reasonable control or foreseeability. DBT may claim an Excusable Delay only if all Work on a critically scheduled activity is stopped for more than six (6) hours of a normal eight (8) hour work day, or if three to six hours are lost in one work day, then it may be claimed for one-half day.

8.5.7.1 Excusable Delay does not include Delay caused by DBT's failure to order equipment and materials sufficiently in advance of the time needed for the Work.

8.5.7.2 Excusable Delay does not include Delay caused by DBT's failure to provide adequate notification to utility companies for connections or services necessary for the timely performance and completion of the Work.

8.5.7.3 Excusable Delay does not include Delay caused by foreseeable conditions DBT could have ascertained from reasonably diligent inspection of the Site and/or review of the Contract Documents.

8.5.8 Compensable Delay means any Excusable Delay to the path of activities that is critical to DBT's Substantial Completion of the Work within the Contract Time, which Delay is all of the following:

- (i) Solely due to acts or omissions of the City or anyone under the City's control, Changes in the Work, Differing Site Conditions or Hazardous Waste for which City is responsible under the Contract Documents;
- (ii) Not due, in whole or in part, to the fault or negligence or breach of DBT or any Subcontractor; and
- (iii) Not concurrent with another Excusable Delay or any Unexcused Delay.

8.5.9 Compensation for delay shall be limited to actual, direct, reasonable, and substantiated Project costs, and shall not include home office overhead, or markup for overhead and profit.

ARTICLE 9 – PAYMENTS AND COMPLETION

9.1 SCHEDULE OF VALUES

Within thirty (30) Days after signing the Contract, but in any event not later than fourteen (14) Days following receipt of the Notice to Proceed, DBT shall submit to City through the Construction Manager a Schedule of Values reflecting cost breakdown of the Contract Sum in a form approved by the Construction Manager. The Schedule of Values shall itemize as separate line items the cost of each scheduled Design Services and Construction Services activity and all other costs, including warranties, Record Documents, insurance, bonds, overhead and profit, the total of which shall equal the Contract Sum and shall be made out in a form approved by the Construction Manager. The

Schedule of Values, when approved by City, shall become the basis for determining the cost of Work requested on DBT's Applications For Payment. DBT shall submit a statement based upon this breakdown, and if required, itemized in such form and supported by such evidence as the Construction Manager may direct, showing DBT's right to the payment claimed.

9.2 PROGRESS PAYMENT

9.2.1 City shall retain five percent (5%) of the undisputed amount due on each progress payment, or the percentage stated in the Request for Proposals, whichever is greater, as retention to ensure full and complete performance of the Work. Subject to City's right of withholding under Paragraph 9.4.2 of these General Conditions, City agrees to pay to DBT within thirty (30) Days of receipt of a properly submitted Application for Payment an amount equal to ninety-five percent (95%), or a lesser amount if corresponding to a higher retention percentage, if applicable, of the sum of the following, excepting therefrom any amounts which are disputed by City:

- (i) Construction Manager's determination of the value, expressed as a percentage of the Contract Sum, of the Work in permanent place that has been tested and accepted as of the end of the preceding month.
- (ii) Construction Manager's determination of the value of materials suitably stored but not yet incorporated into the Work, subject to Paragraph 9.3.6 of these General Conditions.
- (iii) Less amounts previously paid.

9.2.2 At any Time after fifty percent (50%) of the Construction Services has been determined by Construction Manager to be completed, City may in its sole discretion, make any of the remaining progress payments in accordance with the calculation in Paragraph 9.2.1 of these General Conditions based on one hundred percent (100%) of City's determination of the value of the Work in place and of stored materials not yet incorporated into the Work.

9.2.3 Progress payments shall not be construed as City's Acceptance of any or all of the Design-Build Services and shall not be a waiver of any or all rights City has under the Contract Documents.

9.3 APPLICATION FOR PAYMENT

9.3.1 At the end of each month, DBT shall submit to City an itemized Application for Payment, requesting payment for Work as of the end of that month that is calculated in accordance with the formula for payment set forth in Paragraph 9.2.1 of these General Conditions. The Application for Payment shall be prepared:

- (i) Utilizing the format as designated by City or the Construction Manager.
- (ii) Itemized in accordance with the Approved Schedule of Values.
- (iii) Showing the results of a successful system test (for example a pressure test for gas project) of the system installed or completed in the pay period covering the Application for Payment.
- (iv) Including such data substantiating DBT's right to payment as City may reasonably require, such as invoices, payrolls, daily time and material records, and, if securities are deposited in lieu of retention pursuant to Section 9.5, a certification of the market value of all such securities as of a date not earlier than five (5) Days prior to the date of the Application for Payment.

- (v) Showing itemized amounts for Change Orders, Modifications, and retention.

9.3.2 Applications for Payment shall not include requests for payment on account of increases to the Contract Sum which have not been authorized by Change Orders or amounts DBT does not intend to pay a Subcontractor because of a dispute or other reason.

9.3.3 If required by City, an Application for Payment shall be accompanied by all of the following:

- (i) A summary showing payments that DBT will make to Design Professionals or Subcontractors covered by such application.
- (ii) Conditional waivers and releases of claims and stop notices from DBT and each Subcontractor and Sub-subcontractor, of every Tier, listed in the current Application for Payment covering sums requested in the current Application for Payment.
- (iii) Unconditional waivers and releases of claims and stop notices, from DBT and each Subcontractor and Sub-subcontractor, of every Tier, listed in the preceding Application for Payment covering sums disbursed pursuant to that preceding Application for Payment.

9.3.4 DBT warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payment has been received from City, shall be free and clear of all claims, stop notices, security interests and encumbrances in favor of DBT or Subcontractors or other persons or firms entitled to make claims by reason of having provided labor, materials or equipment relating to the Design-Build Services.

9.3.6 At the sole discretion of City, the Construction Manager may approve for inclusion in DBT's Application for Payment the cost of materials to be incorporated in the Work but not yet incorporated in the Work and already delivered and suitably stored either at the Site or at some other appropriate location acceptable to City. In such case, DBT shall furnish evidence satisfactory to City:

- (i) Of the cost of such materials.
- (ii) That such materials are under the exclusive control of DBT, or if not, that title to the materials is in City's name, free of any lien or encumbrance and that the materials are safely and suitably stored in a bonded warehouse with appropriate insurance coverage satisfactory to City to cover any Loss.
- (iii) Photographs of such materials if requested by the City.

Any payment pursuant to this Paragraph shall not be construed as an inspection or acceptance of the materials nor shall it relieve DBT of its continuing and sole responsibility for the care and protection of such materials nor shall it relieve DBT from sole responsibility for any loss or damage to the materials from any cause whatsoever nor act as a waiver of the right of City to require strict fulfillment by DBT with all terms of the Contract Documents.

9.3.7 City shall have the right, in its sole discretion, to make payments of monies owing to DBT by means of direct payment to Subcontractors of any unpaid work performed by any Subcontractor or by joint payment to DBT and to Subcontractors. The making of such payments shall not be construed as the assumption of any obligation on the part of City or as creating any contractual relationship between City and any Subcontractor and shall not relieve DBT of any of its obligations under the Contract Documents.

9.3.8 If the Contract Sum includes an Allowance from the Proposal and the cost of performing the Work covered by that Allowance is greater or less than the amount of that Allowance, the Contract Sum shall be increased or decreased accordingly.

9.4 CERTIFICATE FOR PAYMENT

9.4.1 Approval of all or any part of an Application for Payment may be withheld, a Certificate For Payment may be withheld or all or part of a previous Certificate For Payment may be nullified and that amount withheld from a current Certificate For Payment in order to protect City against actual or threatened loss for which DBT is responsible as a result of any of the following:

- (i) Defective Work not remedied or failure to pass required system tests.
- (ii) Third-party claims against DBT or City arising from the acts or omissions of DBT, its Design Professionals or Subcontractors.
- (iii) Stop payment notices.
- (iv) Failure of DBT to make timely payments due Subcontractors for material or labor.
- (v) A reasonable doubt that the Design-Build Services can be completed for the balance of the Contract Sum then unpaid.
- (vi) Damage to City or Separate Contractor for which DBT is responsible.
- (vii) Reasonable evidence that the Project will not be completed within the Contract Time.
- (viii) Failure of DBT to maintain and update As-Built or Record Documents.
- (ix) Failure of DBT to timely submit Construction Schedules, reports, Submittals or their updates as required by the Contract Documents.
- (x) Performance of Work by DBT without Approved Submittals.
- (xi) Liquidated or actual damages assessed in accordance with the Design-Build Contract.
- (xii) Any other failure of DBT to perform an obligation under the Contract Documents.

9.4.2 Subject to the withholding provisions of Paragraph 9.4.2 and when any or all of the noted deficiencies or others have been removed, City shall pay DBT the amount set forth in the Certificate for Payment in accordance with its normal disbursement procedures.

9.4.3 Neither City nor the Construction Manager shall have an obligation to pay or to see to the payment of money to a Design Professional or Subcontractor, except as may otherwise be required by Law.

9.4.4 Neither a Certificate for Payment nor any payment (progress or final) shall be construed as a waiver of any rights arising from Defective Work.

9.4.5 City may, at any time, require that payment of any undisputed amount is contingent upon DBT furnishing City with a release of all claims against City which are related to those undisputed payments. Any disputed amount may be expressly excluded from such release.

9.4.6 The City may require a tri-party agreement among the City, the DBT, and the DBT's surety as a condition to making full progress payments if the Work is behind schedule, in order to avoid exoneration of the surety bond or impairment of the surety's security.

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

9.5.1 At the request and expense of DBT, a substitution of securities may be made as found in Government Code Section 16430 and as authorized by the Public Contract Code Section 22300 in lieu of monies retained by City under Section 9.2 of these General Conditions to ensure performance under the Contract Documents. Securities equivalent in value to the retention amount required by the Contract Documents for each Certificate For Payment shall be deposited by DBT with a state or federally chartered bank in the State of California ("Escrow Agent"), which shall hold such securities pursuant to the escrow agreement referred to in Paragraph 9.5.3 until Final Payment is due in accordance with Section 9.8. Securities shall be valued as often as conditions of the securities market warrant, but in no case less than once per month. DBT shall deposit additional securities so that the current market value of the total of all deposited securities shall be at least equal to the total required amount of retention.

