

## DESIGN-BUILD CONTRACT AMENDMENT NO. 3

THIS CONTRACT AMENDMENT NO. 3 is made and entered into by and between the CITY OF FRESNO, a California municipal corporation (City), and Q&D Construction, a Nevada Limited Liability Company (Design-Builder), as follows:

### RECITALS

WHEREAS, Council approved the Phase 1 Design Contract on March 19, 2020, for specified Design-Build Design phase services, including all sub-consultant, subcontractor, and reimbursable costs for the Terminal Expansion at Fresno Yosemite International Airport (Project); and

WHEREAS, The City Council on September 16, 2021, approved Amendment No. 1 which authorizes additional design cost associated with a second CBIS scheme as required by the Transportation Security Administration (TSA) increasing the contract by \$465,000 to \$8,915,000; and

WHEREAS, The City Council on September 29, 2022, approved Amendment No. 2 which authorizes additional design and preconstruction services associated with optimizing the training room required by the Transportation Security Administration (TSA) increasing the contract by \$1,378,974 to \$10,293,974; and

WHEREAS, the City now desires to execute Phase 2 of the Design-Build Contract for construction of the Terminal Expansion at Fresno Yosemite International Airport (Project); and

WHEREAS, the selected design build team is composed of Q&D Construction (Design/Builder) and it's sub-consultants including architect and engineers from CSHQA, shall provide Phase 2 construction services and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement; and

WHEREAS, this Agreement will be administered for the City by its Airports Department Director (Director) or designee.

### AGREEMENT

NOW THEREFORE, the parties agree that the Agreement be amended as follows:

1. Contract Documents. The "Progressive Design Build Agreement" in its entirety, as modified, for all services related to a Terminal Expansion at Fresno Yosemite International Airport, copies of which are annexed hereto as part **Exhibit 1**, together with all the documents specifically referred to in said annexed documents are hereby incorporated into and made a part of this Contract and shall be known as the Contract Documents.

2. Price. For the monetary consideration of \$137,162,837 as set forth in **Exhibit 1**, Design-Builder has substantially performed Phase 1 (design and preconstruction activities) and promises and agrees to perform or cause to be performed, in a good and workmanlike manner, and to the satisfaction of the City, and in strict accordance with the Specifications, all of the work as set forth in the Contract Documents.

3. Payment. The City accepts the Design-Builder's Proposal as stated and agrees to pay the consideration stated, at the times, in the amounts, and under the conditions specified in the Contract Documents. The Design-Builder agrees to accept electronic payment from the City.

4. Scope of Services. Design-Builder shall perform the services described herein and in **Exhibit 1** to complete the Project more fully described in **Exhibit 1**, and this shall include all work incidental to, or necessary to perform, such services even though not specifically described in **Exhibit 1**. By entry into this Agreement and upon City's issuance of a written "Notice to Proceed for Phase 2 work," City contracts for the services in Phase Two for construction services.

The DBIA Design Build Agreement (Agreement), as modified, contains additional terms and conditions related to this Contract. In the event of a conflict between this Contract and the Agreement, this Contract shall take precedence. However, if this Contract does not address a legal issue for this Project, the parties shall be governed by the provisions of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Contract on the day and year here below written, of which the date of execution by the City shall be subsequent to that of the Design-Builder's, and this Contract shall be binding and effective upon execution by both parties.

[SIGNATURES FOLLOW ON THE NEXT PAGE]

CITY OF FRESNO,  
A California municipal corporation

Q&D Construction,  
A Nevada Limited Liability Company

By: \_\_\_\_\_  
Henry Thompson  
Director of Aviation


By: 

Dated: \_\_\_\_\_

Name: Duane Boreham

APPROVED AS TO FORM:  
ANDREW JANZ  
City Attorney

Title: Vice President  
(If corporation or LLC., Board Chair,  
Pres. or Vice Pres.)

By:  2/14/23  
Brandon M. Collet  
Supervising Deputy City Attorney

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

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

ATTEST:  
TODD STERMER, CMC  
City Clerk

Title: \_\_\_\_\_  
(If corporation or LLC., CFO, Treasurer,  
Secretary or Assistant Secretary)

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

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

Addresses:  
CITY:  
City of Fresno  
Attention: Henry Thompson  
Director of Aviation  
4995 E Clinton Way  
Fresno, CA 93727  
Phone: (559) 621-4600  
FAX: (559) 251-4825

DESIGN-BUILDER:  
Q&D Construction  
Attention: Duane Boreham  
Vice President  
1050 South 21<sup>st</sup> Street  
Sparks, NV 89431  
Phone: (775) 302-6425  
FAX: (775) 786-5136

Attachment:  
Exhibit 1 – Contract Documents including Scope of Services

# **DESIGN BUILD CONTRACT AMENDMENT NO. 3**

## **EXHIBIT NO. 1**

Exhibit B – Contract Price Amendment

Exhibit C – General Conditions

Exhibit D – Special Conditions (Supplemental General Conditions)

Exhibit E – Markups (not used)

Exhibit H – Labor Rates (Provided at contract execution)

Exhibit I – Tool Rates (Provided at contract execution)

## EXHIBIT B

### CONTRACT PRICE AMENDMENT

#### FRESNO YOSEMITE INTERNATIONAL AIRPORT TERMINAL EXPANSION

#### PHASE TWO – CONSTRUCTION SERVICES

This Exhibit B Contract Price Amendment incorporates the Design-Builder's Proposal (Proposal) for completion of design and construction (Phase Two Construction Services) on the Fresno Yosemite International Airport (FAT) Terminal Expansion (Project) and is, by this reference, made a part of the Contract Documents to the same extent as if set forth herein in full.

Amendments and clarifications to the DBIA 544, Exhibit 1, as included in the Contract executed 3/23/2020 between the Owner and Design-Builder are as follows:

##### Article 5 – Ownership of Work Product

**5.1 *Delete and Replace with:*** Ownership of Work Product will be in accordance with the General Conditions of the Contract.

**5.2 through 5.4 *Delete.*** NOT USED.

##### Article 6 – Contract Time

**6.2.1 *Delete and Replace with:*** Substantial Completion of the entire Work, as defined in the General Conditions of the Contract, shall be achieved no later than 852 consecutive calendar days after the Notice to Proceed (NTP) for Phase Two Construction Services.

**6.2.2 *Delete and Replace with:*** Interim milestones and/or Substantial Completion of identified portions of the Work shall be achieved as stated in the Design-Builders Proposal.

**6.2.3 *Delete*** "Item 55" and ***Replace with*** "Item 54".

**6.4 *Delete and Replace with:*** Design-Builder understands that if Completion is not attained by the Scheduled Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Completion is not attained as specified in Section 6.2.1 herein, Design-Builder shall pay Owner the amount of \$2,500 for each Calendar Day after the Scheduled Completion Date that Completion is not attained.

**6.6 *Delete and Replace with:*** No Early Completion Credit will be paid for this Project.

## Article 7 – Contract Price

**7.1.2 *Delete and Replace with:*** For Phase 2 Services, Owner shall pay Design-Builder in accordance with the General Conditions of Contract a contract price (“Contract Price”) equal to the Guaranteed Maximum Price established in Section 7.6 herein and any adjustments made in accordance with the General Conditions of Contract.

**7.2 *Delete.*** NOT USED.

**7.3 *Delete and Replace with:*** If the Contract Price requires an adjustment due to changes in the Work, the cost of such changes shall be determined in accordance with the General Conditions of Contract.

**7.3.1 and 7.3.2 *Delete.*** NOT USED

**7.4.1 *Delete and Replace with:*** Design-Builder’s Fee shall be five percent (5%) of the Cost of the Work as adjusted for any changes in the Work in accordance with the General Conditions of Contract.

**7.4.2 *Delete.*** NOT USED.

**7.5 *Delete and Replace with:*** Cost of the Work shall conform to the General Conditions of Contract.

**7.5.1 *Delete.*** NOT USED

**7.5.1.1 through 7.5.1.23 *Delete.*** NOT USED

**7.5.2 *Delete.*** NOT USED

**7.5.2.1 through 7.5.1.4 *Delete.*** NOT USED

**7.6.1 *Delete and Replace with:*** Design-Builder guarantees that it shall not exceed the Guaranteed Maximum Price (GMP) of **\$124,118,863.00** Dollars for Phase 2 services. Documents used as a basis for the GMP are identified in the Design-Builder’s Proposal, herein. Design-Builder does not guarantee any specific line item as part of the GMP and has the sole discretion to apply payment due to overruns in one line item to savings due to underruns in any other line item. Design-Builder agrees, however, that it will be responsible for paying all costs of completing the Work which exceed the GMP, as may be adjusted in accordance with the Contract Documents.

**7.6.2 *Delete and Replace with:*** Contingency

**Add: 7.6.2.1** The GMP includes a Project Contingency in the amount stated in the Design-Builder’s Proposal. The Project Contingency shall be within the control of the Design-Builder, subject to Owner approval, and shall be utilized to reimburse the Design-Builder for unanticipated costs incurred in performing the Work of the Contract Documents. The Design-Builder may not use the Project Contingency for costs relating to correction of defective, damaged, or nonconforming Work performed by the Design-Builder or its Subcontractors or costs

related to design errors or omissions performed by the Design-Builder or its Subconsultants. The Project Contingency is not available to Owner, for changes in scope or any other item which would enable Design-Builder to increase the GMP under the Contract Documents. Design-Builder shall provide Owner notice of all anticipated charges against the Project Contingency, and shall provide Owner, as part of the monthly status report required by Item 29 of the Design-Build General Conditions of Contract, an accounting of the anticipated expenditures against the Project Contingency in the upcoming three (3) months. Design-Builder agrees that with respect to any expenditure from the Project Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, Design-Builder will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. Design-Builder agrees that if Design-Builder is subsequently reimbursed for said costs, then said recovery will be credited back to the Project Contingency. At the end of Phase 2 of the construction of the Project and prior to the Design-Builder Final Payment in accordance with General Conditions of Contract, the Design-Builder will provide a final reconciliation of the Project Contingency account. All unused Project Contingency amount remaining at the end of the Project will be used for additional scope at the sole discretion of the Owner or will be removed from the Contract with a deductive change order.

**Add: 7.6.2.2** The Contract Price includes an Owner Contingency, which is available for the Owner's exclusive use and discretion during the Project, for items such as but not limited to, Owner directed changes, Owner-responsible payment items and scope enhancements. All unused Owner Contingency amount remaining at the end of the Project will be removed from the Contract with a deductive change order.

## **Article 8 – Procedure for Payment**

**8.1 *Delete and Replace with:*** Contract Payments and Retainage will be prepared, submitted and processed in accordance with the General Conditions of the Contract.

**8.2 through 8.5 *Delete.*** NOT USED.

## **Article 9 – Termination for Convenience**

**9.1 *Delete and Replace with:*** Owner may, for its convenience, and without cause, elect to terminate this agreement in accordance with the General Conditions of the Contract.

**9.1.1 through 9.1.3 *Delete.*** NOT USED.

## **Article 11 – Bonds and Insurance**

**11.1 *Delete and Replace with:*** Design-Builder shall provide bonds in accordance with the General Conditions of the Contract.

**11.2 *Delete and Replace with:*** Design-Builder shall provide insurance in accordance with the General Conditions of the Contract.

## Article 10

**10.1.1** *Delete* Kevin Meikle *and replace with* Henry Thompson





**Q&D CONSTRUCTION  
GUARANTEED MAXIMUM PRICE PROPOSAL  
FOR  
FRESNO YOSEMITE INTERNATIONAL AIRPORT  
TERMINAL EXPANSION  
ISSUED: JANUARY 13, 2023**

**OWNER:** City of Fresno  
Mr. Henry Thompson  
Director of Airports  
4995 E. Clinton Way  
Fresno, CA 93727

**DESIGN BUILDER:** Q&D Construction  
1050 South 21<sup>st</sup> Street  
Sparks, NV 89431

**DESIGN-CONSULTANT:** CSHQA  
200 Broad Street  
Boise, ID 83702



**Q&D CONSTRUCTION  
GUARANTEED MAXIMUM PRICE PROPOSAL  
FOR  
FRESNO YOSEMITE INTERNATIONAL AIRPORT  
TERMINAL EXPANSION**

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**Q&D CONSTRUCTION  
GUARANTEED MAXIMUM PRICE PROPOSAL**

**FOR**

**FRESNO YOSEMITE INTERNATIONAL AIRPORT  
TERMINAL EXPANSION**

**01 GMP PROPOSAL**



January 13, 2023

Mr. Henry Thompson  
5175 E Clinton Way  
Fresno, CA 93727

Dear Mr. Thompson,

Q&D Construction and CSHQA are pleased to submit for your approval the Guaranteed Maximum Price (GMP) for the FAT Forward Terminal Expansion Project at the Fresno Yosemite International Airport. This submittal is based on the bid documents prepared by Q&D Construction and CSHQA. If any portion of the project funding comes from the Bipartisan Infrastructure Law (BIL), this project may be subject to the Buy America Act.

The documents used in preparation of this GMP are as follows:

- FAT Forward Terminal Expansion Bid Set Project Manual dated April 25, 2022
- FAT Terminal Expansion Out to Bid Drawings Volume 1 thru 5
- FAT Basis of Design 100% dated February 1, 2022
- FAT Plan C.301 Revised 7/15/22
- FAT Plan C.1001 Revised 7/15/22

**Guaranteed Maximum Price ..... \$124,118,863**

**(One Hundred Twenty-Four Million One Hundred Eighteen Thousand Eight Hundred Sixty-Three dollars)**

This GMP Proposal includes the following:

- A Project duration of 852 calendar days as shown in Exhibit A.
- General Conditions coordinated with the current schedule and specifications. We have included twenty-eight (28) months for general conditions in the Project GMP.
- An Owner Contingency of 3% for any Owner directed changes that may be requested over the course of the Project.
- A Contractor Contingency of 3% for any unanticipated or unforeseen construction issues that may occur during the course of construction.
- The cost of Payment and Performance bonds.
- The cost of General Liability and Builders Risk insurance.
- Construction Administration by CSHQA and their sub consultants.
- A Design-Builder fee of 5%.

It is our understanding that the Ramp project will begin in February of 2023. Previous project coordination dictated that the Terminal project begin no less than 3 months after the Ramp project, otherwise the Terminal project site would be inaccessible. Due to the volatility of the construction market, our subcontractors have only agreed to honor their proposals until May 1, 2023, therefore; this proposal will remain valid until that May 1, 2023. Future changes in the construction market are unknown and construction costs may fluctuate. If the project is postponed for any reason, subcontractor costs will either have to be re-negotiated or re-bid and a new proposal issued upon completion.

It has been our pleasure to participate as a team member with the City of Fresno Airports Department to bring this exciting new project to the Fresno community. We offer our continued support and make ourselves available to you as you evaluate this proposal toward approval of the GMP.

Sincerely,

A handwritten signature in blue ink, appearing to read "Duane Boreham", with a stylized flourish at the end.

Duane Boreham  
Vice President – Aviation  
Q&D Construction

## Scope Clarifications

### 01. General Requirements

1. Project Director, Senior Project Manager, Project Engineers, Project Administrator, Project Superintendents, General Superintendent, Safety Director and scheduler for actual time spent on project.
2. Travel expenses for senior staff members to attend on site conferences as required and subsistence for key staff members stationed on site full time.
3. Project Management Collaborative Software (Procore).
4. Airport badges to be paid for by the airport, however an estimate has been provided to account for the man hours spent applying for and acquiring a badge.
5. Temporary project and wayfinding signage.
6. Building commissioning.
7. Winter protection, temporary heat, temporary power and light distribution in construction area, drinking water and ice, construction trailers, tool sheds, temporary toilets, office supplies, computer equipment, mobilization and demobilization, temporary construction fence and wall rental, building layout, daily cleanup, final cleaning, trash dumpsters and small tools.

### 02. Site Work

1. Building survey.
2. Selective demolition of walls, doors, bollards, handrails and paving.
3. Excavation of building foundation and construction of building pad.
4. Connection to and continuation of utilities installed under the Ramp project.
5. Demolition of existing FIS structure.
6. Striping and landscape.

### 03. Concrete

1. Foundation system consisting of continuous and spread footings for all building support.
2. Concrete slab on grade for building and areas demolished at existing baggage make up area.
3. Equipment and housekeeping pads and curbs as required.
4. Seal concrete floors where scheduled.

### 04. Masonry

1. CMU walls in the FIS.

### 05. Metals

1. Structural steel framing for support of roof structure and baggage handling equipment.
2. Exterior stair with code compliant railing.
3. Miscellaneous metals for overhead clearance bars, protection bollards and rails.

06. Wood, Plastics, Composites

1. Rough carpentry.
2. Miscellaneous wood blocking and backing requirements.

07. Thermal and Moisture Protection

1. Foundation and wall insulation as scheduled.
2. Exterior Insulation and Finish System (EIFS) at building exterior.
3. Thermoplastic Polyolefin (TPO) roofing at CBIS building.
4. Metal roof panels at oversize baggage and over exterior baggage conveyor.
5. General sheet metal flashing and trim for all flashing requirements.
6. Fire stopping, caulking and sealants.

08. Openings

1. Hollow metal doors and frames, wood doors and associated hardware.
2. Access and coiling overhead doors per door schedule.
3. Storefront assemblies, glass and glazing.

09. Finishes

1. Cold formed gauge metal framing for all exterior wall assemblies.
2. Light gauge wall framing for all interior wall systems.
3. Light gauge suspension system and metal framing as required for all ceilings.
4. Gypsum wallboard at all interior walls.
5. Vinyl Composition Tile (VCT) flooring and rubber base as scheduled.
6. Ceramic tile as scheduled.
7. Anti-fatigue flooring and rubber base as scheduled.
8. Epoxy flooring and artificial turf as scheduled.
9. Painting of all walls and ceilings as scheduled.

10. Specialties

1. Metal toilet partitions.
2. Wall and corner guards as shown on plans.
3. Bird netting as shown on plans.
4. Fire cabinets and fire extinguishers as shown.
5. Accordion fire doors as scheduled.

11. Equipment

1. First Aid kits and video wall supports.
2. The following allowances have been assigned to Equipment:
  - a. Autoclave procurement.....\$350,000

12. Furnishings

1. Furniture, Fixtures and Equipment (FF&E) as shown.
2. Restroom accessories and window coverings.
3. The following allowances have been assigned to Furnishings:
  - a. TSA Furniture, Fixtures & Equipment (FF&E).....\$45,000
  - b. Art procurement..... \$500,000

#### 14. Conveying Equipment

1. Baggage Handling System installation and testing
  - a. Conveyor system outbound from ticketing through TSA security screening EDS to baggage make up carousels.
    - i. EDS machines are not included in this proposal.
  - b. FIS inbound conveyors and scanners.
2. The following allowances have been assigned to Conveyors:
  - a. Checkpoint equipment relocation.....\$125,000

#### 15. Mechanical

1. Heating, Ventilating and Air Conditioning (HVAC)
  - a. Central package air units on roof, direct expansion cooling with gas fire heating.
    - i. Roof curbs as necessary for equipment.
  - b. Renovation of controls to 3 existing Air Handling Units to Trane Tracer Controls.
  - c. DX Split system in I or Communication rooms.
2. Plumbing
  - a. Roof drains, condensate and gas lines per plan.
3. Fire Suppression
  - a. Wet sprinkler system for all interior spaces per code.

#### 16. Electrical

1. New PG&E electrical service from McKinley Ave.
  - a. New Switchgear not part of this proposal, purchased under separate contract.
2. Feeders to new distribution panels.
3. Interior distribution and subpanels.
4. Interior light fixture package.
5. Low voltage raceway.
6. Distribution / power and 3 diesel powered generators.
7. Communications:
  - a. Teledata communications and networking
  - b. Specialty PVC / RISER rated cables
8. Electronic Safety and Security:
  - a. Fire alarm system per code.
  - b. CCTV security monitoring in TSA areas as shown.
9. Amadeus / EVIDS by Owner.
10. New switchgear to be purchased through Ramp project.

#### Add Alternate:

1. Concession and TSA lease space Tenant Improvement.....\$2,750,000
  - a. Estimate based on the Floor Plan design by CSHQA as shown in Exhibit B.





**Q&D CONSTRUCTION**

est. 1964

**Standard Estimate Report**  
*Fresno Airport Terminal*

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Project name    Fresno Airport Terminal  
5175 E Clinton Way  
Fresno  
CA 93727



Standard Estimate Report  
Fresno Airport Terminal

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**Q&D CONSTRUCTION**  
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Item	Description	Takeoff Qty		Unit Cost	Total	
					Amount	
<b>01000</b>	<b>GENERAL CONDITIONS</b>					
<b>01005</b>	<b>GENERAL CONDITIONS</b>					
n	10 General Conditions	1.00	LS	8,626,844.00 /LS	8,626,844	
n	<b>GENERAL CONDITIONS</b>				<b>8,626,844</b>	
	<b>GENERAL CONDITIONS</b>					<b>8,626,844</b>
<b>02000</b>	<b>SITEWORK</b>					
<b>02050</b>	<b>SITE WORK</b>					
n	02 Site Work	1.00	LS	7,962,643.00 /LS	7,962,643	
n	02 Fencing	1.00	LS	725,000.00 /LS	725,000	
	<b>SITE WORK</b>				<b>8,687,643</b>	
<b>02220</b>	<b>SITE DEMOLITION</b>					
n	04 Building Demo	1.00	LS	844,707.00 /LS	844,707	
	<b>SITE DEMOLITION</b>				<b>844,707</b>	
<b>02305</b>	<b>SURVEYING</b>					
	06 Building Survey				10,000	
	<b>SURVEYING</b>				<b>10,000</b>	
<b>02320</b>	<b>BUILDING EXCAVATION</b>					
	56 Vapor Barrier Building Slab				82,220	
	<b>BUILDING EXCAVATION</b>				<b>82,220</b>	
<b>02760</b>	<b>PAVEMENT MARKING</b>					
n	02 Striping	1.00	LS	145,080.00 /LS	145,080	
	<b>PAVEMENT MARKING</b>				<b>145,080</b>	
<b>02905</b>	<b>LANDSCAPE SUBCONTRACT</b>					
	02 Landscape				211,000	
	<b>LANDSCAPE SUBCONTRACT</b>				<b>211,000</b>	



# Q&D CONSTRUCTION

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## Standard Estimate Report Fresno Airport Terminal

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Item	Description	Takeoff Qty	Unit Cost	Total	Amount
<hr/>					
	<b>SITEWORK</b>				<b>9,980,650</b>
<b>03000</b>	<b>CONCRETE</b>	<hr/>			
<b>03310</b>	<b>CAST IN PLACE CONCRETE</b>				
n	01 Cast In Place Concrete				4,020,026
	<b>CAST IN PLACE CONCRETE</b>				<b>4,020,026</b>
<hr/>					
	<b>CONCRETE</b>				<b>4,020,026</b>
<b>04000</b>	<b>MASONRY</b>	<hr/>			
<b>04220</b>	<b>CONCRETE MASONRY UNITS</b>				
n	04 Block Masonry				155,751
	<b>CONCRETE MASONRY UNITS</b>				<b>155,751</b>
<hr/>					
	<b>MASONRY</b>				<b>155,751</b>
<b>05000</b>	<b>METALS</b>	<hr/>			
<b>05120</b>	<b>STRUCTURAL STEEL</b>				
n	01 Structural Steel	1.00	LS	6,194,377.00 /LS	6,194,377
	<b>STRUCTURAL STEEL</b>				<b>6,194,377</b>
<b>05510</b>	<b>MISC. METALS</b>				
	06 Handrails				3,300
	<b>MISC. METALS</b>				<b>3,300</b>
<b>05810</b>	<b>EXP.JOINT COVERS</b>				
	10 Expansion Joint	1.00	LS	124,760.00 /LS	124,760
	<b>EXP.JOINT COVERS</b>				<b>124,760</b>
<hr/>					
	<b>METALS</b>				<b>6,322,437</b>
<b>06000</b>	<b>WOOD &amp; PLASTICS</b>	<hr/>			
<b>06105</b>	<b>ROUGH CARPENTRY</b>				
n	01 Rough Carpentry				2,956,250



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Fresno Airport Terminal

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**Q&D CONSTRUCTION**  
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Item	Description	Takeoff Qty	Total	
			Unit Cost	Amount
	ROUGH CARPENTRY			2,956,250
	<b>WOOD &amp; PLASTICS</b>			<b>2,956,250</b>
<b>07000</b>	<b>THERMAL/MOISTURE PROTECT</b>			
<b>07210</b>	<b>BUILDING INSULATION</b>			
n	05 Insulation	1.00	LS 347,411.00 /LS	347,411
	<b>BUILDING INSULATION</b>			<b>347,411</b>
<b>07240</b>	<b>EIFS</b>			
n	02 EIFS			2,208,600
	<b>EIFS</b>			<b>2,208,600</b>
<b>07410</b>	<b>METAL ROOF/WALL PANELS</b>			
n	02 Metal Roof & Wall Panel - Bridge	1.00	LS 146,000.00 /LS	146,000
n	04 Metal Composite Wall Panel	1.00	LS 376,000.00 /LS	376,000
	<b>METAL ROOF/WALL PANELS</b>			<b>522,000</b>
<b>07540</b>	<b>THERMO-PLASTIC ROOFING</b>			
n	60 60mil TPO Roofing, Fully Adhered	1.00	LS 1,922,000.00 /LS	1,922,000
	<b>THERMO-PLASTIC ROOFING</b>			<b>1,922,000</b>
<b>07620</b>	<b>SHEET METAL FLASHING/TRIM</b>			
	24 Sheetmetal & Flashing, Commercial			75,000
	<b>SHEET METAL FLASHING/TRIM</b>			<b>75,000</b>
<b>07810</b>	<b>APPLIED FIREPROOFING</b>			
n	05 Spray Fireproofing & Intumescent Painting			631,018
	<b>APPLIED FIREPROOFING</b>			<b>631,018</b>
<b>07840</b>	<b>FIRESTOPPING</b>			
	20 Firestopping			57,368
	<b>FIRESTOPPING</b>			<b>57,368</b>
<b>07920</b>	<b>JOINT SEALANTS</b>			
	05 Sealing & Caulking			105,574



# Q&D CONSTRUCTION

est. 1964

## Standard Estimate Report Fresno Airport Terminal

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Item	Description	Takeoff Qty	Total	
			Unit Cost	Amount
	JOINT SEALANTS			105,574
	<b>THERMAL/MOISTURE PROTECT</b>			<b>5,868,971</b>
<b>08000</b>	<b>DOORS &amp; WINDOWS</b>			
<b>08110</b>	<b>METAL DOORS &amp; FRAMES</b>			
n	01 Hollow Metal Doors & Frames	1.00 LS	1,111,819.00 /LS	1,111,819
	<b>METAL DOORS &amp; FRAMES</b>			<b>1,111,819</b>
<b>08310</b>	<b>ACCESS DOORS</b>			
	02 Access Doors			8,000
	<b>ACCESS DOORS</b>			<b>8,000</b>
<b>08330</b>	<b>COILING DOORS/GRILLS</b>			
n	02 Coiling Overhead Door	1.00 LS	554,315.00 /LS	554,315
	<b>COILING DOORS/GRILLS</b>			<b>554,315</b>
<b>08410</b>	<b>METAL FRAMED STOREFRONTS</b>			
n	02 Storefront	1.00 LS	2,189,456.00 /LS	2,189,456
	<b>METAL FRAMED STOREFRONTS</b>			<b>2,189,456</b>
<b>08810</b>	<b>GLASS &amp; GLAZING</b>			
	02 Glass & Glazing			28,400
	<b>GLASS &amp; GLAZING</b>			<b>28,400</b>
	<b>DOORS &amp; WINDOWS</b>			<b>3,891,990</b>
<b>09000</b>	<b>FINISHES</b>			
<b>09250</b>	<b>GYPSUM WALL BOARD</b>			
n	02 Framing & Drywall	1.00 LS	6,801,509.00 /LS	6,801,509
	<b>GYPSUM WALL BOARD</b>			<b>6,801,509</b>
<b>09310</b>	<b>CERAMIC TILE</b>			
n	02 Ceramic Tile	1.00 LS	571,010.00 /LS	571,010