9.5.2 Alternatively to Paragraph 9.5.1 of these General Conditions, and at the request and expense of DBT, City shall deposit retention directly with the Escrow Agent. DBT may direct the investment of such deposited retention into interest bearing accounts or securities, and such deposits or securities shall be held by the Escrow Agent upon the same terms provided for securities deposited by DBT.

9.5.3 A prerequisite to the substitution of securities in lieu of retention or the deposit of retention into escrow shall be the execution by DBT, City, and the Escrow Agent of an Escrow Contract for Deposit of Securities in Lieu of Retention and Deposit of Retention forms provided by City. The terms of such escrow agreement are incorporated into the requirements of this Section 9.5.

9.5.4 Release of funds or securities from escrow to DBT shall be made upon receipt by Escrow Agent of written notification by City that the DBT has complied with all requirements and procedures applicable to the Contract.

9.5.5 City has the right to draw upon the securities in the event of default by DBT, as determined by City pursuant to the provisions of these Contract Documents. Within seven (7) days following receipt of the City's written notice of such default, Escrow Agent must immediately convert the securities to cash and distribute the cash as instructed by City.

9.6 BENEFICIAL OCCUPANCY

9.6.1 City reserves the right, at its option and convenience, to occupy or otherwise make use of all or any part of the Work, at any time prior to issuing the Certificate of Substantial Completion, upon seven (7) Days' notice to DBT. Such occupancy or use is herein referred to as "Beneficial Occupancy." Beneficial Occupancy shall be subject to the following conditions:

1. City, Design Consultant and Construction Manager will make an inspection of the portion of the Work to be beneficially occupied and prepare a list of items to be completed or corrected prior to issuing the Certificate of Substantial Completion.
2. Beneficial Occupancy by City shall not be construed by DBT as Acceptance by City of that portion of the Work which is to be occupied. City may, however, at its sole option, relieve DBT of Contract requirements to protect Work being beneficially occupied by City where such relief is specifically designated by City in writing.
3. Beneficial Occupancy by City shall not constitute a waiver of City's right to assess liquidated damages as otherwise provided in these Contract Documents.
4. DBT shall provide, in the areas beneficially occupied and on a continual basis (if required), utility services, heating, and cooling for systems which are in operable condition at the time of

Beneficial Occupancy. All responsibility for the operation and maintenance of equipment shall remain with DBT while the equipment is so operated. DBT shall submit to City an itemized list of each piece of equipment so operated with the date operation commences.

5. The Guarantee to Repair Periods, as defined in Section 12.2 of these General Conditions, will commence upon the first dates of actual occupancy or use of portions of the Work to which the City has taken Beneficial Occupancy and to equipment or systems fully utilized.
6. City shall pay all normal operating and maintenance costs resulting from its use of equipment in areas beneficially occupied.
7. City shall pay all utility costs which arise out of the Beneficial Occupancy.
8. DBT shall not be responsible for providing security in areas beneficially occupied.
9. City shall use its best efforts to prevent its Beneficial Occupancy from interfering with the conduct of DBT's remaining Work.
10. DBT shall not be required to repair damage caused by City in its Beneficial Occupancy.
11. Except as provided in this Section 9.6 of these General Conditions, there shall be no added cost to City due to Beneficial Occupancy.
12. DBT shall continue to maintain all insurance required by the Contract in full force and effect.

9.7 SUBSTANTIAL COMPLETION

9.7.1 When DBT gives notice to City that the Work, or portion thereof designated by City for separate delivery, is Substantially Complete, unless City determines that the Work or designated portion thereof is not sufficiently complete to warrant an inspection to determine Substantial Completion, Design Professional or Construction Manager will inspect the Work, or such designated portion thereof, and prepare and give to DBT a comprehensive list of items, if any, to be completed or corrected before establishing Substantial Completion. DBT shall promptly proceed to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of DBT to complete all Work in accordance with the Contract Documents. City will then make a further inspection to determine whether the Work or such designated portion thereof is Substantially Complete. If City's inspection discloses any item, whether or not included on the list, which must be completed or corrected before Substantial Completion, DBT shall, before City's issuance of the Certificate of Substantial Completion, complete or correct such item. DBT shall then submit a request for another inspection by City to determine Substantial Completion.

9.7.2 When City determines that the Work or such designated portion thereof is Substantially Complete, City will prepare a Certificate of Substantial Completion on City's form, which when signed by City shall establish the date of Substantial Completion and the responsibilities of City and DBT for security, maintenance, heat, utilities, insurance, completion of minor items and correction or repair of the Work or such designated portion thereof. Unless otherwise provided in the Certificate of Substantial Completion, the Guarantee To Repair Period for the Work (which is defined in Article 12, Section 12.2.1), or such designated portion thereof covered by the Certificate of Substantial Completion, excluding any systems provided by Separate Contractors which are not yet fully operational or accepted by City, shall commence on the date of Substantial Completion of the Work or such designated portion thereof. The Guarantee To Repair Period for systems which become fully operational or Accepted subsequent to Substantial Completion will begin on the later of the date they are operational or Acceptance of the Project by City.

9.8 FINAL COMPLETION AND FINAL PAYMENT

9.8.1 Upon receipt of notice from DBT that the Work is ready for final inspection, City will make such inspection. City will file a notice of completion with the County Clerk within fifteen (15) Days after Acceptance by City. Thirty-five (35) Days after filing the notice of completion, the City may release the final retention provided the requirements in this paragraph are met.

9.8.2 Without limitation to any other provisions of the Contract Documents, before Final Payment (including release of undisputed retention) for Work under this Design-Build Contract is authorized, the DBT shall have completed the Work in accordance with the Contract Documents and all applicable standards of care and the following requirements of the Contract Documents must be fulfilled by DBT:

- (i) The submittal of an application for Final Payment, together with supporting documentation, as required by Section 9.3 of these General Conditions. By submitting an application for final payment, Contractor warrants that all workers and persons employed, all firms supplying the materials, and all Subcontractors have been paid in full with the exception of any Subcontractor retention payments that are not yet due pursuant to Public Contract Code section 7107(d) or (e), and that there are no bills outstanding against the Work for either labor or materials, except certain items, documented as disputed claims or pending stop payment notices.
- (ii) Completion and delivery by DBT to City of all required written guarantees, warranties, operation and maintenance manuals, As-Built Documents and other Record Documents, drawings, schedules, certificates and such other documents as required by the Contract Documents. All approvals and acceptances shall have been made pursuant to Applicable Code Requirements.
- (iii) Completion of all construction Work, including corrective and punch list items, in a manner acceptable to City. All rubbish, tools, scaffolding and surplus materials and equipment have been removed from the Site.
- (iv) Submission of conditional releases of claims and stop notices from DBT and its Subcontractors with no reservation of rights for disputed claims or amounts.
- (v) If a Stop Payment Notice(s) is received by the City after the Notice of Completion has been filed and prior to Final Payment, the City may, at its election, withhold the amount specified in the Stop Payment Notice plus reasonable cost of any litigation pursuant to Civil Code Section 9358 from the Final Payment or permit the DBT to supply a stop notice release bond in the amount of 125% of the stop notice amount from a Surety acceptable to the City.

9.8.3 For purposes of determining the last day for submission of a Claim pursuant to Article 4, the date of Final Payment is deemed to be the date that the City acts to release undisputed retention as part of Final Payment, either by transmitting a written request to the retention Escrow Agent or by transmitting a payment directly to DBT, whichever occurs first. Acceptance of Final Payment by DBT shall constitute a complete waiver of all Claims, except those previously made in writing and identified by DBT as unsettled at the time of the Application for Final Payment.

9.8.4 DBT shall pay or cause to be paid to Subcontractors, the amount stated in the conditional releases within five (5) Days after receipt of the Final Payment and shall promptly thereafter furnish evidence of such payment to City.

ARTICLE 10 – PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 DBT shall be solely and completely responsible for initiating, maintaining and supervising all safety precautions and programs on the Site in connection with the performance of the Design-Build Contract, including safety of all persons for the duration of the Work, on a 24-hour day, 7-day week basis.

10.1.2 Prior to the start of construction, DBT shall submit to Construction Manager a copy of DBT's safety program for the Project. A copy of this program shall be maintained on Site at all times. The safety program shall include, at a minimum:

- (i) Management policy, illness and injury prevention program (as described below).
- (ii) Safety meetings.
- (iii) Accident investigation.
- (iv) Basic accident causes.
- (v) Safety inspection check list.
- (vi) Fire prevention and control.
- (vii) Report forms.
- (viii) Employee safety manual.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 The DBT shall be solely and completely responsible for job site conditions and safety during the life of the Contract. This obligation shall include the safety of all persons within or affected by the line of construction and all private property affected by the Work.

10.2.2 At its sole expense, DBT shall furnish, erect and maintain such temporary fences, barricades, signs, lights, ramps, and temporary construction of whatever nature as may be necessary to provide access to abutting properties and to warn the public of the Work in progress and of any dangerous conditions as may exist due to the Work in progress. The DBT's responsibility shall be continuous and not be limited to working hours or days and shall not cease until formal acceptance of the Work by the City except that if the City should make partial acceptance of the Work, the DBT's responsibility for the portion of the Work so accepted shall thereupon cease, except for latent errors in the work or faulty construction.

10.2.3 The duty of the Construction Manager, its agents, or employees, to conduct construction review of the DBT's performance and operations is not intended to and does not include review of or responsibility for the adequacy of the DBT's safety measures and procedures in, on, or adjacent to the site of the Work.

10.2.4 DBT shall protect persons and property on the Site at all times. DBT shall have available at the Site copies or suitable extracts of "Construction Safety Orders" and "General Industrial Safety Orders" issued by the California Division of Industrial Safety. DBT shall comply with provisions of these and all other applicable laws, ordinances, and regulations.