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**Q&D CONSTRUCTION**  
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Item	Description	Takeoff Qty	Total	
			Unit Cost	Amount
	CERAMIC TILE			571,010
<b>09410</b>	<b>CEMENT TERRAZZO</b>			
n	2 Terrazzo Flooring	1.00 LS	1,210,492.00 /LS	1,210,492
	<b>CEMENT TERRAZZO</b>			<b>1,210,492</b>
<b>09510</b>	<b>ACOUSTIC CEILINGS</b>			
n	1 Acoustic Ceiling	1.00 LS	1,858,200.00 /LS	1,858,200
	<b>ACOUSTIC CEILINGS</b>			<b>1,858,200</b>
<b>09670</b>	<b>FLUID APPLIED FLOORING</b>			
n	5 Fluid Applied Flooring	1.00 LS	89,200.00 /LS	89,200
	<b>FLUID APPLIED FLOORING</b>			<b>89,200</b>
<b>09680</b>	<b>CARPET</b>			
n	2 Carpet & Anti-fatigue flooring	1.00 LS	925,363.00 /LS	925,363
	<b>CARPET</b>			<b>925,363</b>
<b>09720</b>	<b>WALL COVERINGS</b>			
n	04 Vinyl Wall Covering	1.00 LS	11,250.00 /LS	11,250
	<b>WALL COVERINGS</b>			<b>11,250</b>
<b>09910</b>	<b>PAINTING</b>			
n	29 Panting	1.00 LS	414,177.00 /LS	414,177
	<b>PAINTING</b>			<b>414,177</b>
<b>09960</b>	<b>HIGH PERFORMANCE COATINGS</b>			
n	10 Epoxy on Flooring & Walls	1.00 LS	8,020.00 /LS	8,020
	<b>HIGH PERFORMANCE COATINGS</b>			<b>8,020</b>
<b>09980</b>	<b>CONC./MASONRY COATINGS</b>			
n	20 Seal Concrete Floors	1.00 LS	64,001.27 /LS	64,001
	<b>CONC./MASONRY COATINGS</b>			<b>64,001</b>
	0.02 Labor hours			



# Q&D CONSTRUCTION

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Item	Description	Takeoff Qty	Unit Cost	Total	
					Amount
	<b>FINISHES</b>				<b>11,953,222</b>
	0.02 Labor hours				
<b>10000</b>	<b>SPECIALTIES</b>				
<b>10160</b>	<b>METAL TOILET PARTITIONS</b>				
n	02 Metal Toilet Partition	1.00	LS	62,705.00 /LS	62,705
	<b>METAL TOILET PARTITIONS</b>				<b>62,705</b>
<b>10260</b>	<b>WALL &amp; CORNER GUARDS</b>				
n	60 Wall & Corner Guards	1.00	LS	9,000.00 /LS	9,000
	<b>WALL &amp; CORNER GUARDS</b>				<b>9,000</b>
<b>10440</b>	<b>INTERIOR SIGNAGE</b>				
n	02 Interior Signage	1.00	LS	199,139.00 /LS	199,139
	<b>INTERIOR SIGNAGE</b>				<b>199,139</b>
<b>10520</b>	<b>FIRE PROTECTION</b>				
n	03 Fire Extinguisher & Cabinets	1.00	LS	3,703.00 /LS	3,703
	<b>FIRE PROTECTION</b>				<b>3,703</b>
	2.15 Labor hours				
<b>10650</b>	<b>OPERABLE PARTITIONS</b>				
n	15 Accordion Fire Door	1.00	LS	39,325.00 /LS	39,325
	<b>OPERABLE PARTITIONS</b>				<b>39,325</b>
	<b>SPECIALTIES</b>				<b>313,872</b>
	2.15 Labor hours				
<b>11000</b>	<b>EQUIPMENT</b>				
<b>11130</b>	<b>AUDIO-VISUAL EQUIPMENT</b>				
	2 Video Wall Supports	1.00	LS	7,500.00 /LS	7,500
	<b>AUDIO-VISUAL EQUIPMENT</b>				<b>7,500</b>
<b>11710</b>	<b>MEDICAL EQUIPMENT</b>				
	05 Autoclave - Allowance	1.00	LS	350,000.00 /LS	350,000



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**Q&D CONSTRUCTION**  
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Item	Description	Takeoff Qty	Unit Cost	Total	
				Amount	
	MEDICAL EQUIPMENT			350,000	
	<b>EQUIPMENT</b>			<b>357,500</b>	
<b>12000</b>	<b>FURNISHINGS</b>				
<b>12410</b>	<b>FURNITURE &amp; FURNISHINGS</b>				
	05 Microwave, Fridge, AED	1.00	LS	5,168.00 /LS	5,168
	06 TSA FF&E - Allowance				45,000
	06 Art Allowance				500,000
n	06 FF&E	1.00	LS	1,096,537.00 /LS	1,096,537
	06 Restroom Accessories & Locker Room				351,968
	<b>FURNITURE &amp; FURNISHINGS</b>				<b>1,998,673</b>
<b>12490</b>	<b>WINDOW TREATMENTS</b>				
	2 Window Covering				2,500
	<b>WINDOW TREATMENTS</b>				<b>2,500</b>
	<b>FURNISHINGS</b>				<b>2,001,173</b>
<b>14000</b>	<b>CONVEYING SYSTEMS</b>				
<b>14240</b>	<b>HYDRAULIC ELEVATORS</b>				
n	5 2 Stop Hydraulic Elevators and Escalator	1.00	LS	1,132,000.00 /LS	1,132,000
	<b>HYDRAULIC ELEVATORS</b>				<b>1,132,000</b>
<b>14550</b>	<b>CONVEYORS</b>				
	04 Relocate Checkpoint Equipment - Allowance				125,000
	04 Airport Baggage Handling System	1.00	LS	15,767,219.00 /LS	15,767,219
	<b>CONVEYORS</b>				<b>15,892,219</b>
<b>14830</b>	<b>TELESCOPING PLATFORMS</b>				
n	2 Passenger Boarding Bridge	1.00	LS	2,297,367.00 /LS	2,297,367
	<b>TELESCOPING PLATFORMS</b>				<b>2,297,367</b>
	<b>CONVEYING SYSTEMS</b>				<b>19,321,586</b>
<b>15000</b>	<b>MECHANICAL</b>				





**Q&D CONSTRUCTION**

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Item	Description	Takeoff Qty		Total	
				Unit Cost	Amount
<b>15100</b>	<b>PLUMBING</b>				
n	2 Plumbing	1.00	LS	2,210,900.00 /LS	2,210,900
	<b>PLUMBING</b>				<b>2,210,900</b>
<b>15300</b>	<b>FIRE PROTECTION</b>				
n	2 Fire Sprinklers	1.00	LS	1,359,000.00 /LS	1,359,000
	<b>FIRE PROTECTION</b>				<b>1,359,000</b>
<b>15510</b>	<b>HVAC</b>				
n	2 HVAC	1.00	LS	5,628,500.00 /LS	5,628,500
	<b>HVAC</b>				<b>5,628,500</b>
<b>MECHANICAL</b>					<b>9,198,400</b>
<b>16000</b>	<b>ELECTRICAL</b>				
<b>16010</b>	<b>ELECTRICAL</b>				
n	2 Electrical	1.00	LS	20,942,155.00 /LS	20,942,155
	<b>ELECTRICAL</b>				<b>20,942,155</b>
<b>ELECTRICAL</b>					<b>20,942,155</b>



**Q&D CONSTRUCTION**

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**Estimate Totals**

Description	Amount	Totals	Hours	Rate	Cost Basis	Percent of Total
Labor	1		2.170 h			0.00%
Material	9,165,630					7.38%
Subcontract	96,745,196					77.95%
Equipment						
Other						
	105,910,827	105,910,827				85.33%
Escalation Allowance					C	
Owner Contingency	3,177,325			3.000 %	T	2.56%
Contractor Contingency	3,272,645			3.000 %	T	2.64%
General Liability	1,348,330			1.200 %	T	1.09%
Builders Risk	992,951			0.800 %	T	0.80%
P&P Bond	529,554			0.500 %	T	0.43%
Construction Administration	2,926,809			2.583 %	T	2.40%
	12,297,614	118,208,441				9.91%
Fee	5,910,422			5.000 %	T	4.76%
<b>Total</b>		<b>124,118,863</b>				

FAT Fee Breakdowns 20027.000 CA PHASE 1 and PHASE 2

		Task 06 CA	Task 06 CA	Task 06 CA	Task 06 CA
		PHASE 1	PHASE 2	REIMB	TOTAL
CSHQA - Arch		331,511.25	615,663.74	65,000.00	1,012,174.99
CSHQA - Int		15,437.65	28,669.92	5,000.00	49,107.57
CSHQA - Elec		64,827.83	120,394.54	15,000.00	200,222.38
CSHQA - mark up*		19,819.55	88,937.15	36,875.13	145,631.83
Cator Ruma	X	67,100.00	82,000.00	36,634.23	185,734.23
KPFF	X	49,600.00	92,100.00	14,000.00	155,700.00
R&B	X	-	97,850.00	28,225.00	126,075.00
Kimley-Horn	X	66,495.50	66,495.50	12,000.00	144,991.00
Cage	X	-	331,190.00	49,350.00	380,540.00
Cage PBB (.300/0006)	X	-	90,874.00	13,825.00	104,699.00
Mead & Hunt	X	-	128,862.00	6,800.00	135,662.00
Miscellaneous Svcs		15,000.00	-	-	15,000.00
		629,791.78	1,743,036.86	282,709.36	2,655,538.00
					2,655,538.00
					NEW Amt

\*10% on consultants, 15% on reimbursables

## GMP PROPOSAL NO. 1 SUMMARY SHEET

Project Number:		Date:		
Project Name:   Fresno Yosemite International Airport Terminal Expansion Project				
CONSTRUCTION SERVICES		AMOUNT		
DIRECT COSTS				
A.	Cost of the Works	\$	100,260,792.00	A
	Add Alternate	\$	2,750,000.00	A
B.	Project Contingency	\$	3,272,645.00	B
C.	SUBTOTAL DIRECT COST		\$ 106,283,437.00	C=A+B
INDIRECT COSTS				
D.	General Conditions (exclude Bonds & Insurance)	\$	8,626,844.00	D
E.	Payment and Performance Bond	\$	529,554.00	E
F.	Insurance - General Liability	\$	1,348,330.00	F
G.	Insurance -Builders Risk	\$	992,951.00	G
H.	SUBTOTAL INDIRECT COST		\$ 11,497,679.00	H=D+E+F+G
I.	SUBTOTAL DIRECT AND INDIRECT COSTS (NOT INCLUDING FEE)		\$ 117,781,116.00	I=C+H
J.	Construction Fee	\$	5,910,422.00	J
K.	SUBTOTAL DIRECT AND INDIRECT COSTS (INCLUDING FEE)		\$ 123,691,538.00	K=I+J
L.	GMP No. 1 (Minus Owner's Contingency)		\$ 123,691,538.00	L=K
M.	Owner's Contingency	\$	3,177,325.00	See Breakout
N.	Total Contract Price	\$	126,868,863.00	N=L+M
O.	Total Prior Contract Price	\$	10,293,974.00	O
P.	Total Amended Contract Price	\$	137,162,837.00	P=N+O

- A. Construction Administration is included in line A  
 Add Alternate: Concession and TSA lease space Tenant Improvement



**Q&D CONSTRUCTION  
GUARANTEED MAXIMUM PRICE PROPOSAL**

**FOR**

**FRESNO YOSEMITE INTERNATIONAL AIRPORT  
TERMINAL EXPANSION**

**02 SCOPE OF WORK**

## Scope of Work

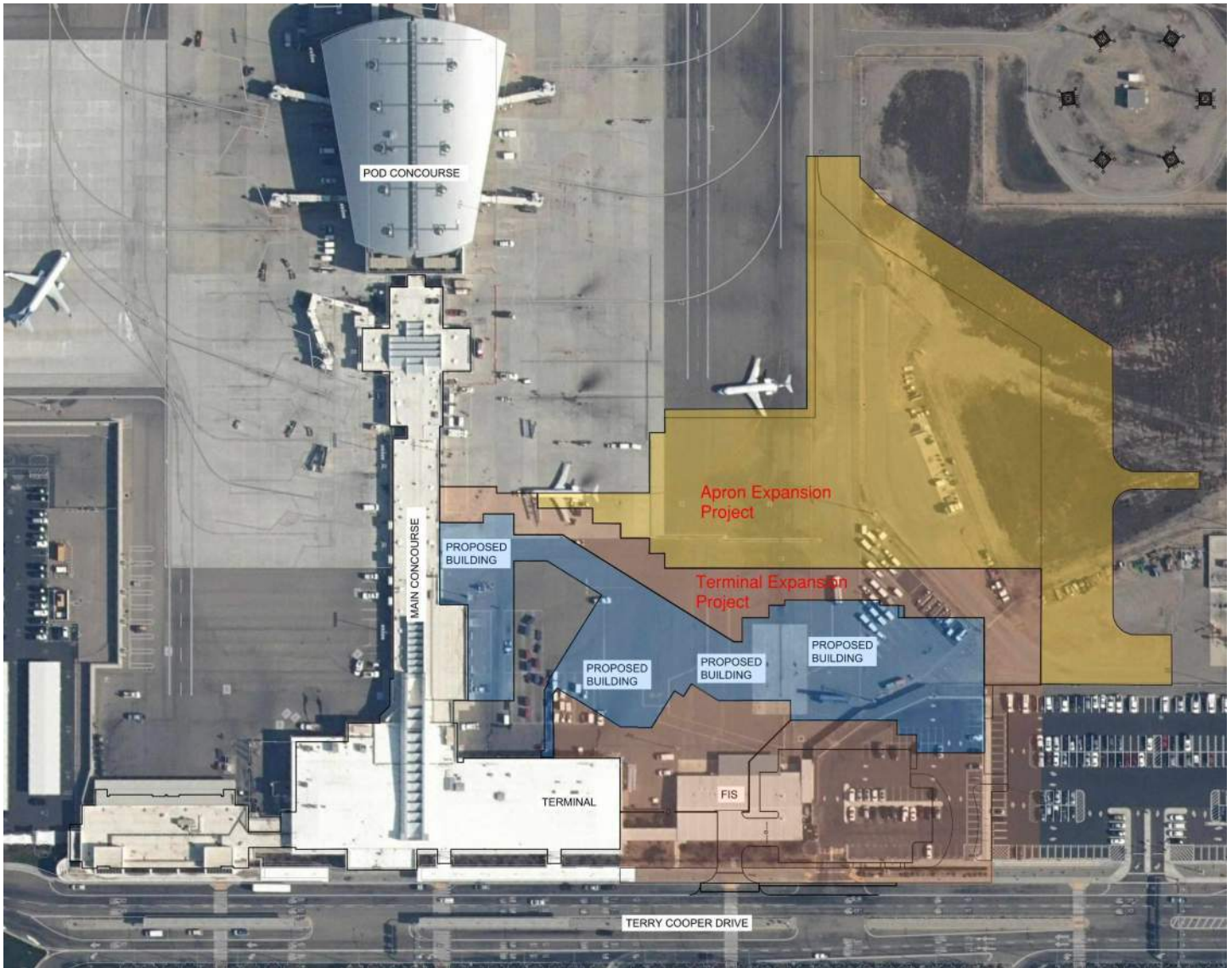
- Project Goals and Objectives
  - Increase capacity & efficiency.
  - Enhance customer experience.
  - Incorporate passive and active security elements.
  - Enhance opportunities to advance sustainability.
  - Enhance safety.
  - Enhance connectivity.
  - Design for future expandability.
  - Minimize impacts to ongoing operations.
- Project Description
  - The **terminal expansion and remodel project** at the Fresno Yosemite International Airport is a new 2-story building including remodel and expansion of the passenger screening checkpoint, remodel of Airline Ticket Office (ATO) and in-line baggage screening support areas, new outbound baggage conveyor system with in-line Explosive Detection System (EDS), new Checked Baggage Resolution Area (CBRA), new baggage make-up area, new/replacement Federal Inspection Station (FIS), new second floor concourse, holdrooms, restrooms, and concessions supporting (2) new passenger boarding bridges and aircraft parking positions. In addition, this project includes tenant improvements for the existing concession areas, lease areas and Nick Palomares conference room adjacent to the Central Lobby. The project includes approximately 96,521 SF of building expansion area and 26,276 SF of interior remodel area. The project includes approximately 3.47 acres of site work. The terminal building expansion has been designed in coordination with the East Apron Expansion project that is currently under construction under separate contract.
  - **Security Screening Checkpoint (SSCP) Expansion** – This includes expansion of the existing SSCP from three lanes to five lanes, based on the current TSA screening lane technology, equipment and standard screening lane design as defined in the TSA Checkpoint Requirements and Planning Guide (CRPG). The expansion of the SSCP also includes expansion of the passenger queuing area, divesting area and composure area. Other TSA tenant improvements include an increase from two offices to four offices, breakroom, storage room, TSA Comm room, private search room and training room. The SSCP area will also include a Law Enforcement Officer (LEO) office/help desk and secure storage area just north of the SSCP.
  - **New Concourse B Hold Room and Gate Expansion** – This project includes two new flex gates/hold rooms for domestic/international flights. The two new hold rooms are the first phase of Concourse B expansion. The hold rooms are sized for 85% load factor on aircraft up to A321 or 737-900 with aircraft passenger seating capacity up to 230 passengers per aircraft. Sizing of the hold rooms is based on criteria from IATA passenger service level “Optimum” and ACRP design guide for hold room design. Each gate includes a three-tunnel apron drive Passenger Boarding Bridge (PBB) that serves the full range of programmed aircraft. The passenger boarding gates are connected by a

secure hallway and vertical circulation (stairway/escalator/elevator) that connect to the new ground level FIS facility.

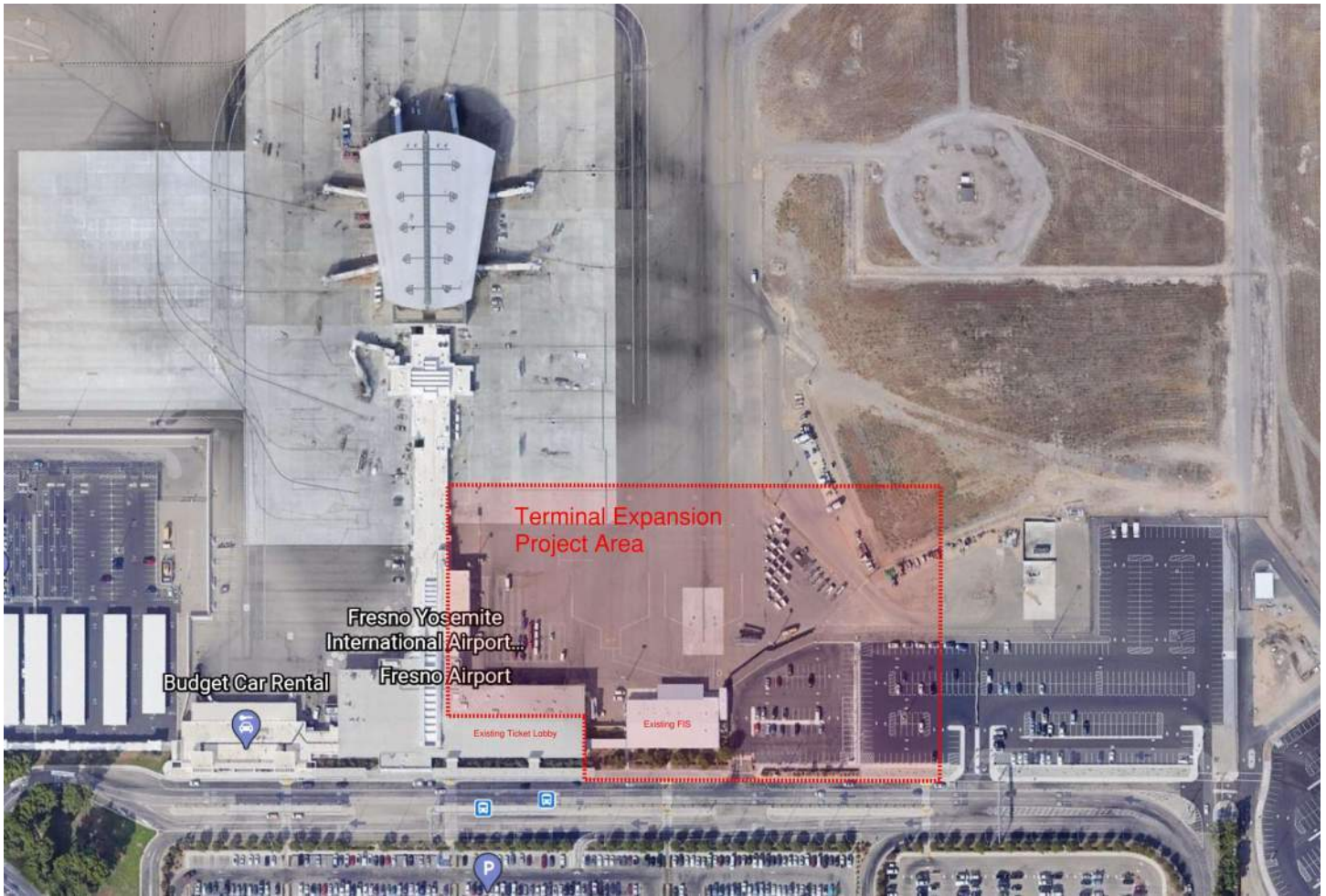
- **Concession expansion** – Concession space will be included adjacent to the new hold rooms in Concourse B. The size and function of the concession space is based on the Terminal Concession study provided by FAT. The program includes 1,130 SF for Coffee/Gift and News and 1,913 SF for food and beverage. This project also includes Remodel of concession shell space in the central lobby and conversion of the existing TSA training area to concession space on the existing concourse spine at what will be the intersection of Concourse A and B. The concession space will be constructed as shell space with utility connections and basic HVAC infrastructure. The FAT concessionaire will be responsible for tenant improvements within the defined concession space.
- **Expanded ATO** – Remodel existing baggage screening and baggage make-up spaces into ATO lease space bind the ticket counter area.
- **New expanded baggage makeup** – The new baggage make-up area is located on the first floor under Concourse B. The baggage make-up includes two new sloped bed carousels with capacity to stage (16+) bag make-up carts and capacity to add an additional baggage make-up carousel in the future.
- **New In-line EDS baggage screening system** – The new baggage screening system is designed in compliance with the TSA PGDS Version 7.0. The new EDS system includes new baggage conveyor from ticket counters to baggage make-up. The new system will process checked baggage through three EDS screening machines and CBRA area.
- **New Federal Inspection Station (FIS)** – The FIS was designed in compliance with Customs and Boarder Protection (CBP) requirements as reviewed and approved by CBP. The new FIS will replace the existing facility. It is sized to process a minimum of 400 passengers per hour. The FIS is integrated with the Concourse B expansion and directly connected to the passenger boarding/deplaning gates. This will allow international aircraft to park at the gate for arrival deplaning and departure boarding. Deplaning passengers will connect directly to the FIS through a secure hallway that isolates the international passengers from domestic passengers until they are processed through the FIS.
- **Site Work** – Utility relocation and new utilities, including new PG&E power service connection to the Airport terminal from E. McKinley Ave., demolition of existing FIS, construction of new pavement surrounding the terminal building and tying into the expanded east apron, new SIDA security fence and gate, new managers parking lot, and new FIS arrivals plaza.
- **Tenant Area Reconfiguration** – This scope of work includes remodel of the existing spaces on the west side of the central lobby, including the Nick Palomares conference room, old “Home Town Sports,” area remodel and remodel of other miscellaneous adjacent lease spaces that tie into the secure loading dock area. It also includes the addition of a new sanitary sewer and grease interceptor for the new concession space on the spine concourse.
- **Loading Dock Area Improvements** – This scope of work includes removal of old cooling tower enclosure, rerouting of utilities to allow removal of cooling tower enclosure, and new accessible pedestrian ramps to the loading dock and tenant hallway exit door.

- **Future expansion capability** – The terminal expansion project is designed with future expansion capability in all program areas.
  - Expansion space is preserved on the east side of the SSCP for two or more additional passenger screening lanes.
  - The roof of the FIS is designed as a future floor to allow the second-floor concourse to expand east with additional hold rooms and gates in the future. The ground level FIS is designed to allow for a future secure connector hallway to connect to additional future domestic/international flex gates.
  - Baggage make-up has space to add one additional bag make-up carousel in the future.
  - The FIS has future expansion space on the south and east sides and a configuration of program spaces that allows the bag claim, customs, secondary screening, office, and reception hall areas to expand in the future.
  - The new baggage screening concepts allow for expansion of the ticket lobby to the east and additional ATO spaces adjacent to the ticket counters.