10.2.5 DBT shall immediately respond to notice from City of unsafe conditions, shall take adequate precautions for safety of persons on the Site, and shall provide adequate protection to prevent

injury or Loss to the following:

- (i) Employees involved in the Work and other persons who may be affected thereby.
- (ii) The Work in place and materials and equipment to be incorporated therein, whether in storage on or off the Site, under care, custody, or control of DBT or Subcontractors.
- (iii) Other property at the Site and adjoining property(ies).

10.2.6 DBT shall promptly remedy damage and Loss (other than damage or Loss insured under property insurance required by the Contract Documents) to property caused in whole or in part by DBT or its Subcontractors or anyone for whose acts they may be liable and for which DBT is responsible.

10.2.7 DBT shall erect and maintain, as required by existing conditions and performance of the Work, adequate safeguards for safety and protection of persons and property, including providing adequate lighting and ventilation, posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

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

10.2.9 DBT shall be required to provide at the Site a member of DBT's organization, typically the Superintendent, whose responsibility it shall be to provide instruction to persons present on the Site about prevention of accidents and overall jobsite safety. DBT shall notify City in writing if DBT replaces the person responsible for safety.

10.2.10 DBT shall be responsible for locating, providing, and coordinating the storage and staging of materials and equipment on-Site and off-Site and shall not load/store or permit any part of the Work on the Site to be loaded/stored so as to endanger the safety of persons or property.

10.2.11 DBT shall protect its materials and the Work from damage in a manner satisfactory to City and shall make good, without charge to City, all damage due to negligence in providing proper protection.

10.2.12 DBT shall take necessary precautions to guard against and eliminate possible fire hazards and to prevent damage to the Work, building materials, equipment, temporary field offices, storage sheds and public and private property.

10.2.13 DBT shall not permit the possession or use of alcohol or controlled substances on the Site.

10.2.14 Explosives may be used only when authorized in writing by City. Explosives shall be handled, used and stored in accordance with applicable regulations.

10.3 EMERGENCIES

In an emergency affecting the safety of persons or property, DBT shall immediately act to prevent or minimize damage, injury or loss. DBT shall immediately notify the Construction Manager and City, which notice may be oral, followed within twenty-four (24) hours after occurrence of the incident by written confirmation, of the occurrence of such an emergency and DBT's action.

10.4 TRENCH SAFETY

In accordance with the California Labor Code, where the work will involve trenches five feet or more in depth and the estimated or Proposal cost of excavation is in excess of \$25,000, the DBT shall submit to and receive

from the City of Merced, or its designee, the acceptance of a detailed plan showing design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazards of caving ground. Such plan shall be submitted at least five (5) days before the DBT intends to begin work on the trenches.

If such plan varies from the shoring system standards established by the Construction Safety Orders of the State of California Division of Industrial Safety, the plan shall be prepared by a registered civil or structural engineer.

The DBT shall not use shoring, sloping, or protective systems less effective than that required by the Construction Safety Orders of the Division of Industrial Safety.

The City shall not be responsible or liable for the safety of such trenching or trenching plans.

Whenever the Work called for on these plans or Contract Documents involves the construction of a pipeline, sewer, sewage disposal system, boring and jacking pits, or similar trenches or excavations, which are five feet or deeper, DBT shall include in its Proposal Price, the cost of design and construction of adequate sheeting, shoring, and bracing, or equivalent method, for the protection of life or limb, which shall conform to applicable safety orders.

ARTICLE 11 – INSURANCE AND BONDS

11.1 DBT'S INSURANCE

11.1.1 DBT, at its sole expense, shall for the term of the Contract obtain and maintain insurance in the amounts for the coverage specified in Exhibit C.

11.1.2 DBT shall furnish City with the certificates of insurance and with original endorsements affecting coverage required under this Contract within ten (10) business days following issuance of the Notice of Award. The certificates and endorsements for each insurance policy shall be signed by a person who is authorized by that insurer to bind coverage on its behalf. Endorsement for additional insured shall be submitted on standard form CG 20101185. Endorsement forms CG 2010 04/13 and CG 2037 04/13, when used together, are acceptable in lieu of CG 20101185 for Public Works projects. All Insurance required shall be from a California admitted insurance company.

11.1.3 Design Professionals and Subcontractors: DBT shall include all Subcontractors and as insureds under its policies or shall furnish separate certificates and endorsements for each Design Professional or Subcontractor in compliance with this Article. All coverages for Design Build Professional or Subcontractors shall be subject to all the requirements stated herein.

11.1.4 At the request of City, DBT shall submit to City copies of the policies obtained by DBT in response to a verified claim. In the event DBT does not comply with these insurance requirements, City may, at its option, provide insurance coverage to protect City; and the cost of such insurance shall be paid by DBT and may be deducted from the Contract Sum.

11.1.5 The requirements of this Section may only be modified in writing by the City's Risk Manager.

11.2 BOND REQUIREMENTS

11.2.1 Within fourteen (14) calendar days from the date the DBT is notified that the Construction Documents are approved and City issues a notice to proceed to start the Construction Services, the Contractor shall deliver to the City two each of the Performance Bond and Payment Bond on the forms supplied by the City and included as Exhibit H to the Contract. The surety supplying the bond must be an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, authorized to do business as such in the State of California and satisfactory to the City. The Performance Bond and the Payment Bond shall be for one hundred percent (100%) of the Total Contract Sum.

11.2.2 The Payment Bond shall remain in effect at least until the time for filing a claim on a stop payment notice has expired pursuant to the California Civil Code. The Performance Bond provided by DBT shall remain in effect for the duration of the period of all warranties required by the Contract Documents and shall assure faithful performance of all DBT's obligations under the Contract Documents, including, without limitation, all obligations that survive Final Completion or termination or expiration, such as, but not limited to DBT's warranty and indemnity obligations.

11.2.3 DBT shall promptly furnish such additional security as may be required by City to protect its interests and those interests of persons or firms supplying labor or materials to the Work.

11.2.4 Surety companies used by DBT shall be, on the date the Contract is signed by City and at all times while the bonds are in effect, either California Admitted Sureties or listed in the latest published United States Treasury Department list of Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies and either have a current A.M. Best A VIII rating or be an admitted surety that meets the requirements of Code of Civil Procedure Section 995.660.

11.2.5 The premiums for all Bonds are included in the Contract Sum and shall be paid by DBT.

11.2.6 The bonds shall name City as obligee.

11.2.7 Change Orders, Field Orders, Modifications, Changes in the Work and adjustments in the scope of Work Contract Sum or Contract Time shall in no way release or exonerate DBT or its sureties from their obligations and notice thereof shall be waived by such sureties.

11.2.8 City and the Construction Manager shall have the right to communicate with DBT's sureties with respect to matters that are related to DBT's performance of its obligations under the Contract Documents. DBT shall be provided with a copy of all such written communications. Such communications shall not create or be interpreted as creating any contractual relationship between City or the Construction Manager and any such surety.

11.2.9 In the event of a significant (15% or more) increase in Contract Sum, replacement bonds totaling the new Contract Sum may be required by City.

ARTICLE 12 – DEFECTIVE WORK

12.1 UNCOVERING OF WORK

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

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

12.2 CORRECTION OF DEFECTIVE WORK AND GUARANTEE TO REPAIR PERIOD

12.2.1 In addition to any specific warranty mentioned in these Contract Documents, the DBT shall guarantee that all material, apparatus, equipment, and workmanship used, installed, or incorporated in the work is free from defects, and agrees to replace at no expense to the City any and all defective Work or materials which become evident within one (1) year ("Guarantee To Repair Period"), unless a longer period of time is specified in the Special Provisions and technical specifications, commencing as follows:

- (i) For any Work not described as incomplete in the Certificate of Substantial Completion, on the date of Substantial Completion.
- (ii) For space beneficially occupied or for separate systems fully utilized prior to Substantial Completion pursuant to Section 9.6, from the first date of such Beneficial Occupancy or actual use, as established an appropriate written authorization for Beneficial Occupancy.
- (iii) For all Work other than (i) or (ii) above, from the date of filing of notice of completion pursuant to Section 9.8 above.

12.2.2 DBT shall (i) correct Defective Work that becomes apparent during the progress of the Work or during the Guarantee To Repair Period and (ii) replace, repair, or restore to City's satisfaction any other parts of the Work and any other real or personal property which is damaged or destroyed as a result of Defective Work or the correction of Defective Work, without any expense whatsoever to City. City will give notice of observed Defective Work with reasonable promptness, and DBT shall promptly commence such correction, replacement, repair or restoration upon notice from City, but in no case later than seven (7) Days after receipt of such notice. DBT shall diligently and continuously prosecute such correction to completion. DBT shall bear all costs of such correction, replacement, repair, or restoration and all Losses resulting from such Defective Work, including additional testing, inspection and compensation for City's or City's services and expenses. DBT shall perform corrective Work at such times that are acceptable to City and in such a manner as to avoid, to the extent practicable, disruption to City's activities. Ordinary wear and tear, unusual abuse or neglect are excepted from this guarantee. DBT shall notify City upon completion of repairs.

12.2.3 If immediate correction of Defective Work is required for life safety or the protection of property or, if in the opinion of City, Defective Work creates a dangerous condition or requires immediate corrections or attention to prevent further Loss to City or to prevent interruption of operations of City, City will attempt to give immediate notice to DBT. If DBT cannot be contacted or does not comply with City's

request for correction within a reasonable time as determined by City, City or Separate Contractors under City's direction, may, notwithstanding the provisions of this Article, proceed to make such corrections or provide such attention; and the costs of such correction or attention shall be charged against DBT. Such action by City will not relieve DBT of the guarantees provided in this Article or elsewhere in the Design-Build Contract. DBT shall replace, repair or restore to City's satisfaction any other parts of the Work and any other real or personal property, which is damaged or destroyed as a result of such Defective Work or the correction of such Defective Work.

12.2.4 DBT shall promptly remove from the Site those portions of the Work and materials which are not in accordance with the Contract Documents, and which are neither corrected by DBT nor accepted by City.