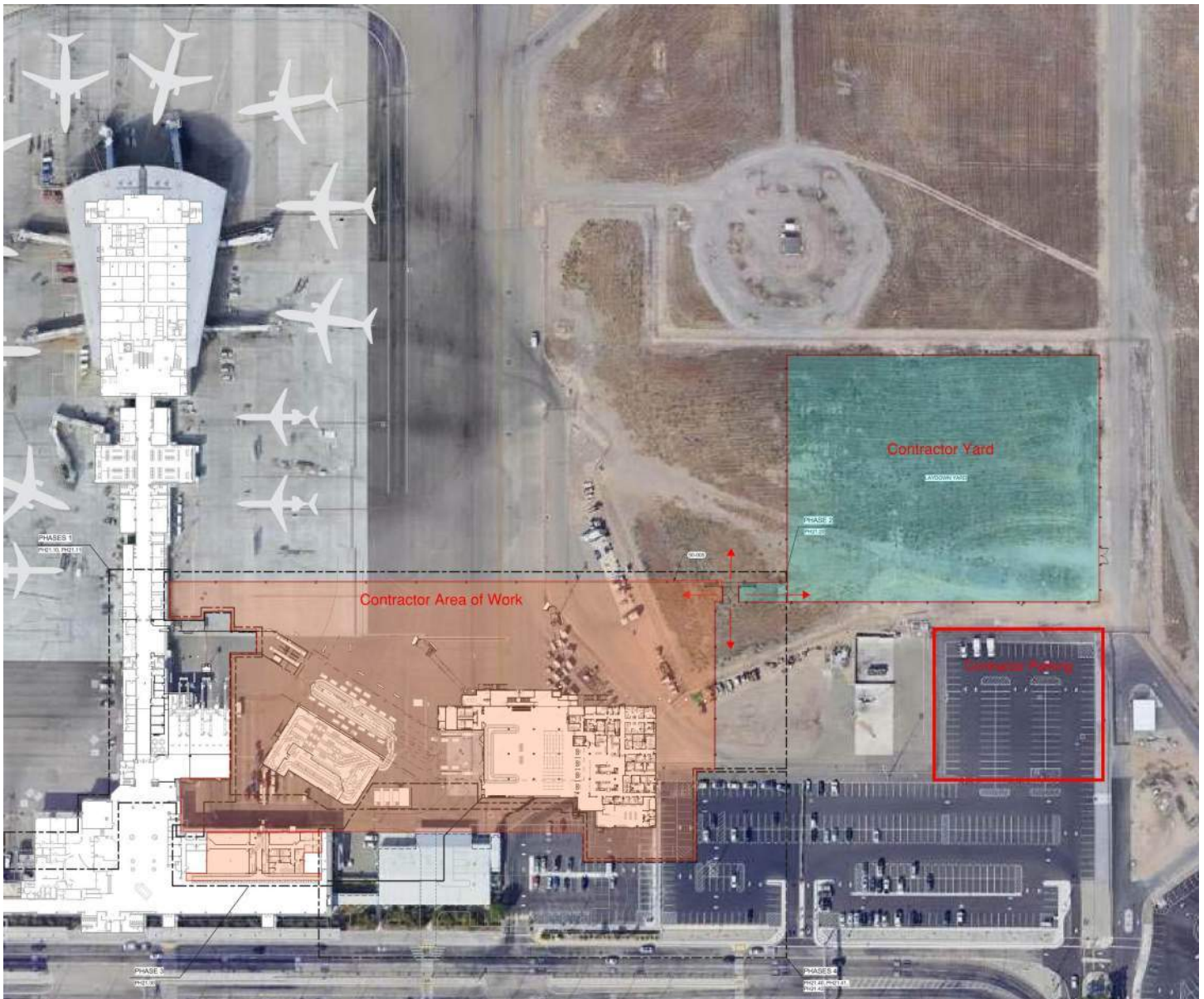


TERMINAL EXPANSION DIAGRAM - AERIEL VIEW

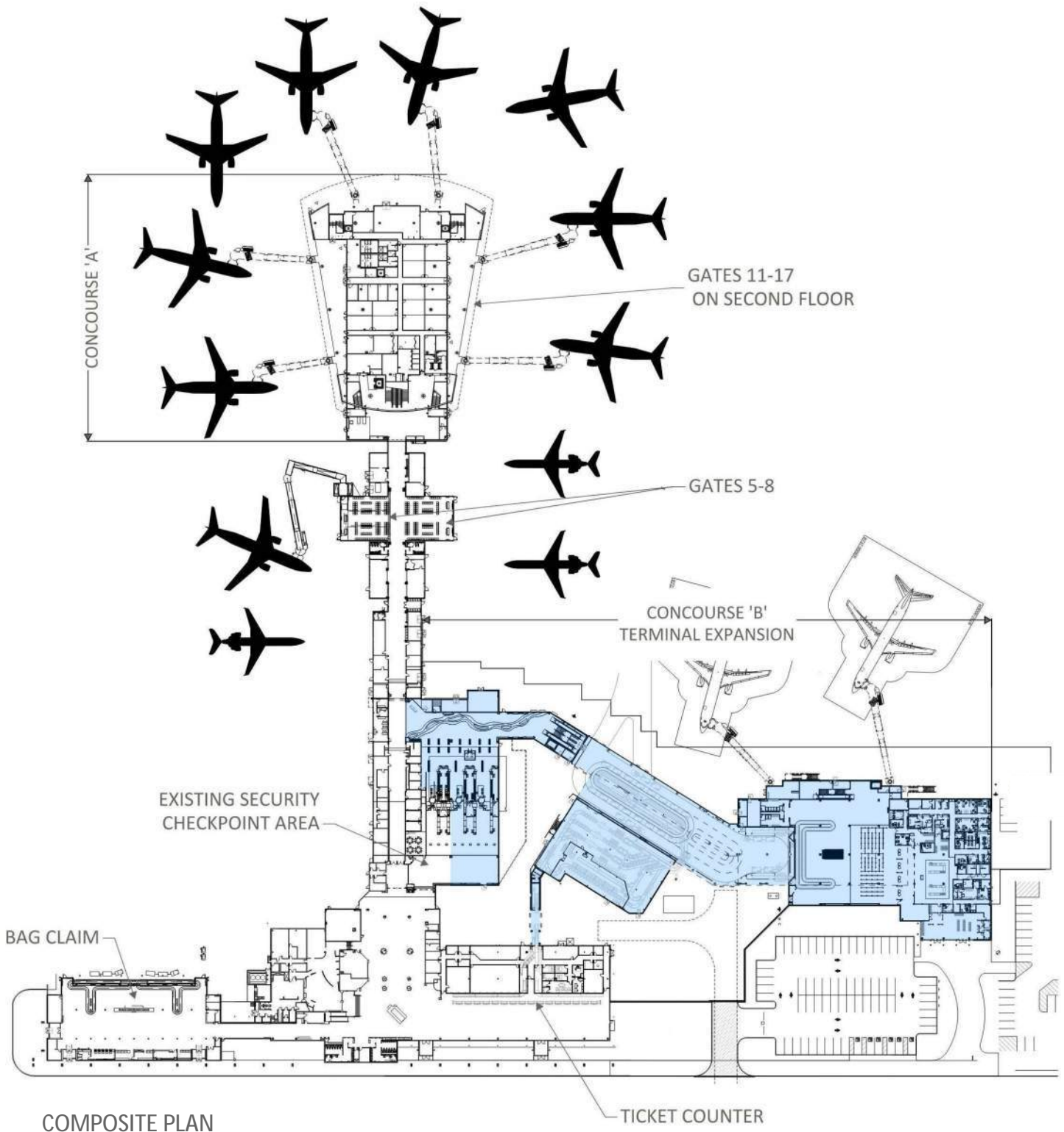


TERMINAL EXPANSION PROJECT AREA - AERIAL VIEW



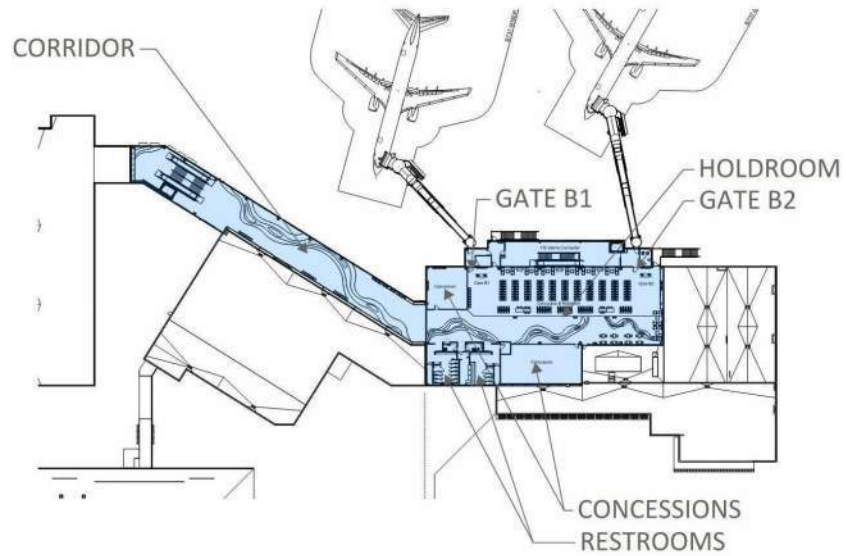


CONTRACTOR AREA OF WORK - AERIEL VIEW

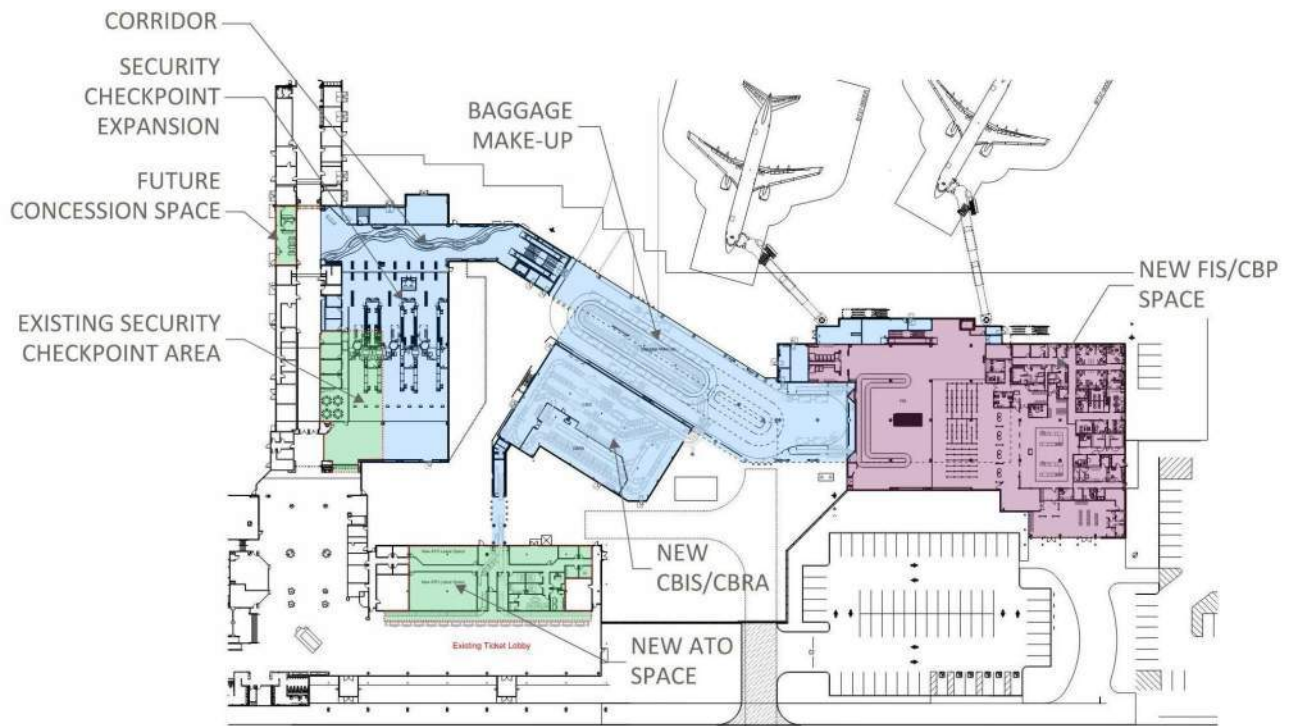


CONTOUR 'B' TERMINAL EXPANSION





SECOND FLOOR CONCOURSE 'B'



FIRST FLOOR TERMINAL EXPANSION AND REMODEL

- CONCOURSE 'B' TERMINAL EXPANSION
- NEW FIS/CBP SPACE
- EXISTING SPACE TO BE REMODELED



VIEW OF TERMINAL CURB FRONT ROADWAY



VIEW OF FIS PLAZA FROM TERMINAL CURB FRONT ROADWAY





VIEW OF CONCOURSE 'B' FROM EAST APRON



VIEW ENTERING PASSENGER SCREENING CHECKPOINT





VIEW FROM HALLWAY POST-SCREENING TOWARDS CONCOURSE 'B' EXPANSION



VIEW ON SECOND FLOOR CONCOURSE CONNECTOR LOOKING TOWARDS CONCOURSE 'B'





VIEW ENTERING HOLD ROOMS IN CONCOURSE 'B'



**Q&D CONSTRUCTION  
GUARANTEED MAXIMUM PRICE PROPOSAL**

**FOR**

**FRESNO YOSEMITE INTERNATIONAL AIRPORT  
TERMINAL EXPANSION**

**03 SCHEDULE OF VALUES**

CONTINUATION SHEET

Page 1 of 1

Application and Certification for Payment, containing

Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

Application No. 0

Application Date:

To:

Architect's Project No.:

Invoice #: Sample

15581. FAT Terminal Expansion Project

A Item No.	B Description of Work	C Scheduled Value	Approved Changes	E Revised Schedule of Value	F Work Completed		H Materials Presently Stored	I Total Completed and Stored to Date	J %	K Balance To Finish	Retainage
					From Previous Application	This Period In Place					
001	Checkpoint	\$15,382,606.00		\$15,382,606.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$15,382,606.00	
002	Concourse	\$31,320,806.00		\$31,320,806.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$31,320,806.00	
003	FIS	\$20,363,743.00		\$20,363,743.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$20,363,743.00	
004	ATO	\$3,127,245.00		\$3,127,245.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$3,127,245.00	
005	Sitework	\$12,133,520.00		\$12,133,520.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$12,133,520.00	
006	CBIS	\$26,524,544.00		\$26,524,544.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$26,524,544.00	
007	GC's, Contingency and Fee	\$18,016,399.00		\$18,016,399.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$18,016,399.00	
TOTAL		\$126,868,863.00	\$0.00	\$126,868,863.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	\$126,868,863.00	0.00%

Bid Packages / Bid Responses

Division 01 - General Requirements		Cator / Ruma		
Spec	Description	PRICE	QTY	TOTAL
01 91 19	Building Commisioning	\$ 142,900.00	1.00	\$ 142,900.00
		TOTAL		\$ 142,900.00

Division 02 - Survey		F3 & Associates			Bedrock Engineering		
Spec	Description	PRICE	QTY	TOTAL	PRICE	QTY	TOTAL
02 01 00	Site Survey	\$ 141,360.00	1.00	\$ 141,360.00	\$ 190,000.00	1.00	\$ 190,000.00
		TOTAL		\$ 141,360.00	TOTAL		\$ 190,000.00

Division 02 - Demolition		CenCal Services			Q&D Construction			David Knott, Inc.		
Spec	Description	PRICE	QTY	TOTAL	PRICE	QTY	TOTAL	PRICE	QTY	TOTAL
02 41 00	Demolition	\$ 771,000.00	1.00	\$ 771,000.00	\$ 1,190,310.00	1.00	\$ 1,190,310.00	\$ 953,083.00	1.00	\$ 953,083.00
		TOTAL		\$ 771,000.00	TOTAL		\$ 1,190,310.00	TOTAL		\$ 953,083.00

Division 03 - Cast-in-place Concrete & rebar		Urata & Sons Concrete			Concrete North			Largo Concrete			Cencal Services		
Spec	Description	PRICE	QTY	TOTAL	PRICE	QTY	TOTAL	PRICE	QTY	TOTAL	PRICE	QTY	TOTAL
03 30 00	CIP Concrete	\$ 3,900,000.00	1.00	\$ 3,900,000.00	\$ 5,750,770.00	1.00	\$ 5,750,770.00	\$ 4,164,721.00	1.00	\$ 4,164,721.00	\$ 7,980,000.00	1.00	\$ 7,980,000.00
		TOTAL		\$ 3,900,000.00	TOTAL		\$ 5,750,770.00	TOTAL		\$ 4,164,721.00	TOTAL		#####

Division 03 - Concrete Sealant		American River Caulking			Wm. B Saleh Co.			Concrete Doctor		
Spec	Description	PRICE	QTY	TOTAL	PRICE	QTY	TOTAL	PRICE	QTY	TOTAL
03 36 20	Polished Concrete Floor	\$ 64,000.00	1.00	\$ 64,000.00	\$ 72,660.00	1.00	\$ 72,660.00	\$ 163,067.00	1.00	\$ 163,067.00
		TOTAL		\$ 64,000.00	TOTAL		\$ 72,660.00	TOTAL		\$ 163,067.00

Division 04 - Masonry		Cornerstone Masonry			Brafton Masonry, Inc.		
Spec	Description	PRICE	QTY	TOTAL	PRICE	QTY	TOTAL
04 20 00	Masonry	\$ 115,751.00	1.00	\$ 115,751.00	\$ 184,250.00	1.00	\$ 184,250.00
		TOTAL		\$ 115,751.00	TOTAL		\$ 184,250.00

Notes:  
No other Masonry proposals received

Division 05 - Structural Steel		TrueNorth Steel			Anderson Steel			Olson & Co.		
Spec	Description	PRICE	QTY	TOTAL	PRICE	QTY	TOTAL	PRICE	QTY	TOTAL
05 12 00	Structural Steel Fabrication	\$ 4,932,475.00	1.00	\$ 4,932,475.00	\$ 6,374,428.00	1.00	\$ 6,374,428.00	\$ 6,494,171.00	1.00	\$ 6,494,171.00
05 12 00	Structural Steel Erection	\$ 864,000.00	1.00	\$ 864,000.00	Included			Included		
		TOTAL		#####	TOTAL		#####	TOTAL		\$ 6,494,171.00

Division 06 - Carpentry		ISEC			Q&D Construction			Universal Plastics		
Spec	Description	PRICE	QTY	TOTAL	PRICE	QTY	TOTAL	PRICE	QTY	TOTAL
06 10 00	Div 6 Scope	\$ 2,573,989.00	1.00	\$ 2,573,989.00	\$ 2,283,823.00	1.00	\$ 2,283,823.00	\$ 1,164,768.00	1.00	\$ 1,164,768.00
		TOTAL		\$ 2,573,989.00	TOTAL		#####	TOTAL		\$ 1,164,768.00

Notes:  
ISEC low bid after bid leveling.  
Universal Plastics - Supply Only

Division 07 - EFIS		Karsyn Construction			Tarlton			Rutherford Co.		
Spec	Description	PRICE	QTY	TOTAL	PRICE	QTY	TOTAL	PRICE	QTY	TOTAL
07 24 00	EFIS	\$ 2,298,680.00	1.00	\$ 2,298,680.00	\$ 2,270,848.00	1.00	\$ 2,270,848.00	\$ 1,929,500.00	1.00	\$ 1,929,500.00
		TOTAL		#####	TOTAL		\$ 4,601,414.00	TOTAL		\$ 1,929,500.00

Notes:  
Rutherford high bid on other activities, would not split scope.

Division 07 - Thermal & Moisture Protection		Coast Building Products			Alcal Specialty Contracting			Rutherford Co.		
Spec	Description	PRICE	QTY	TOTAL	PRICE	QTY	TOTAL	PRICE	QTY	TOTAL
07 21 00	Thermal Insulation	\$ 104,159.00	1.00	\$ 104,159.00	\$ 124,147.00	1.00	\$ 124,147.00	\$ 133,155.00	1.00	\$ 133,155.00
		TOTAL		\$ 104,159.00	TOTAL		\$ 124,147.00	TOTAL		\$ 133,155.00

Division 07 - Metal Panels		Graham-Prewett, Inc.			Rutherford Co.			Architectural Glass & Aluminum		
Spec	Description	PRICE	QTY	TOTAL	PRICE	QTY	TOTAL	PRICE	QTY	TOTAL
07 42 13	Metal Wall & Roof Panels	\$ 510,000.00	1.00	\$ 510,000.00	\$ 631,000.00	1.00	\$ 631,000.00	\$ 626,851.00	1.00	\$ 626,851.00
		TOTAL		\$ 510,000.00	TOTAL		\$ 631,000.00	TOTAL		\$ 626,851.00

Division 07 - Fireproofing		Coast Building Products			Rolling Plains Construction			Anning-Johnson Company		
Spec	Description	PRICE	QTY	TOTAL	PRICE	QTY	TOTAL	PRICE	QTY	TOTAL
07 81 00	Applied Fire Proofing	\$ 599,630.00	1.00	\$ 599,630.00	\$ 829,845.00	1.00	\$ 829,845.00	\$ 911,711.00	1.00	\$ 911,711.00
		TOTAL		\$ 599,630.00	TOTAL		\$ 829,845.00	TOTAL		\$ 911,711.00

Division 07 - Expansion Joints		Platinum Insulation			Inpro			Sonoma Fabricators		
Spec	Description	PRICE	QTY	TOTAL	PRICE	QTY	TOTAL	PRICE	QTY	TOTAL
07 92 00	Expansion Joints	\$ 124,760.00	1.00	\$ 124,760.00	\$ 155,650.00	1.00	\$ 155,650.00	\$ 173,900.00	1.00	\$ 173,900.00
		TOTAL		\$ 124,760.00	TOTAL		\$ 155,650.00	TOTAL		\$ 173,900.00

Division 08 - Doors, Frames, Hardware		ISEC			Q&D Construction / Anchor Door		
Spec	Description	PRICE	QTY	TOTAL	PRICE	QTY	TOTAL
08 11 13	Doors, Frames, Hardware	\$ 982,855.00	1.00	\$ 982,855.00	\$ 1,503,385.00	1.00	\$ 1,503,385.00
		TOTAL		\$ 982,855.00	TOTAL		\$ 1,503,385.00

Notes:  
Q&D Construction Install, Anchor door supply only. Only one other Door supplier / installer was qualified to do work.

Division 08 - Overhead Colling Doors

Spec	Description	PRICE	QTY	TOTAL
08 33 23	Overhead Colling Door	\$ 534,575.00	1.00	\$ 534,575.00
		TOTAL	\$	534,575.00

Division 08 - Accordion Fire Door

Spec	Description	PRICE	QTY	TOTAL
08 35 13.23	Accordion Fire Door	\$ 38,152.00	1.00	\$ 38,152.00
		TOTAL	\$	38,152.00

Division 08 - Aluminum Framed Storefronts

Spec	Description	PRICE	QTY	TOTAL
08 43 13	Aluminum Storefronts	\$ 1,976,793.00	1.00	\$ 1,976,793.00
		TOTAL	#####	

Division 09 - Gypsum Board Assemblies

Spec	Description	PRICE	QTY	TOTAL
09 21 16	Drywall, Framing, Texture	\$ 6,496,030.00	1.00	\$ 6,496,030.00
		TOTAL	#####	

Division 09 - Tile

Spec	Description	PRICE	QTY	TOTAL
09 30 00	Floor & Wall Tile	\$ 537,410.00	1.00	\$ 537,410.00
		TOTAL	\$	537,410.00

Division 09 - Acoustical Ceilings

Spec	Description	PRICE	QTY	TOTAL
09 51 00	ACT	\$ 1,858,200.00	1.00	\$ 1,858,200.00
		TOTAL	#####	

Division 09 - Flooring

Spec	Description	PRICE	QTY	TOTAL
09 65 00	Resilient Flooring			Included
09 65 00	Resilient Athletic Flooring			Included
09 65 00	Carpet Tile			Included
09 65 00	Cushioned Hooring System			Included
		\$ 693,585.00	1.00	\$ 693,585.00
		TOTAL	\$	693,585.00

Division 09 - Terrazzo Flooring

Spec	Description	PRICE	QTY	TOTAL
09 66 23	Terrazzo Flooring	\$ 1,210,492.00	1.00	\$ 1,210,492.00
		TOTAL	#####	

Division 09 - Fluid Applied Flooring

Spec	Description	PRICE	QTY	TOTAL
09 67 00	Fluid Applied Flooring	\$ 87,200.00	1.00	\$ 87,200.00
		TOTAL	\$	87,200.00

Division 09 - Painting

Spec	Description	PRICE	QTY	TOTAL
09 91 13	Interior / Exterior Painting	\$ 414,177.00	1.00	\$ 414,177.00
		TOTAL	\$	414,177.00

Division 10 - Signage

Spec	Description	PRICE	QTY	TOTAL
10 14 00	Signage	\$ 199,139.00	1.00	\$ 199,139.00
		TOTAL	\$	199,139.00

Division 12 - Holdroom Seating

Spec	Description	PRICE	QTY	TOTAL
12 00 01	Hold Room Seating	\$ 565,341.00	1.00	\$ 565,341.00
		TOTAL	\$	565,341.00

Division 12 - Furniture

Spec	Description	PRICE	QTY	TOTAL
12 10 00	Furniture	\$ 498,619.00	1.00	\$ 498,619.00
		TOTAL	\$	498,619.00

Division 14 - Elevator & Escalator

Spec	Description	PRICE	QTY	TOTAL
14 24 00	Elevator & Escalator	\$ 1,132,000.00	1.00	\$ 1,132,000.00
		TOTAL	#####	

B.T. Mancini

PRICE	QTY	TOTAL		
\$ 534,575.00	1.00	\$ 534,575.00		
		TOTAL	\$	358,450.00

Browns Dock & Door

PRICE	QTY	TOTAL		
\$ 264,400.00	1.00	\$ 264,400.00		
		TOTAL	\$	264,400.00

Inland Overhead Door Co.

PRICE	QTY	TOTAL		
\$ 358,450.00	1.00	\$ 358,450.00		
		TOTAL	\$	358,450.00

B.T. Mancini

PRICE	QTY	TOTAL		
\$ 38,152.00	1.00	\$ 38,152.00		
		TOTAL	\$	133,644.00

Browns Dock & Door

PRICE	QTY	TOTAL		
\$ 178,000.00	1.00	\$ 178,000.00		
		TOTAL	\$	178,000.00

B.T. Mancini

PRICE	QTY	TOTAL		
\$ 133,644.00	1.00	\$ 133,644.00		
		TOTAL	\$	133,644.00

Architectural Glass & Aluminum

PRICE	QTY	TOTAL		
\$ 1,976,793.00	1.00	\$ 1,976,793.00		
		TOTAL	#####	

Atascadero Glass

PRICE	QTY	TOTAL		
\$ 2,079,050.00	1.00	\$ 2,079,050.00		
		TOTAL	#####	

Notes:

AGA selected as Design-Assist contractor

Tarlton & Son Inc.

PRICE	QTY	TOTAL		
\$ 6,496,030.00	1.00	\$ 6,496,030.00		
		TOTAL	#####	

Patterson Construction

PRICE	QTY	TOTAL		
\$ 7,800,478.00	1.00	\$ 7,800,478.00		
		TOTAL	\$	7,800,478.00

Rutherford

PRICE	QTY	TOTAL		
\$ 8,909,709.00	1.00	\$ 8,909,709.00		
		TOTAL	\$	8,909,709.00

National Ceramic Tile & Stone

PRICE	QTY	TOTAL		
\$ 537,410.00	1.00	\$ 537,410.00		
		TOTAL	\$	537,410.00

Bella Stone

PRICE	QTY	TOTAL		
\$ 537,410.00	1.00	\$ 537,410.00		
		TOTAL	\$	537,410.00

Northern California Tile & Stone, Inc.

PRICE	QTY	TOTAL		
\$ 537,410.00	1.00	\$ 537,410.00		
		TOTAL	\$	537,410.00

Chaney Company

PRICE	QTY	TOTAL		
\$ 1,858,200.00	1.00	\$ 1,858,200.00		
		TOTAL	#####	

Notes:

RJ Commercial Flooring

PRICE	QTY	TOTAL		
		Included		
		Included		
		Included		
		Included		
\$ 693,585.00	1.00	\$ 693,585.00		
		TOTAL	\$	693,585.00

Applied Finished

PRICE	QTY	TOTAL		
		Included		
		Included		
		Included		
		Included		
\$ 693,585.00	1.00	\$ 693,585.00		
		TOTAL	\$	693,585.00

B.T. Mancini

PRICE	QTY	TOTAL		
		Included		
		Included		
		Included		
		Included		
\$ 693,585.00	1.00	\$ 693,585.00		
		TOTAL	\$	693,585.00

Corradini Corp.

PRICE	QTY	TOTAL		
\$ 1,210,492.00	1.00	\$ 1,210,492.00		
		TOTAL	#####	

American Terrazzo

PRICE	QTY	TOTAL		
\$ 1,402,950.00	1.00	\$ 1,402,950.00		
		TOTAL	#####	

Notes:

Only 2 terrazzo bids received

American River Caulking, Inc.

PRICE	QTY	TOTAL		
\$ 87,200.00	1.00	\$ 87,200.00		
		TOTAL	\$	87,200.00

Notes:

Only 1 Concrete Sealing bid received

Applied Finishes

PRICE	QTY	TOTAL		
\$ 414,177.00	1.00	\$ 414,177.00		
		TOTAL	\$	414,177.00

Wm. B Saleh Co.

PRICE	QTY	TOTAL		
\$ 742,800.00	1.00	\$ 742,800.00		
		TOTAL	\$	742,800.00

Notes:

Only 2 painting bids received

Architectural Design & Sign

PRICE	QTY	TOTAL		
\$ 199,139.00	1.00	\$ 199,139.00		
		TOTAL	\$	199,139.00

Vomar Products, Inc.

PRICE	QTY	TOTAL		
\$ 206,639.00	1.00	\$ 206,639.00		
		TOTAL	\$	206,639.00

Sign Solutions

PRICE	QTY	TOTAL		
\$ 184,226.00	1.00	\$ 184,226.00		
		TOTAL	\$	184,226.00

Notes:

Sign Solutions could not re-bid

Arconas

PRICE	QTY	TOTAL		
\$ 565,341.00	1.00	\$ 565,341.00		
		TOTAL	\$	565,341.00

Reno Business Interiors

PRICE	QTY	TOTAL		
\$ 801,826.00	1.00	\$ 801,826.00		
		TOTAL	\$	801,826.00

Adaptaspace

PRICE	QTY	TOTAL		
\$ 663,675.00	1.00	\$ 663,675.00		
		TOTAL	\$	663,675.00

Arconas / Tangram

PRICE	QTY	TOTAL		
\$ 498,619.00	1.00	\$ 498,619.00		
		TOTAL	\$	498,619.00

Reno Business Interiors

PRICE	QTY	TOTAL		
\$ 757,257.00	1.00	\$ 757,257.00		
		TOTAL	\$	757,257.00

Adaptaspace

PRICE	QTY	TOTAL		
\$ 565,341.00	1.00	\$ 565,341.00		
		TOTAL	\$	565,341.00

Schindler

PRICE	QTY	TOTAL		
\$ 1,132,000.00	1.00	\$ 1,132,000.00		
		TOTAL	#####	

ThyssenKrup

PRICE	QTY	TOTAL		
\$ 1,345,669.00	1.00	\$ 1,345,669.00		
		TOTAL	#####	

Otis

PRICE	QTY	TOTAL		
\$ 1,132,000.00	1.00	\$ 1,132,000.00		
		TOTAL	\$	1,132,000.00

Notes:

Browns Dock & Door estimate incomplete  
Inland Overhead Door Co. unable to re-bid

Division 21 - Fire Suppression		Fire Systems Solutions			Cosco Fire Protection			Notes:
Spec	Description	PRICE	QTY	TOTAL	PRICE	QTY	TOTAL	Fire Systems Solutions chosen as Fire Sprinkler Design-Assist
21 05 00	Fire Sprinklers	\$ 1,359,000.00	1.00	\$ 1,359,000.00	\$ 2,035,200.00	1.00	\$ 2,035,200.00	
		TOTAL	#####		TOTAL	#####		

Division 23 - HVAC		Lawson Mechanical			New England Sheet Metal			Notes:
Spec	Description	PRICE	QTY	TOTAL	PRICE	QTY	TOTAL	Lawson chosen as Mechanical Design-Assist
23 05 00	HVAC	\$ 5,628,500.00	1.00	\$ 5,628,500.00	\$ 6,888,688.00	1.00	\$ 6,888,688.00	
		<b>TOTAL</b>		<b>#####</b>	<b>TOTAL</b>		<b>#####</b>	