12.2.5 If DBT fails to commence correction of Defective Work within seven (7) Days as required in Section 12.2.3 after notice from City or fails to diligently prosecute such correction to completion, City may correct the Defective Work in accordance with Section 2.4; and, in addition, City may remove the Defective Work and store salvageable materials and equipment at DBT's expense.

12.2.6 If DBT fails to pay the costs of such removal and storage as required by Paragraphs 12.2.4 and 12.2.5 within seven (7) Days after written demand, City may, without prejudice to other remedies, sell such materials at auction or at private sale or otherwise dispose of such material. DBT shall be entitled to the proceeds of such sale, if any, in excess of the costs and damages for which DBT is liable to City, including compensation for City's services and expenses. If such proceeds of sale do not cover costs and damages for which DBT is liable to City, the Contract Sum shall be reduced by such deficiency. If there are no remaining payments due DBT or the remaining payments are insufficient to cover such deficiency, DBT shall promptly pay the difference to City.

12.2.7 DBT's obligations under this Article are in addition to and not in limitation of its warranty under Section 3.5 or any other obligation of DBT under the Contract Documents. Enforcement of DBT's express warranties and guarantees to repair contained in the Contract Documents shall be in addition to and not in limitation of any other rights or remedies City may have under the Contract Documents or at law or in equity for Defective Work. Nothing contained in this Article shall be construed to establish a period of limitation with respect to other obligations of DBT under the Contract Documents, which may be longer specified periods. Establishment of the Guarantee To Repair Period relates only to the specific obligation of DBT to correct the Work and in no way limits either DBT's liability for Defective Work or the time within which proceedings may be commenced to enforce DBT's obligations under the Contract Documents.

12.3 ACCEPTANCE OF DEFECTIVE WORK

Notwithstanding the provisions of Section 12.2 of these General Conditions, City shall have the option, at its sole discretion and by notice to DBT, to accept Defective Work instead of requiring its removal or correction, in which case the Contract Sum shall be reduced by an amount equal to the difference between the value to City the Work would have had were it complete, correct and in conformity with the Contract Documents and the value to City of such Defective Work. Such option shall be exercised solely by notice to DBT and shall not be implied from any act or omission by City or Construction Manager. If there are no remaining payments of the Contract Sum to be made to DBT, or if the remaining payments and retention are insufficient to cover the amount of the reduction of the Contract Sum, DBT shall promptly pay to City the amount of any such deficiency.

ARTICLE 13 – STATUTORY REQUIREMENT

13.1 STATE LABOR LAW

DBT, its agents, and employees shall be bound by and comply with all applicable provisions of the Labor Code and such federal, state and local laws which affect the conduct of the Work. If prevailing wages are required for this Project, copies of the prevailing rate of per diem wages may be obtained at the Department of Industrial Relations' website: <http://www.dir.ca.gov/>

13.2 WORK DAY

Eight (8) hours labor constitutes a legal day's work. DBT shall not permit any worker to labor more than eight (8) hours during anyone (1) Day or more than forty (40) hours during any one (1) calendar week, unless overtime is paid pursuant to Labor Code Section 1815 or except as otherwise permitted by law. DBT shall forfeit to City, as a penalty, twenty-five dollars (\$25.00) for each worker employed in the execution of this Design-Build Contract by DBT, or any Subcontractor, for each Day during which such worker is required or permitted to Work more than eight (8) hours in any one (1) Day and forty (40) hours in any one (1) calendar week in violation of the terms of this Paragraph or in violation of the provisions of any law of the State of California, including but not limited to Labor Code Sections 1810 through 1815. Such forfeiture amounts may be deducted from the Contract Sum. DBT and each Subcontractor shall keep, or cause to be kept, an accurate record showing the actual hours worked each Day and each calendar week by each worker employed on the Project, which record shall be kept open at all reasonable hours to the inspection of City, its officers and agents, and to the inspection of the appropriate enforcement agency or representative and the State of California.

ARTICLE 14 – JOB SITE NOTICES AND COMPLIANCE MONITORING

14.1 LABOR PROVISIONS

As required by California Labor Code section 1771.4(a)(1) and (a)(2), the City provides notice to all contractors and subcontractors that the Project that is the subject of the RFP and the Design-Build Contract, is a public works project, the DBT is required to post all job site notices prescribed by law or regulation, and the DBT is subject to compliance monitoring and enforcement by the Department of Industrial Relations (DIR).

**CITY OF MERCED
DESIGN-BUILD
SPECIAL
PROVISIONS**

EXHIBIT A - Owner's Project Criteria

SCOPE OF WORK

Selected vendor(s) will be responsible for the design, provision and installation of play equipment and surfacing at Community Park 42 within the designated budget for the location. site plan and playground footprint(s) are provided in Exhibits B. This includes approximately 13,000 Sq. Ft. of playground area.

Location: Community Park 42, located on southeast corner of Mission Ave and Tyler Rd in the City of Merced

Budget for Completed Project: \$450,000

Equipment: The City is looking for a unique, all-inclusive themed playground with surfacing and equipment that encourages multigenerational use among children, siblings, and caregivers of various abilities. Designs that include surfacing and equipment which offer various elevations, textures, and sensory engagement are encouraged. In addition, design and equipment should maximize visibility of children at play. Design features that provide shade in the afternoon heat are highly desirable. The playground should include two play areas separated by a sitting area, Play Area # 1, and Play Area # 2, to be proposed by the vendor. A sitting area will not be part of the required scope but should be incorporated as part of designs included in each proposal.

- Play Area #1 shall be designed for children ages 2-5 and shall include features that engage visual, auditory, and tactile experiences. This area should encourage exploration, cooperative play, social interaction, and imaginative play between children and their caregivers.
- Play Area #2 shall be designed for children ages 5-12 and shall include features that provide scaled levels of healthy challenges that require climbing, swinging, jumping, or spinning. This play area should provide height and spatial versatility that provide maximum play volume and value for older children.

Greater consideration will be given to designs that incorporate ADA compliant components and encourage interactive play for children of all abilities. This could include wheelchair compatible elements, sensory components, or other inclusive play equipment and or surfacing.

Creativity in design and consideration of durable equipment is strongly encouraged. Vendors who showcase established design build partnerships or teams that will lead to more feasible timelines for completion of the playground will be given stronger consideration.

Proposals that include equipment that can leverage additional funding sources or discounts are of specific interest.

Basic Requirements:

Designs submitted for review shall include:

- Full color elevation from all sides and a playground layout visible from overhead.
- Color options

- Catalog/cut sheet information
- Full warranty information including fade resistance

The new playground must be in the area provided at the park, indicated as Item 12 in the Legend in Exhibit A (Community Park 42 Site Plan). Play areas (1 & 2) shall not extend beyond the existing play area indicated in Exhibit B (Play Area(s) Dimensions).

The applicant is responsible for reviewing the attached exhibits. If the applicant wishes to walk the project site, please contact Christopher Jensen to schedule a walkthrough. It is crucial that the no one enter the job site without the accompaniment of a City of Merced representative, as the site is currently under construction.

Following installation, a full and thorough audit of all newly installed play equipment will be performed by the City of Merced Parks & Community Services and Engineering staff. Vendor(s) will be required to address and resolve any identified deficiencies within five (5) working days of notification of the deficiencies by the City representative.

MANDATORY PRE-BID MEETING

A mandatory pre-proposal meeting will be held for all interested vendors. The meeting will be held on September 10, 2024, at 11 a.m. through Microsoft Teams. Interested parties should email Director of Parks & Community Services, Christopher Jensen, at jensenc@cityofmerced.org by September 5, 2024, to receive the meeting link.

Site visits will not be held following the meeting, but interested vendors are encouraged to schedule a time with Christopher Jensen to review site conditions at the location to familiarize themselves with the park site, playground areas, and active construction activities.

PROPOSAL CONTENT

The submission should consist of a written proposal, which shall include the following items:

1. An introduction containing the following information:
 - a. A complete description of capability and history of the contractor (vendor).
 - b. History of similar projects completed within the last three years, including cost and client contact information.
 - c. California State Contractors License Board (CSLB) contractor license number and type of licenses held.
 - d. A brief description of the proposed schedule including how the project would be organized and built.
 - e. A list of sub-contractors to be used on the project, including CSLB license number and licenses held (if applicable).
2. A list of not less than three (3) references including product or service provided, name of agency, contact person, phone number and/or e-mail.
3. Identify any Leveraged Procurement Agreements (LPAs) or other cooperative purchasing programs in which vendor participates to secure favorable pricing on equipment. Such pricing is to be incorporated

in the cost proposal(s).

4. Up to two (2) playground/equipment design proposals. For each design proposal, provide the following:
 - a. A scaled site plan showing the proposed equipment and relationship to existing equipment (if applicable). For sand play area equipment, include any surfacing required for ADA compliance. No more than three playground designs will be accepted.
 - b. Drawings and manufacturer's printed literature and specifications for each item or component of the modular equipment being proposed.
 - c. A detailed breakdown of cost shall include, but is not limited to, all expenses including, (note this is a prevailing wage project):
 - i. Design
 - ii. Equipment (inclusive of all structures, components, signage, hardware, equipment manuals and operations manuals)
 - iii. Installation
 - iv. ADA compliant surfacing in play areas (if necessary)
 - v. Any other equipment-related improvements necessary to complete the project.
 - d. Playground manufacturer warranties.
 - e. Proof of Manufacturer's Product Liability Insurance
 - f. Proof of installer factory certification
5. Anticipated lead time for equipment construction and delivery.

EXHIBIT B – Scope of Services

The City of Merced requires the vendor to design a playground system that meets or exceeds all current federal standards and shall meet the following certifications, guidelines, rules and regulations:

- a. ADA (Americans with Disabilities Act).
- b. CPSC (U.S. Consumer Product Safety Commission).
- c. ASTM – F1487 (American Society for Testing and Materials standard for Public Use Playground Equipment). The most recent edition.
- d. IPEMA Certification (Internal Play Equipment Manufacturers Association).