Division 32 - Site Work		Granite Construction			Teichheart			Cencal		
Spec	Description	PRICE	QTY	TOTAL	PRICE	QTY	TOTAL	PRICE	QTY	TOTAL
32 00 00	Site Work	\$ 7,051,830.00	1.00	\$ 7,051,830.00	\$ 8,114,770.00	1.00	\$ 8,114,770.00	\$ 8,737,324.00	1.00	\$ 8,737,324.00
		<b>TOTAL</b>		#####	<b>TOTAL</b>			#####	<b>TOTAL</b>	\$ 8,737,324.00

Division 32 - Striping		Chrisp			Granite Construction			Ticheart			Notes:
Spec	Description	PRICE	QTY	TOTAL	PRICE	QTY	TOTAL	PRICE	QTY	TOTAL	Ticheart Striping
32 17 23	Striping	\$ 144,330.00	1.00	\$ 144,330.00	\$ 205,883.00	1.00	\$ 205,883.00		1.00	\$ -	
		<b>TOTAL</b>	<b>\$</b>	<b>144,330.00</b>	<b>TOTAL</b>	<b>\$</b>	<b>205,883.00</b>		<b>TOTAL</b>	<b>\$</b>	



**Q&D CONSTRUCTION  
GUARANTEED MAXIMUM PRICE PROPOSAL**

**FOR**

**FRESNO YOSEMITE INTERNATIONAL AIRPORT  
TERMINAL EXPANSION**

**04 GMP PLANS & SPECIFICATIONS**

**GMP PLANS AND SPECIFICATIONS**

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The documents used in preparation of this GMP are as follows:

- FAT Forward Terminal Expansion Bid Set Project Manual dated April 25, 2022
- FAT Terminal Expansion Out to Bid Drawings Volume 1 thru 5
- FAT Basis of Design 100% dated February 1, 2022
- FAT Plan C.301 Revised 7/15/22
- FAT Plan C.1001 Revised 7/15/22





**Q&D CONSTRUCTION  
GUARANTEED MAXIMUM PRICE PROPOSAL**

**FOR**

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TERMINAL EXPANSION**

**05 CLARIFICATIONS AND ASSUMPTIONS**

## **Assumptions**

1. All pricing is Guaranteed Maximum Price, and will be held until **May 1, 2023**.
2. Design and Construction scope is included as listed in the GMP Proposal Summary, and as illustrated in the Drawings dated August 11, 2021.
3. Pricing is based on the following schedule milestones:
  1. Construction Contract Execution by April 7, 2023.
  2. Construction permit issuance, and Mobilization starting April 10, 2023
  3. Substantial Completion in July of 2025.
4. Final GMP Pricing has been developed with all phases of construction being awarded concurrently. Should any portion of the project be removed or re-sequenced, pricing will be revised accordingly.
5. Final GMP Pricing has been figured as work performed continuously.
6. Labor Rates for Time and Materials work are valid only for the time period listed and are subject to increase each year.
7. No Escalation allowances have been included in the GMP. Any cost adjustment made due to material / labor escalation prior to May 1, 2023 will come from Owner contingency, after May 1, 2023 will come from Project contingency.
8. Additional design fees are not included in the GMP Proposal. Q&D has included Construction Administration for the duration of construction activities.
9. Q&D's onsite construction team will include full time Supervision, key management personnel, and labor supervisors, foremen and specialty crews. Airport badging fees are responsibility of the Airport. Time/manhours associated with badging are the responsibility of the Contractor.
10. Per Diem is included for individuals traveling or relocating for the Project.
11. The Airport shall be responsible for any utility connection fees, Environmental Impact fees, and any fees imposed by any AHJ's review of the Terminal Expansion.
12. General Liability, Builder's Risk Insurance, and Worker's Compensation Insurance and payment and performance bonds are included based on the Contract Value.
13. Airport to provide space in its lot for Contractor parking adjacent to the project and at no cost to the Contractor.
14. Subcontractors listed are the lowest responsive bidders, unless noted otherwise.
15. The Owner will retain and pay for 3<sup>rd</sup> party inspection services, materials testing laboratory and special inspections for the project. Q&D agrees that inspection services provided by others do not, in any way, diminish, relieve, or alter the Q&D's responsibilities under the Contract.
16. Contractor will provide a Quality Assurance/Control plan and implement it during construction.
17. Contractor will design the project using 3D software (BIM) to avoid conflicts to the greatest extent possible.
18. It is assumed that the Ramp project will begin in February of 2023. Previous project coordination dictated that the Terminal project begin no less than 3 months after the Ramp project, otherwise the Terminal project site would be inaccessible.

## **Clarifications**

### 01. General Requirements

1. Project Director, Senior Project Manager, Project Engineers, Project Administrator, Project Superintendents, General Superintendent, Safety Director and scheduler for actual time spent on project.
2. Travel expenses for senior staff members to attend on site conferences as required and subsistence for key staff members stationed on site full time.
3. Project Management Collaborative Software (Procore).
4. Airport badges to be paid for by the airport, however an estimate has been provided to account for the man hours spent applying for and acquiring a badge.
5. Temporary project and wayfinding signage.
6. Building commissioning.
7. Winter protection, temporary heat, temporary power and light distribution in construction area, drinking water and ice, construction trailers, tool sheds, temporary toilets, office supplies, computer equipment, mobilization and demobilization, temporary construction fence and wall rental, building layout, daily cleanup, final cleaning, trash dumpsters and small tools.

### 02. Site Work

1. Building survey.
2. Selective demolition of walls, doors, bollards, handrails and paving.
3. Excavation of building foundation and construction of building pad.
4. Connection to and continuation of utilities installed under the Ramp project.
5. Demolition of existing FIS structure.
6. Striping and landscape.

### 03. Concrete

1. Foundation system consisting of continuous and spread footings for all building support.
2. Concrete slab on grade for building and areas demolished at existing baggage make up area.
3. Equipment and housekeeping pads and curbs as required.
4. Seal concrete floors where scheduled.

### 04. Masonry

1. CMU walls in the FIS.

### 05. Metals

1. Structural steel framing for support of roof structure and baggage handling equipment.
2. Exterior stair with code compliant railing.
3. Miscellaneous metals for overhead clearance bars, protection bollards and rails.

## 06. Wood, Plastics, Composites

1. Rough carpentry.
2. Miscellaneous wood blocking and backing requirements.

## 07. Thermal and Moisture Protection

1. Foundation and wall insulation as scheduled.
2. Exterior Insulation and Finish System (EIFS) at building exterior.
3. Thermoplastic Polyolefin (TPO) roofing at CBIS building.
4. Metal roof panels at oversize baggage and over exterior baggage conveyor.
5. General sheet metal flashing and trim for all flashing requirements.
6. Fire stopping, caulking and sealants.

## 08. Openings

1. Hollow metal doors and frames, wood doors and associated hardware.
2. Access and coiling overhead doors per door schedule.
3. Storefront assemblies, glass and glazing.

## 09. Finishes

1. Cold formed gauge metal framing for all exterior wall assemblies.
2. Light gauge wall framing for all interior wall systems.
3. Light gauge suspension system and metal framing as required for all ceilings.
4. Gypsum wallboard at all interior walls.
5. Vinyl Composition Tile (VCT) flooring and rubber base as scheduled.
6. Ceramic tile as scheduled.
7. Anti-fatigue flooring and rubber base as scheduled.
8. Epoxy flooring and artificial turf as scheduled.
9. Painting of all walls and ceilings as scheduled.

## 10. Specialties

1. Metal toilet partitions.
2. Wall and corner guards as shown on plans.
3. Bird netting as shown on plans.
4. Fire cabinets and fire extinguishers as shown.
5. Accordion fire doors as scheduled.

## 11. Equipment

1. First Aid kits and video wall supports.
2. The following allowances have been assigned to Equipment:
  - a. Autoclave procurement.....\$350,000

## 12. Furnishings

1. Furniture, Fixtures and Equipment (FF&E) as shown.
2. Restroom accessories and window coverings.
3. The following allowances have been assigned to Furnishings:
  - a. TSA Furniture, Fixtures & Equipment (FF&E).....\$45,000
  - b. Art procurement..... \$500,000

## 14. Conveying Equipment

1. Baggage Handling System installation and testing
  - a. Conveyor system outbound from ticketing through TSA security screening EDS to baggage make up carousels.
    - i. EDS machines are not included in this proposal.
  - b. FIS inbound conveyors and scanners.
2. The following allowances have been assigned to Conveyors:
  - a. Checkpoint equipment relocation.....\$125,000

## 15. Mechanical

1. Heating, Ventilating and Air Conditioning (HVAC)
  - a. Central package air units on roof, direct expansion cooling with gas fire heating.
    - i. Roof curbs as necessary for equipment.
  - b. Renovation of controls to 3 existing Air Handling Units to Trane Tracer Controls.
  - c. DX Split system in I or Communication rooms.
2. Plumbing
  - a. Roof drains, condensate and gas lines per plan.
3. Fire Suppression
  - a. Wet sprinkler system for all interior spaces per code.

## 16. Electrical

1. New PG&E electrical service from McKinley Ave.
  - a. New Switchgear not part of this proposal, purchased under separate contract.
2. Feeders to new distribution panels.
3. Interior distribution and subpanels.
4. Interior light fixture package.
5. Low voltage raceway.
6. Distribution / power and 3 diesel powered generators.
7. Communications:
  - a. Teledata communications and networking
  - b. Specialty PVC / RISER rated cables
8. Electronic Safety and Security:
  - a. Fire alarm system per code.
  - b. CCTV security monitoring in TSA areas as shown.
9. Amadeus / EVIDS by Owner.
10. New switchgear to be purchased through Ramp project.

**Exclusions**

- A. Hazardous material testing and abatement.
- B. Relocating vehicles that are in the parking lot area designated for construction or construction laydown and storage for the duration of the project.
- C. 3<sup>rd</sup> party testing and inspection.
- D. Utility connection fees.
- E. Material or personnel hoist (not required per OSHA).
- F. Costs for Contractor parking.
- G. Upgrading existing Airport facilities to be compliant with current Code, ADA or other regulatory agencies including those facilities used during construction for General Public routing.
- H. Temporary ADA parking stall striping and pathway modifications.
- I. Permit Fees / AHJ review fees.
- J. Overtime / Swing shift work unless otherwise directed by Q&D.

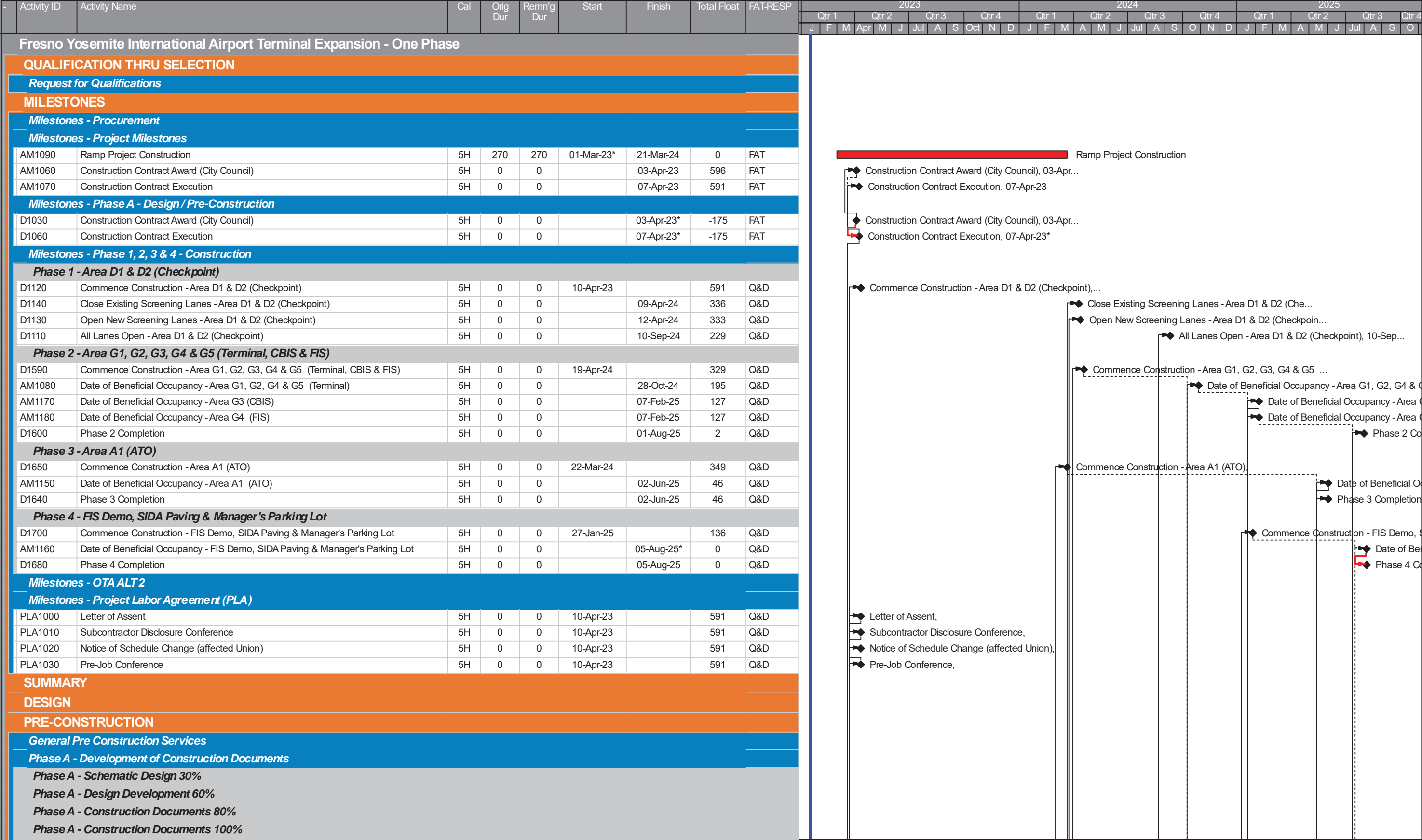


**Q&D CONSTRUCTION  
GUARANTEED MAXIMUM PRICE PROPOSAL**

**FOR**

**FRESNO YOSEMITE INTERNATIONAL AIRPORT  
TERMINAL EXPANSION**

**06 PROJECT SCHEDULE**





**EXHIBIT C**  
**DESIGN-BUILD**  
**GENERAL CONDITIONS**

**DESIGN-BUILD  
GENERAL CONDITIONS**

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# GENERAL CONDITIONS

## **Item 1. DEFINITIONS**

**Action of the City Council:** a vote of the required number of City Council members for a particular decision in a lawful meeting.