Play structures and amenities must be age appropriate with proper signage. Playground structure(s) shall be designed for age groups 2-5 years and 5-12 years.

Detailed technical installation instructions and maintenance and operations manuals from the manufacturer.

EXHIBIT C- INSURANCE

INSURANCE. During the term of this Agreement, DBE shall maintain in full force and effect at its own cost and expense, the following insurance coverage:

- a. **Workers' Compensation Insurance.** Full workers' compensation insurance shall be provided with a limit of at least One Hundred Thousand Dollars (\$100,000) for any one person and as required by law, including Employer's Liability limits of \$2,000,000.00 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the City.
- b. **General Liability.**
 - (i) DBE shall obtain and keep in full force and effect general liability coverage at least as broad as ISO commercial general liability coverage occurrence Form CG 0001.
 - (ii) DBE shall maintain limits of no less than Two Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage.
 - (iii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects liability arising out of work or operations performed by or on behalf of the DBE.
 - (iv) The policy shall stipulate that this insurance will operate as primary insurance for work performed by DBE and its sub-contractors, and that any other insurance or self-insurance maintained by City or other named insureds shall be excess and non-contributory.
 - (v) DBE shall maintain its commercial general liability coverage for three (3) years after completion of the work and shall add an additional insured blanket endorsement form acceptable to the City and policy naming the City of Merced, its officers, employees, and agents for each year thereafter for at least three (3) years after completion of the work. Copies of the annual renewal and additional insured endorsement form shall be sent to the City within thirty (30) days of the annual renewal.
- c. **Automobile Insurance.**
 - (i) DBE shall obtain and keep in full force and effect an automobile policy of at least One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.
 - (ii) The City, its officers, employees, and agents are to be named as additional insureds under the policy, as respects automobiles owned, leased, hired or borrowed by the DBE.
 - (iii) The policy shall stipulate that this insurance will operate as primary insurance for work performed by DBE and its sub-contractors, and that any other insurance or self-insurance maintained by City or other named insureds shall be excess and non-contributory.
- d. **Professional Liability Insurance.** DBE shall carry professional liability insurance appropriate to DBE's profession in the minimum amount of Two Million Dollars (\$2,000,000). Architects and engineers' coverage is to be endorsed to include contractual liability.
- e. **Qualifications of Insurer.** The insurance shall be provided by an acceptable insurance provider, as determined by City, which satisfies all the following minimum requirements:
 - (i) An insurance carrier admitted to do business in California and maintaining an agent for service of process within this State; and,
 - (ii) An insurance carrier with a current A.M. Best Rating of A:VII or better (except for workers' compensation

provided through the California State Compensation Fund).

- f. **Certificate of Insurance.** DBE shall complete and file with the City prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance evidencing coverage as set forth above and 30-day Notice of Cancellation Endorsements which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to City prior to the effective date of such cancellation—including cancellation for nonpayment of premium. In addition to any other remedies City may have, City reserves the right to withhold payment if DBE's insurance policies are not current.

EXHIBIT D- DESIGN-BUILDER'S PROPOSAL



C/O MRC
PO Box 225250
San Francisco, CA 94122
Ph: 800-235-2440
Em: MRC@GAMETIME.COM
Web: www.mrcrec.com

12/19/2024
Quote #
115737-01-18

CA Merced City of Community Park 42 - Option 4 Revised 12/19/24

Merced City of
Attn: Christopher Jensen
690 West 16th Street
Merced, CA 95340
United States
Phone: 209-385-6978
jensenc@cityofmerced.org

Ship to Zip 93636

Quantity	Part #	Description	Unit Price	Amount
1	RDU	GameTime - Custom PowerScape 2-5 Play Structure	\$120,316.00	\$120,316.00
1	RDU	GameTime - PrimeTime ADA 3-Bay Swing- <i>Includes (2) belt swings, (2) enclosed tot swings and (2) Zero-G 2-5 swings</i>	\$7,418.00	\$7,418.00
1	RDU	GameTime - Custom PowerScape 5-12 Play Structure	\$150,161.00	\$150,161.00
1	564	GameTime - Curved Balance Beam	\$1,155.00	\$1,155.00
2	10768	GameTime - Toad Stool Seat	\$658.00	\$1,316.00
1	3274	GameTime - Sensory Wave Seat	\$2,661.00	\$2,661.00
1	6245	GameTime - RoxAll See Saw	\$13,296.00	\$13,296.00
1	6375	GameTime - Communication Board	\$2,619.00	\$2,619.00
1	6313	GameTime - Dune 12	\$4,791.00	\$4,791.00
1	6314	GameTime - Dune 11	\$3,726.00	\$3,726.00
1	91547	GameTime - Metallophone Panel (Below Deck)	\$3,206.00	\$3,206.00
1	90876	GameTime - Keyboard Half Panel	\$4,791.00	\$4,791.00
3	90264	GameTime - 6' Upright, Alum	\$413.00	\$1,239.00
1	5935SP	GameTime - VistaSky Rope Tower 5	\$28,205.00	\$28,205.00
1	5035	GameTime - Custom Fiberglass Sign 1S	\$2,585.00	\$2,585.00
1	51183PIP	GT-Impax - Supply and Installation of 6,188 SF Poured in Place Safety Surfacing- - 6,057 SF for play equipment area and 87 LF (131 SF) turndown - Includes 3.5" system comprised of a 3.0" cushion layer and a 0.5" wear layer accounting for up to an 8' fall height - 1,580 SF - Includes 2.5" system comprised of a 2.0" cushion layer and a 0.5" wear layer accounting for up to a 5' fall height - 4,608 SF - 50% standard color EPDM (blue, green, red, or beige) 50% black - Aromatic Binder, Prevailing Wages - Good job access, no design - Borders / Security / Dumpster BY OTHERS	\$111,193.75	\$111,193.75
1	INSTALL	GameTime - by a certified GameTime installer- - Provide and install compacted road base for PIP 6,057 SF with turn down (131 SF) for 3.5" and 2.5" systems - Installation of above-quoted GameTime play equipment (includes concrete footings, labor and materials) - Temporary fencing while equipment is being installed - Receive and storage at installer's yard and transport to jobsite once construction begins - Prevailing wages NOTE: This proposal assumes that the areas of work are accessible for all equipment and ready for the installation of new equipment.	\$111,225.00	\$111,225.00
1	RDU	GameTime - Bonds	\$8,118.00	\$8,118.00
Contract: OMNIA #2017001134			Sub Total	\$578,021.75



C/O MRC
PO Box 225250
San Francisco, CA 94122
Ph: 800-235-2440
Em: MRC@GAMETIME.COM
Web: www.mrcrec.com

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CA Merced City of Community Park 42 - Option 4 Revised 12/19/24

Quantity	Part #	Description	Unit Price	Amount
			Discount	(\$147,730.23)
			Freight	\$12,250.00
			Tax	\$16,479.77
			Total	\$459,021.29

Comments

Price is based on the GameTime Community Champions Playground Grant Program.

This offer expires December 23, 2024.

OMNIA Partners f/n/a USC Contract #2017001134 Vendor #121531

Please supply your OMNIA registration # or Federal Tax ID #: _____

Fitness equipment is not included in this proposal.

Site preparation, demo, and borders are not included in this proposal.

Shipping equipment to installer in Madera, CA 93636; surfacing to site in Merced, CA 95341.

INSTALLATION SCHEDULE TO BE DETERMINED BY WEATHER CONDITIONS ALLOWING FOR PROPER MATERIAL SET UP AND CURING. QUOTE DOES NOT INCLUDE ANY TENTING OR ARTIFICIAL HEATING.

PLEASE NOTE: Quote assumes favorable access with install location within 50 linear feet of box truck staging area. Quote assumes any adjacent sprinklers or irrigation will be shut off at least 24hrs prior to our crew's arrival on site.

CHOOSE YOUR COLOR SCHEME: IT IS VERY IMPORTANT THAT YOU CHOOSE A COLOR SCHEME FOR YOUR MODULAR PLAYGROUND UNIT AT TIME OF ORDER. PLEASE SELECT FROM ONE OF THE MANY "PLAY PALETTES" LISTED IN THE BACK OF THE GAMETIME CATALOG OR ON OUR WEBSITE: www.gametime.com. INDICATE YOUR SELECTION BELOW.

GAMETIME PLAY PALETTE: _____

NOTE: COLOR SELECTION FOR ALL OTHER EQUIPMENT SHOULD BE ENTERED IN THE SPACE PROVIDED UNDER THAT SPECIFIC ITEM.

NOTES: It is the customer's responsibility to verify total square footage of materials.

- Poured in place must be installed on asphalt, concrete or crushed stone surfacing.
- Grading and base preparation of area is required prior to installation of above surfacing.
- Base must meet GTImpax Architectural Specifications.
- Customer must be on site at time of delivery.
- Customer is responsible for overnight security of the site.
- A large turning area is required for access by tractor/trailer.

This quotation is subject to policies in the current GAMETIME PARK & PLAYGROUND CATALOG and the following terms and conditions. Our quotation is based on shipment of all items at one time to a single destination, unless noted, and changes are subject to price adjustment. Purchases in excess of \$1,000.00 to be supported by your written purchase order made out to **GAMETIME c/o MRC**. Customer is responsible for any required permits and fees pertaining to such permits.



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CA Merced City of Community Park 42 - Option 4 Revised 12/19/24

PRICING / PAYMENT: Pricing f.o.b. factory, firm until December 23, 2024. Payment terms: Purchase order made payable to **GameTime**. 75% due Net 30 days after ship and 25% balance due upon completion of project for tax supported governmental agencies. A 1.5% per month finance charge will be imposed on all past due accounts. Equipment shall be invoiced separately from other services and shall be payable in advance of those services and project completion. Retainage not accepted.

TAXES: State and local taxes, if applicable, will be added at time of invoicing unless a tax exempt certificate is provided at the time of order entry.

FREIGHT/SHIPMENT: Freight charges: Prepaid and added at time of invoicing. Shipment: order will ship within 14-18 weeks after GameTime's receipt and acceptance of your PURCHASE ORDER, signed quotation and color selections. Some products may require longer lead times. Consult with your Sales Representative for any extended lead times that may apply to your order.

RECEIPT OF GOODS: Installer is responsible for unloading and uncrating equipment from truck. Installer shall receive, unload and inspect goods upon arrival, noting any discrepancies on the Delivery Receipt prior to written acceptance of the shipment. Customer must be on-site at time of surfacing delivery. Direct access to the site is required for a tractor-trailer to deliver the surfacing.

INSTALLATION: Installation by a Gametime Certified Installer. Terms of installation listed briefly below:

- Installation Pricing is based on manufacturer's recommended footing depth of 30" below finished grade. Any requirement greater than that will incur additional charges.
- Installation assumes a flat, dirt surface with no grading preparation required.
- Gametime's installer is not responsible for any site preparation, and/or grading.
- Customer is responsible for calling 888-DIG-SAFE a minimum of 72 hours before installation is to begin.
- Direct access is required for large construction vehicles.
- All work is to be done in one move.
- All excavated material is to remain on site.
- The installation of border timbers is not included in the above price.
- Overnight security is not included in this proposal.
- Unforeseen subsurface obstructions may incur additional charges.

EXCLUSIONS: unless specifically included, this quotation excludes all landscaping; removal of existing equipment and/or surfacing; fitness area equipment; security and drainage provisions.

TO ORDER: Please complete the acceptance portion of this quotation and provide color selections, purchase order copy and other key information requested. Acceptance of this proposal indicates your agreement to the terms and conditions stated herein.

Sales Representative: Jenn Peterson/es



C/O MRC
PO Box 225250
San Francisco, CA 94122
Ph: 800-235-2440
Em: MRC@GAMETIME.COM
Web: www.mrcrec.com

12/19/2024
Quote #
115737-01-18

CA Merced City of Community Park 42 - Option 4 Revised 12/19/24

Acceptance of quotation: (ALL INFORMATION REQUIRED)

Accepted By (printed): _____ P.O. No: _____
Signature: _____ Date: _____
Title: _____ Phone: _____
Email: _____ Facsimile: _____

Purchase Amount: **\$459,021.29**

Order Information: (ALL INFORMATION REQUIRED)

Bill To: _____ Ship To: _____
Bill To Contact: _____ Ship To Contact: _____
Bill To Email: _____ Ship To Email: _____
Bill To Phone: _____ Ship To Phone: (Office): _____
(Cell): _____
Bill to Address: _____ Ship To Address: _____
Bill To City, State, Zip: _____ Ship To City, State, Zip: _____

SALES TAX EXEMPTION CERTIFICATE #: _____
(PLEASE PROVIDE A COPY OF CERTIFICATE)

COMMUNITY PARK 42
OPTION 4
MERCED, CA

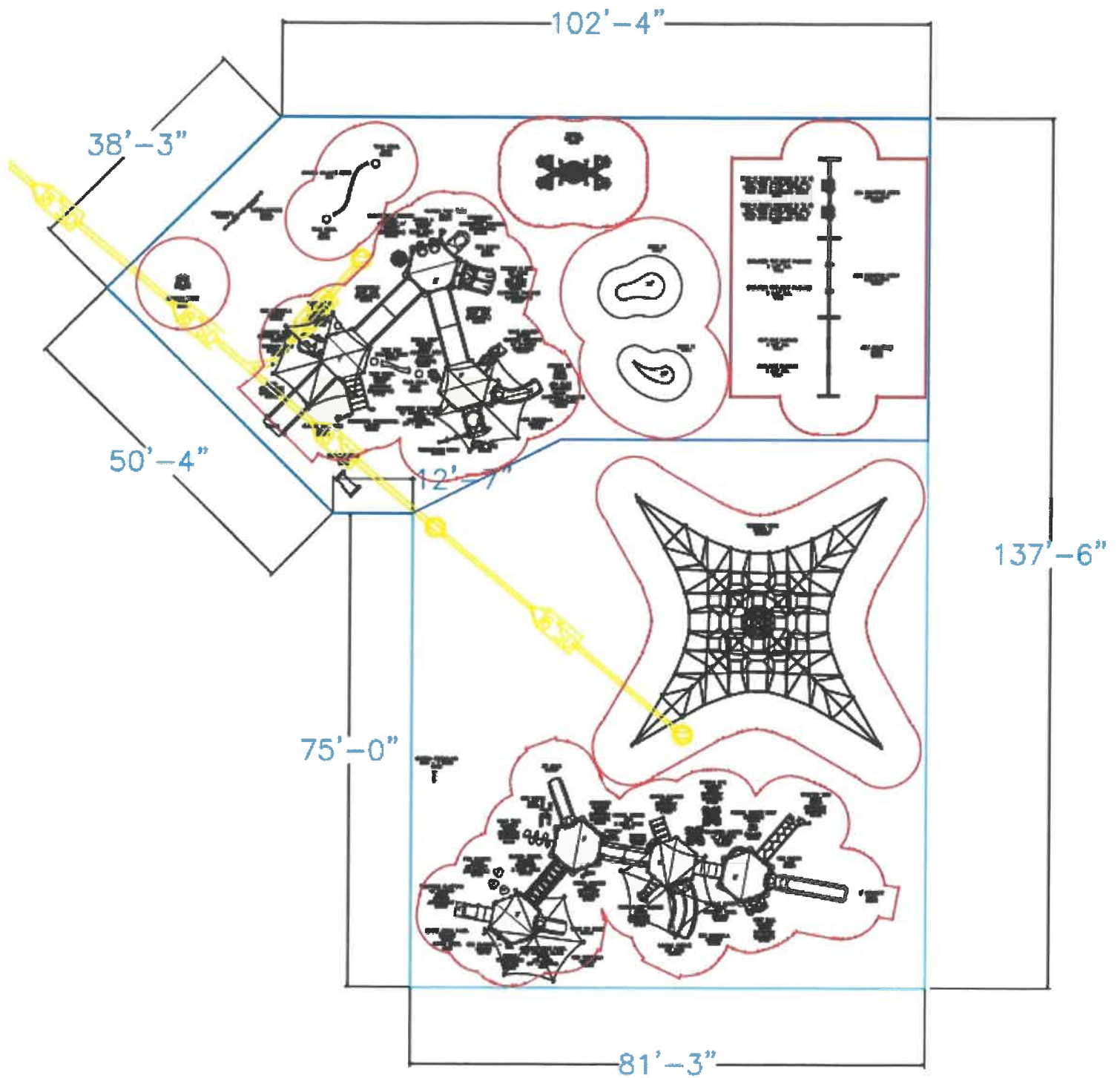


EXHIBIT E-SPECIAL CONDITIONS

ARTICLE 1 BONDS

Within ten (10) calendar days from the date the Contractor is notified of award of the Contract, the Contractor shall deliver to the City four identical counterparts of the Performance Bond and Payment Bond on the forms supplied by the City and included as Exhibit H to the Contract. The surety supplying the bond must be an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, authorized to do business as such in the State of California and satisfactory to the City. The Performance Bond and the Payment Bond shall be for one hundred percent (100%) of the Total Contract Price.

RETAINAGE FROM PAYMENTS

The retainage from progress payments on this contract is five percent (5%) pursuant to Public Contract Code §§7201 and 9203. The Contractor may elect to receive 100 percent of payments due under the Contract Documents from time to time, without retention of any portion of the payment by the City, by depositing securities of equivalent value with the City.

IRAN CONTRACTING ACT OF 2010

In accordance with Public Contract Code Section 2200 et seq., the City requires that any person that submits a bid or proposal or otherwise proposes to enter into or renew a contract with the City with respect to goods or services of one million dollars (\$1,000,000) or more, certify that the person is not identified on a list created pursuant to subdivision (b) of Public Contract Code Section 2203 as a person engaging in investment activities in Iran described in subdivision (a) of Public Contract Code Section 2202.5, or as a person described in subdivision (b) of Public Contract Code Section 2202.5, as applicable.

The form of such Iran Contracting Certificate must be signed and dated under penalty of perjury.

WORKERS COMPENSATION CERTIFICATION

In accordance with the provisions of Labor Code Section 3700, Contractor shall secure the payment of compensation to its employees. Contractor shall sign and file with the City the following certificate prior to performing the work under this Contract:

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

The form of such Workers' Compensation Certificate is included as part of this document.

SUBSTITUTION OF SECURITY

The Contract call for monthly progress payments based upon the percentage of the Work completed. The City will retain a percentage of each progress payment as provided by the Contract. At the request and expense of the successful Bidder, the City will substitute securities for the amount so retained in accordance with Public Contract Code Section 22300.

PREVAILING WAGES

The City has obtained from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages in the locality in which this work is to be performed for each craft or type of worker needed to execute the Contract. These rates are available at the City of Merced's Engineering Department or may be obtained online at <http://www.dir.ca.gov>. Bidders are advised that a copy of these rates must be posted by the successful Bidder at the job site(s).

DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS

In accordance with the provisions of the Labor Code, contractors or subcontractors may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Labor Code Sections 1777.1 or 1777.7. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid to a debarred subcontractor by the Contractor for the Project shall be returned to the City. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

INSURANCE REQUIREMENTS

Prior to commencing work, the successful bidder shall purchase and maintain insurance as set forth in the Contract. Failure to meet the insurance requirements will cause the City to withdraw any award and the successful bidder will forfeit their bid bond. A payment bond, performance bond, guaranty and all insurance required for this contract must be filed with the contract documents and approved by the City Attorney before the Contractor enters upon performance of the work. Endorsement for additional insured shall be submitted on standard form CG 20101185. Endorsement forms CG 20101001 and CG 2037 04/13, when used together, are acceptable in lieu of CG 20101185 for Public Works projects. Failure to meet the requirements will result in forfeiture of bid security. All Insurance required shall be from a California admitted insurance company.

SALES AND OTHER APPLICABLE TAXES, PERMITS, LICENSES AND FEES

Contractor and its subcontractors performing work under this Contract will be required to pay California sales tax and other applicable taxes, and to pay for permits, licenses and fees required by the agencies with authority in the jurisdiction in which the Work will be located, unless otherwise expressly provided by the Contract.

EXHIBIT F – CERTIFICATION LABOR CODE
SECTION 1861

I, the undersigned Contractor, am aware of the provisions of Section 3700, et seq., of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I, the undersigned Contractor, agree to and will comply with such provisions before commencing the performance of the Work on this Contract.

PlayCore Wisconsin, Inc. dba GameTime

By:



Signature

Clint Whiteside

Name (Print)

Director of Sales

Title (Print)

EXHIBIT G – PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATION

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. See <http://www.dir.ca.gov/Public-Works/PublicWorks.html> for additional information.

No bid will be accepted, nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work.

Contractor hereby certifies that it is aware of the registration requirements set forth in Labor Code sections 1725.5 and 1771.1 and is currently registered as a contractor with the Department of Industrial Relations.¹

Name of Contractor: PlayCore Wisconsin, Inc. dba GameTime

DIR Registration Number: 1000015526

DIR Registration Expiration: 06/30/2025

Small Project Exemption: Yes or X No

Unless Contractor is exempt pursuant to the small project exemption, Contractor further acknowledges:

Contractor shall maintain a current DIR registration for the duration of the project.

- Contractor shall include the requirements of Labor Code sections 1725.5 and 1771.1 in its contract with subcontractors and ensure that all subcontractors are registered at the time of bid opening and maintain registration status for the duration of the project.
- Failure to submit this form or comply with any of the above requirements may result in a finding that the bid is non-responsive.

Name of Contractor PlayCore Wisconsin, Inc. dba GameTime

Signature 

Name and Title Clint Whiteside, Director of Sales

Dated 01/09/2025

EXHIBIT H – PAYMENT AND PERFORMANCE
BONDS

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the City of Merced (hereinafter referred to as "City") has awarded to _____, (hereinafter referred to as the "Contractor")
_____ an agreement for _____
(hereinafter referred to as the "Project").

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

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

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

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

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by City, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the City from loss or damage resulting from or caused by defective materials or faulty workmanship, Surety shall undertake and faithfully fulfill all such obligations. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the City's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

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

- (1) Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or

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

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

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

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project, including but not limited to the provisions of sections 2819 and 2845 of the California Civil Code.

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

(Corporate Seal)

Contractor/ Principal

By _____

Title _____

Surety

By _____
Attorney-in-Fact

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached.

(Attach Attorney-in-Fact Certificate

Title _____

The rate of premium on this bond is _____ per thousand. The total amount of premium charges, \$_____.
(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety)

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

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

NOTE: A copy of the Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

- ☐ Individual
☐ Corporate Officer

Title(s)

- ☐ Partner(s) ☐ Limited
 ☐ General

- ☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Contractor/Principal.

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

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

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- ☐ Attorney-In-Fact
- ☐ Trustee(s)
- ☐ Guardian/Conservator
- ☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for the Attorney-in-Fact. The Power-of Attorney to local representatives of the bonding company must also be attached.

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS That

WHEREAS, the City of Merced (hereinafter designated as the "City"), by action taken or a resolution passed _____, 20____ has awarded to _____ hereinafter designated as the "Principal," a contract for the work described as follows:

_____ (the "Project"); and

WHEREAS, the work to be performed by the Principal is more particularly set forth in the Contract Documents for the Project dated _____ ("Contract Documents"), the terms and conditions of which are expressly incorporated by reference; and

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

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

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 9100 of the Civil Code, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Section 18663 of the Revenue and Taxation Code, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified.

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

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no

circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or City and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 9100 of the Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned and the provisions of sections 2819 and 2845 of the California Civil Code.

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

Contractor/ Principal

By

Title

Surety

By

Attorney-in-Fact

Title

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached. A Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

NOTE: A copy of the Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

- ☐ Individual
☐ Corporate Officer

Title(s)

- ☐ Partner(s) ☐ Limited
 ☐ General

- ☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

DESCRIPTION OF ATTACHED DOCUMENT

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Number of Pages

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

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APPENDIX

CITY OF MERCED STANDARD DESIGNS

THE FOLLOWING STANDARDS ARE FOR REFERENCE ONLY
REFER TO THE CITY OF MERCED WEBSITE FOR THE COMPLETE LISTING OF STANDARD DETAILS

<https://www.cityofmerced.org/departments/engineering/standard-designs/>

STATE GENERAL PREVAILING WAGE RATES

General prevailing wage determination
Made by the Director of Industrial Relations

Pursuant to California Labor Code part 7,
Chapter 1, article 2, sections 1770, 1773, and 1773.1

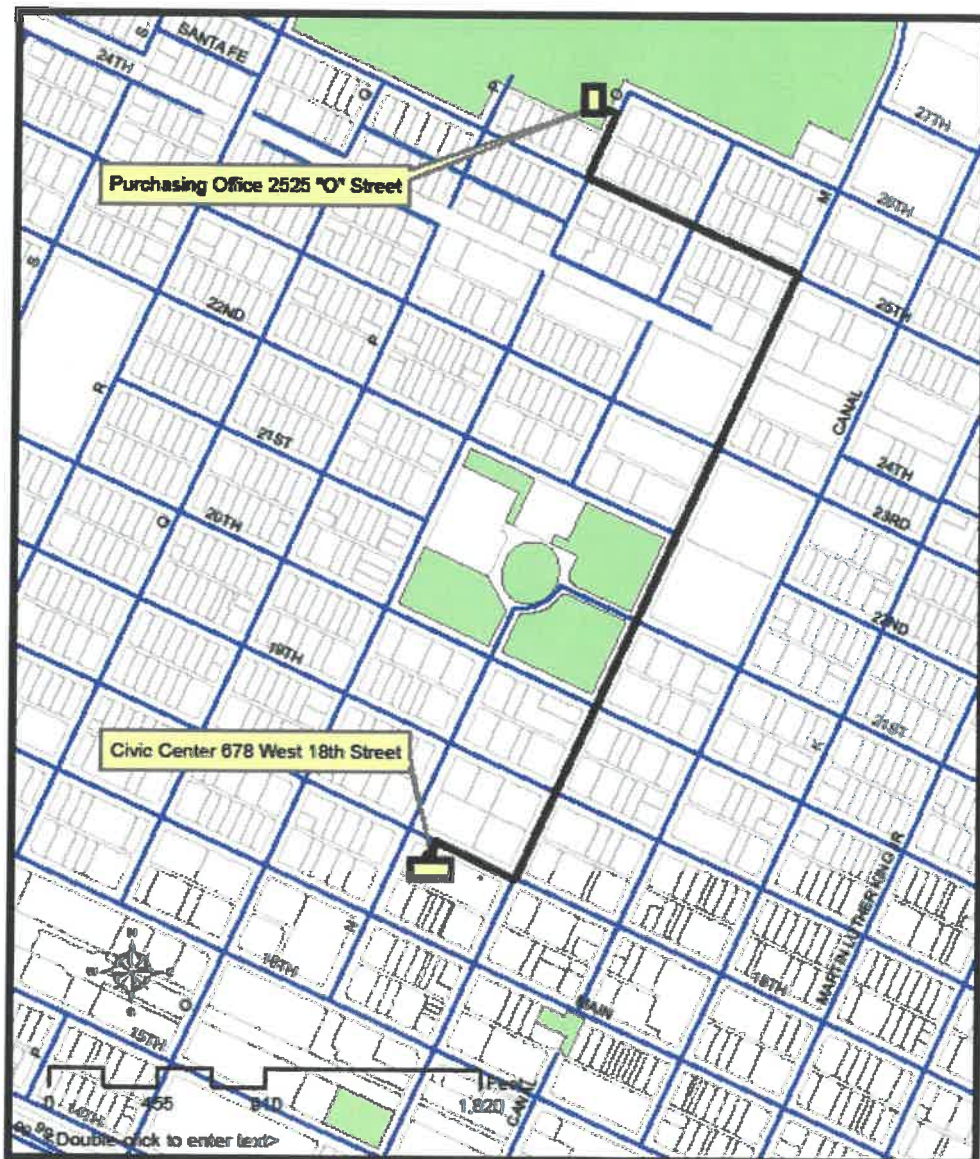
State of California Department of Industrial Relations Website:

<http://www.dir.ca.gov/OPRL/PWD/index.htm>

LOCATION MAP

PUCHASING DEPARTMENT DRIVING DIRECTIONS

DRIVING DIRECTIONS CIVIC CENTER TO PURCHASING OFFICE



DIRECTIONS: **DRIVE NORTH ON 'M' STREET**
 TURN LEFT ON WEST 25TH STREET
 TURN RIGHT ON 'O' STREET

REGULATION VIII – FUGITIVE PM10 PROHIBITIONS



San Joaquin Valley
Air Pollution Control District

COMPLIANCE ASSISTANCE BULLETIN August 2006

Regulation VIII – Fugitive PM10 Prohibitions Requirements on Paved and Unpaved Public Roads

District Rule 8061 (*Paved and Unpaved Roads*) of Regulation VIII (*Fugitive PM10 Prohibitions*) specifies the design criteria for constructing new or modifying existing paved roads and the types of control measures required for limiting fugitive dust emissions from unpaved roads and shoulders. Several compliance dates and deadlines described in the rule apply specifically to city, county, and state agencies. The purpose of this bulletin is to summarize the new requirements for public agencies that own or maintain paved and unpaved roads. The entire rule may be found at www.valleyair.org/rules/1ruleslist.htm - reg8.

- **Constructing New Unpaved Roads:** Effective October 1, 2004, constructing a new unpaved road is prohibited in all urban areas unless the unpaved road is used for a temporary activity that does not exceed six months of use over a consecutive three-year period. Temporary activities may include construction access roads, special events, or traffic detours. The unpaved surface must be maintained in a stabilized condition at all times in order to control fugitive emissions.
- **PM10-Efficient Street Sweepers:** These requirements apply to the routine cleaning of existing paved public roads within urban areas. Effective July 1, 2005, an agency or its contractor may only purchase PM10-efficient street sweepers for their fleets and at least one sweeper must be placed into service by July 1, 2008. PM10-efficient street sweepers are to be used along routine street sweeper routes, which have been predetermined and prioritized by the agency as having paved curbs with the greatest actual or potential for dirt and silt loading. If an agency cannot meet these provisions due to budgetary constraints, a statement of financial hardship must be submitted to the District and the USEPA for review and approval.
- **Cleaning Paved Roads after a Storm Event:** Within 24 hours of discovery, the agency or contractor responsible for maintaining the roadway must remove the accumulated mud and dirt from the paved road or restrict vehicles from traveling over the mud and dirt until the materials can be removed. This requirement applies if the accumulated mud and dirt is a result of wind or water erosion and runoff, is at least one inch thick, and covers an area of at least 50 square feet. Cleanup may be performed manually with a shovel and broom, or with a conventional or PM10-efficient street sweeper, but must be performed in a manner that minimizes fugitive dust. Using a blowing device or a dry rotary brush or broom is prohibited. Redirecting traffic is one way to restrict vehicles from traveling over the mud and dirt. Upon agency notification, the District may approve an extension of the 24-hour cleanup requirement if restricting vehicles is deemed unsafe and removing the mud and dirt is not possible within 72 hours because crews are not available over a weekend or holiday.

Northern Region Office
4800 Enterprise Way
Modesto, CA 95356-8718
(209) 557-6400 ♦ FAX (209) 557-6475

Central Region Office
1990 East Gettysburg Avenue
Fresno, CA 93726-0244
(559) 230-6000 ♦ FAX (559) 230-6062

Southern Region Office
2700 "M" Street, Suite 275
Bakersfield, CA 93301-2373
(661) 326-6900 ♦ FAX (661) 326-6985

- **Posting Speed Limit Signs on Unpaved Roads:** Effective October 1, 2005, public agencies must establish a maximum speed limit of 25 miles per hour for the unpaved roads under their jurisdictions. This requirement applies to the unpaved road segments where vehicle traffic reaches or exceeds 26 annual average daily trips (AADT). At a minimum, agencies are to post at least one speed limit sign in each direction for every mile of unpaved road located within an urban area, and one sign in each direction for every two miles of unpaved road within a rural area. For example, an unpaved road located within an urban area that is ½ mile long and exceeds 26 AADT requires at least one sign posted in each direction. The unpaved surface must be maintained in a stabilized condition at all times in order to control fugitive emissions.
- **Paving Existing Unpaved Roads and Paving or Stabilizing Unpaved Shoulders:** On January 1, 2005, agencies provided the District with a report listing each unpaved road located within an urban area and each paved road with unpaved shoulders within urban and rural areas. On July 1, 2005, agencies provided a report listing each unpaved road located within a rural area. These reports include the length in miles and the AADT for each subject road and unpaved shoulder within the agency's jurisdiction.

As of January 1, 2005, agencies are to pave an annual average of 20 percent of the unpaved roads listed in their urban area unpaved road report, thereby paving 100 percent of these unpaved roads by January 1, 2010. This requirement does not apply to rural unpaved roads.

In urban areas, agencies are to pave or stabilize at least four-feet of unpaved shoulders on at least 50 percent of the existing paved roadways having the highest AADT. In rural areas, this is required on at least 25 percent of the existing paved roadways with the highest AADT. Compliance with these provisions must be complete by January 1, 2010.

If an agency cannot meet these provisions due to budgetary constraints, a statement of financial hardship must be submitted to the District and the USEPA for review and approval.

- **Incremental Progress Reports:** Due on April 1 of each year, from 2006 through 2010, agencies must report their incremental progress to the District by reporting the total miles of urban unpaved roads that were paved over the previous calendar year, the total miles of unpaved shoulders that were paved or stabilized over the previous calendar year, and the percentage of cumulative miles treated relative to the original reports.

For more information please contact the Compliance Department of the District office nearest to you. Information on Regulation VIII is available on the District's website at:

www.valleyair.org



San Joaquin Valley AIR POLLUTION CONTROL DISTRICT

COMPLIANCE ASSISTANCE BULLETIN April 2007

Fugitive Dust Control at Construction Sites: New Requirements

Regulation VIII, Fugitive PM₁₀ Prohibitions, of the District's Rules and Regulations apply to many activities that generate fugitive dust, and particularly to construction sites.

Fugitive dust is emitted into the air by activities that disturb the soil, such as earthmoving and vehicular/equipment traffic on unpaved surfaces. Windblown dust is also of concern where soil has been disturbed at construction sites.

The District adopted Regulation VIII in 1993 and its most recent amendments became effective on October 1, 2004. This is a basic summary of the regulation's requirements as they apply to construction sites.

These regulations affect all workers at a regulated construction site, including everyone from the landowner to the subcontractors. Violations of Regulation VIII are subject to enforcement action including fines.

Visible Dust Emissions (VDE) may not exceed 20% opacity during periods when soil is being disturbed by equipment or by wind at any time. Visible Dust Emissions opacity of 20% means dust that would obstruct an observer's view of an object by 20%. District inspectors are state certified to evaluate visible emissions. Dust control may be achieved by applying water before/during earthwork and onto unpaved traffic areas, phasing work to limit dust, and setting up wind fences to limit wind blown dust.

Soil Stabilization is required at regulated construction sites after normal working hours and on weekends and holidays. This requirement also applies to inactive construction areas such as phased projects where disturbed land is left unattended. Applying water to form a visible crust on the soil and restricting vehicle access are often effective for short-term stabilization of disturbed surface areas. Long-term methods including applying dust suppressants and establishing vegetative cover.

Carryout and Trackout occur when materials from emptied or loaded vehicles falls onto a paved surface or shoulder of a public road or when materials adhere to vehicle tires and are deposited onto a paved surface or shoulder of a public road. Should either occur, the material must be cleaned up at least daily, and immediately if it extends more than 50 feet from the exit point onto a paved road. The appropriate clean-up methods require the complete removal and cleanup of mud and dirt from the paved surface and shoulder. Using a blower device or dry sweeping with any mechanical device other than a PM₁₀-efficient street sweeper is a violation. Larger construction sites, or sites with a high amount of traffic on one or more days, must prevent carryout and trackout from occurring by installing gravel pads, grizzlies, wheel washers, paved interior roads, or a combination thereof at each exit point from the site. In many cases, cleaning up trackout with water is also prohibited as it may lead to plugged storm drains. Prevention is the best method.

Unpaved Access and Haul Roads, as well as unpaved vehicle and equipment traffic areas at construction sites must have dust control. Speed limit signs limiting vehicle speed to 15 mph or less at construction sites must be posted every 500 feet on uncontrolled and unpaved roads.

Northern Region Office
4800 Enterprise Way
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(559) 230-6000 ♦ FAX (559) 230-6062

Southern Region Office
2700 "M" Street, Suite 275
Bakersfield, CA 93301-2373
(661) 326-6900 ♦ FAX (661) 326-6985

Storage Piles and Bulk Materials have handling, storage, and transportation requirements that include applying water when handling materials, wetting or covering stored materials, and installing wind barriers to limit VDE. Also, limiting vehicle speeds, loading haul trucks with a freeboard of six inches or greater along with applying water to the top of the load, and covering the cargo compartments are effective measures for reducing VDE and carryout from vehicles transporting bulk materials.

Demolition activities require the application of water to the exterior of the buildings and to unpaved surfaces where materials may fall. A Dust Control Plan will be required for large demolition projects. Consider all structures slated for demolition as possibly being regulated due to potential asbestos, per District Rule 4002 - *National Emission Standards for Hazardous Air Pollutants*. Contact the District well before starting because a 10 working-day notice will likely be required before a demolition can begin.

Dust Control Plans identify the dust sources and describe the dust control measures that will be implemented before, during, and after any dust generating activity for the duration of the project. Owners or operators are required to submit plans to the District at least 30 days prior to commencing the work for the following:

- Residential developments of ten or more acres of disturbed surface area.
- Non-residential developments of five or more acres of disturbed surface area.
- The relocation of more than 2,500 cubic yards per day of materials on at least three days.

Operations may not commence until the District has approved the Dust Control Plan. A copy of the plan must be on site and available to workers and District employees. **All work on the site is subject to the requirements of the approved dust control plan. A failure to abide by the plan by anyone on site may be subject to enforcement action.**

Owners or operators of construction projects that are at least one acre in size and where a Dust Control Plan is not required, must provide written notification to the District at least 48 hours in advance of any earthmoving activity.

Record Keeping is required to document compliance with the rules and must be kept for each day any dust control measure is used. The District has developed record forms for water application, street sweeping, and "permanent" controls such as applying long term dust palliatives, vegetation, ground cover materials, paving, or other durable materials. Records must be kept for one year after the end of dust generating activities (Title V sources must keep records for five years).

Exemptions exist for several activities. Those occurring above 3,000 feet in elevation are exempt from all Regulation VIII requirements. Further, Rule 8021 – *Construction, Demolition, Excavation, Extraction, and Other Earthmoving Activities* exempts the following construction and earthmoving activities:

- Blasting activities permitted by California Division of Industrial Safety.
- Maintenance or remodeling of existing buildings provided the addition is less than 50% of the size of the existing building or less than 10,000 square feet (due to asbestos concerns, contact the District at least two weeks ahead of time).
- Additions to single family dwellings.
- The disking of weeds and vegetation for fire prevention on sites smaller than ½ acre.
- Spreading of daily landfill cover to preserve public health and safety and to comply with California Integrated Waste Management Board requirements.

Nuisances are prohibited at all times because District Rule 4102 – *Nuisance* applies to all construction sources of fugitive dust, whether or not they are exempt from Regulation VIII. It is important to monitor dust-generating activities and implement appropriate dust control measures to limit the public's exposure to fugitive dust.

For more information please contact the Compliance Division of the District office nearest to you. Information on Regulation VIII, where you may obtain copies of record keeping forms, the Dust Control Plan template, and the Construction Notification form, is available on the District's website at:

www.valleyair.org, under Compliance Assistance/Dust Control.