**Addenda:** the changes in Plans, Specifications, Drawings, and Contract Documents which have been authorized in writing by the OWNER or OWNER'S AUTHORIZED REPRESENTATIVE, and which alter, explain, or clarify the Contract Documents prior to the Request for Proposal or Request for Qualifications bid deadline.

**AGREEMENT:** The written contract between the OWNER and DESIGN-BUILDER, including all of the Documents governing the Work to be performed on the Project and the rights and obligations of the OWNER and DESIGN-BUILD

**AIR OPERATIONS AREA:** For the purpose of these Specifications, the term air operations area (AOA) shall mean any area of the OWNER used or intended to be used for the landing, takeoff, or surface maneuvering of aircraft. An air operation area shall include such paved or unpaved areas that are used or intended to be used for the unobstructed movement of aircraft in addition to its associated runway, taxiway, or apron.

**ALLOWANCE:** an estimated dollar amount determined jointly by the OWNER and the Design Builder that is included in the Contract Price to cover a scope of work which has not been specified explicitly in the GMP Plans and Specifications. Once the actual amount for any allowance item is established, it shall become part of the work. A change order will be required to either reduce or increase the allowance amount to match the actual cost. Allowances are controlled by the OWNER.

**Approval:** a written authorization by the OWNER or OWNER'S AUTHORIZED REPRESENTATIVE, as appropriate, for specific applications. Approvals required by the Plan Review Agency shall mean written authorization by that agency.

**As shown, as indicated, and as detailed:** refer to drawings accompanying the Specification.

**As Directed, Accepted, Rejected, Approved** or others of Similar meaning which authorize any exercise of judgment shall be distinctly understood to mean that such power to direct, accept, reject, and approve shall be vested only in OWNER or his designee, as appropriate.

**"Basis of Design Documents"** are as follows: the OWNER's Project criteria, Design-Builder's Proposal (Contract Price Amendment) and the Deviation List, if any.

**Bidder:** each person or other entity submitting a bid Proposal, whether or not such person or entity shall be awarded the Work.

**Bonds:** bid, performance and payment bonds or other instruments of security.

**Building:** includes all structures, drives, and walks, steps, approaches and site.

**Called For:** as called for, shown, noted, and/or indicated in the Specifications and/or drawings.

**City Council:** the City Council of the City of Fresno.

**"City Standard Specifications":** City of Fresno, Standard Specifications, Department of Public Works,

dated January 15, 2013 as amended, and the 2010 Caltrans Standard Specifications.

**CONSTRUCTION ADMINISTRATION DOCUMENTS: Terms, uses and protocols.**

Notwithstanding any other provisions in the General Conditions, the following terms and definitions shall be used:

**(1) RFI** – The term “RFI” shall mean **Request for Information**. An RFI is a written instrument prepared by the DESIGN-BUILDER and submitted to the OWNER or OWNER’S AUTHORIZED REPRESENTATIVE. An RFI shall be considered a tool for requesting additional information, above and beyond that which is available in the Contract Documents and all reference standards, and fulfilling the Contract coordination requirements for which DESIGN-BUILDER is obligated to perform. Prior to issuing an RFI the DESIGN-BUILDER, Subcontractor, material suppliers and the like shall thoroughly review the Contract Documents and refer to all reference standards for the information sought. When submitting an RFI, the document shall specify the date issued and the date by which the information is needed. The DESIGN-BUILDER shall plan its work and submit questions in sufficient time to accommodate the response time. The DESIGN-BUILDER shall include in the RFI the originating Subcontractor. The DESIGN-BUILDER shall make efforts to coordinate the work in a timely fashion, so as to alleviate priority RFI’s. If the RFI is considered a priority, the DESIGN-BUILDER shall state the word “Priority” on the document, and the DESIGN-BUILDER shall provide weekly RFI Priority Schedules to the CONSTRUCTION MANAGER. The DESIGN-BUILDER shall issue and maintain weekly RFI Priority Schedules. The RFI Priority Schedule shall include a listing of pending requests, including the most current request, and rank the RFI’s in order of priority. The CONSTRUCTION MANAGER or OWNER shall endeavor to respect the DESIGN-BUILDER’s requested order of priorities and requested response dates. The CONSTRUCTION MANAGER’S or OWNER’S response to an RFI shall be considered a Supplemental Instruction (“SI”) in which the Contract Price and/or time is not altered. If the RFI response alters the Contract Price and/or time, a Construction Change Directive (“CCD”) or a Request for Proposal (RFP) may be issued by the CONSTRUCTION MANAGER for the changed condition(s). Should the DESIGN-BUILDER determine the response to the RFI creates changes in the Contract Price and/or time, the DESIGN-BUILDER shall submit a Potential Change Order (PCO) to the CONSTRUCTION MANAGER for review, along with a time extension request (if required).

**(2) SI** – The term “SI” shall mean **Supplemental Instruction**. The SI is a written instrument prepared by the CONSTRUCTION MANAGER or OWNER and submitted to the DESIGN-BUILDER by the CONSTRUCTION MANAGER. The SI can order changes in the Work that do not affect the Contract Price and/or time. Supplemental instructions can also be made in a RFI response by issuing a formal SI document or by written letter from the CONSTRUCTION MANAGER’S office.

**(3) RFP** – The term “RFP” shall mean **Request for Proposal**. The RFP is a written instrument prepared by the OWNER or CONSTRUCTION MANAGER and submitted to the DESIGN-BUILDER by the CONSTRUCTION MANAGER. The RFP is a request for the DESIGN-BUILDER to provide information regarding whether a proposed change to the Project would result in a change to the Contract Price or time. As appropriate, the DESIGN-BUILDER shall Provide the full and complete terms of the request in a Potential Change Order (“PCO”) within **twenty (20) working days** of receipt of the RFP. If the RFP results in added time, the DESIGN-BUILDER shall provide a time extension request within the same **twenty (20) business days**. If DESIGN-BUILDER is unable to determine with precision the schedule impact of a proposed change, DESIGN-BUILDER, shall provide an estimate of the anticipated schedule impact, and shall supplement the time extension request when the actual impact can be determined. If the OWNER accepts the full terms of the RFP, the RFP shall be incorporated into a “CCD” and/or a Potential Change Order (PCO), and the approved time extension, if any, shall become incorporated into the next monthly schedule update to reflect the time impact(s).

**(4) CCD**

The term “CCD” shall mean **Construction Change Directive**. The CCD is a written instrument prepared by the CONSTRUCTION MANAGER and submitted to the DESIGN-BUILDER. The CCD is

a written order, directing a change in the Work, a PCO shall be submitted within 20 working days. Upon approval the PCO will become a CCO stating the required pricing method, if any, in the Contract Price, and the Contract Time adjusted to reflect a previously approved time extension request, if any. The CCD, without invalidating the Contract, may order changes in the Work within the general scope of the Contract, consisting of additions, deletions, or other revisions within. The CCD shall become effective when the OWNER, OWNER'S AUTHORIZED REPRESENTATIVE, and DESIGN-BUILDER have signed the CCD. If the CCD results in additional time, the DESIGN-BUILDER shall provide a time extension request within **twenty (20) work days of the determination of the schedule impact of the CCD**. If the time extension is approved, the Contract Time adjustment shall be incorporated into the originating CCD, or incorporated into a separate CCD and/or a Contract Change Order (CCO). The approved time extension, if any, shall become incorporated into the next monthly schedule update to reflect the time impact(s).

**(5)** The term "PCO" shall mean Potential Change Order. The PCO is a written instrument prepared by the DESIGN-BUILDER and submitted to the CONSTRUCTION MANAGER. The PCO is the DESIGN-BUILDER's method for requesting changes in the contract price and/or time, if any. The PCO will be submitted to the Owner with a scope of work and preliminary cost estimate. The provisions and format of the request are identified under Item entitled **CHANGES AND EXTRA WORK** (Item 52). OWNER and/or CONSTRUCTION MANAGER shall endeavor to respond to the PCO on or within **ten (10) working days** of receipt.

**(6)** The term "CCO" or "Contract Change Order" shall mean an approved **Change Order**. The Change Order shall state the change in Work and the Contract Price and/or time adjustments, if any. The provisions and format of the request are identified under Item entitled **CHANGES AND EXTRA WORK** (Item 52). RFP's and/or CCD's may be incorporated into a Contract Change Order, after any adjustments in the Contract Price and/or time have been reviewed and accepted by the OWNER. The Change Order, and items contained therein, cannot be incorporated into the progress payments until the Contract Change Order has been fully executed and accepted by the OWNER or City Council.

**"CONSTRUCTION MANAGER," "OWNER'S AUTHORIZED REPRESENTATIVE":** The individual and/or assigned representative who has been retained by the OWNER to provide leadership to the construction process through services to the OWNER, including but not limited to, monitoring of the DESIGN-BUILDER's Construction Schedule and any updates required by approved DESIGN-BUILDER submitted time extension requests, cost control and general construction coordination, and payment application processing and reporting to the OWNER.

**Concurrent Delay:** Delays caused by both the DESIGN-BUILDER and the OWNER and occurring at the same time; existing together.

**CONTRACT:** The written document signed by the OWNER and the Design-Builder that defines the full set of terms and conditions under which the OWNER and parties performing the Project will execute the Work.

**Contract Documents:** Includes collectively, as applicable: Subcontractor prequalification, Notice Inviting Bids/Notice to Contractors, Instructions to Bidders and all bidding and contract documents including but not limited to the Bid Proposal, RFP, RFQ, SOQ, Proposal, and Notice to DESIGN-BUILDERS, Instructions to Proposers' and all contract documents including but not limited to the Proposal, General Conditions, any supplemental General Conditions," Plans, Drawings, Federal requirements, Specifications (including, but not limited to technical, special and standard Specifications), the Agreement and all modifications, Owners Project Criteria, Basis of Design documents, Contract Price Amendment, approved baseline schedule and all approved updates thereto, Addenda, and amendments thereto.

**Contract Price:** means the Guaranteed Maximum Price ("GMP") to be paid to the DESIGN-BUILDER pursuant to the Agreement, as adjusted by authorized Contract Change Orders and use and allocations of Contingencies and Allowances, if any, constituting the total amount payable to the DESIGN-BUILDER for the performance of the Work as specified by the Contract Documents. The Contract Price cannot be changed except as specified in the Contract Documents.



**Contract Price Amendment and/or “Amendment”:** The Contract Price Amendment (“CPA”) is an amendment to the Contract indicating the terms of and the Contract Price for Phase 2 work. The CPA includes the Design-Builder’s Proposal, Basis of Design Documents used by the Design-Builder for its Contract Price, Assumptions, Clarifications, Exclusions, Plans and Specifications, Contingencies, Alternates, Allowances if any and other Contract Documents as established in the CPA. The CPA shall be incorporated into the Contract as an exhibit and will establish the Contract Price and other terms as required by the Contract.

**Contract Time:** The number of days specified in the Contract Documents for completion of the Work specified therein. The Contract Time cannot be changed except as specified in the Contract Documents, and by Change Order and by a Potential Change Order and Contract Change Order.

**Days:** “Days” shall be considered **calendar** days, unless otherwise expressly indicated. If any period of time specified in the Contract Documents falls on a weekend or holiday, then the period shall elapse or be extended until the next business day.

**Deferred Approvals:** Deferred Approvals are items identified in the drawings and/or Specifications that require the DESIGN-BUILDER to prepare drawings and/or calculations and other data for submission to the Plan Review Agency for formal review and Approval into the Contract Documents. For Deferred Approvals requiring a structural engineer’s stamp and calculations, a structural engineer licensed in the State of California shall be utilized in the submittal process. The DESIGN-BUILDER shall pay all costs associated with the preparation and Approval of the deferred approvals.

**Delay Days:** “Delay Days” shall be considered working days. Assuming a 5-day workweek, delay days shall be converted into calendar days by a factor of 1.4. Hence 10 Delay Days = 14 calendar days. Delay Days will be evaluated and identified as one of the three categories listed below. Excusable delays will create adjustments in the Contract Time. Compensable delays will create adjustments in both the Contract Price and Contract Time. In the event of concurrent delays, no delay damages are recoverable by either the OWNER or the DESIGN-BUILDER. Delays shall be evaluated using schedule updates, daily reports, notices, and any other records of delaying events. In the event of a delay, the DESIGN-BUILDER shall provide a “Notice of Delay” within five (5) business days of the *delaying* event, and submit a schedule depicting the delay with all substantiating documentation within **ten (10) days** of the *delaying* event.

<u><b>Excusable &amp; Compensable</b></u>	<u><b>Excusable &amp; Non-Compensable</b></u>	<u><b>Inexcusable</b></u>
Delays caused by the CITY, CONSTRUCTION MANAGER or the CITY’S forces.	1. Unusually severe weather 2. Strikes or labor shortages 3. Acts of God 4. Fires, war, acts of government & pestilence 5. Concurrent delays.	Delays caused by the DESIGN-BUILDER, Subcontractor(s), material-men or suppliers; delays which could be avoided.

**Design-Build:** The Project’s delivery methodology under which the OWNER contracts with a single entity that has responsibility for the design and construction of the Project under a single contract with the OWNER.

**DESIGN-BUILDER:** The Design-Builder is the person or entity identified as such in the Contract and is referred to throughout the Design-Build Documents as if singular in number. The term “Design-Builder” means the Design-Builder or the Design-Builder’s authorized representative. The entity having a direct contractual relationship with the OWNER to deliver the project design and construction.

**Design Consultant:** Is a qualified, licensed design professional retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder, to furnish design services required under the Contract Documents.

**Equipment and/or Furnishing Modifiers:**

- (1) **F.B.O.** – Where the indication “F.B.O.” is noted on the drawings or listed in the Specifications, such item(s) are shown or listed for information and will be “Furnished by OWNER” and installed by DESIGN-BUILDER. The DESIGN-BUILDER shall verify all dimensions and details necessary for the proper installation.
- (2) **N.I.C.** – Where the indication “N.I.C.” is noted on the drawings or listed in the Specifications, such item(s) are shown or listed for the purpose of general information and is “Not in Contract”. Installation and connection to services for such work are not in the contract; however coordination is required by DESIGN-BUILDER for utility service locations and/or connection types.
- (3) **I.C.** – “IN CONTRACT”: All item(s) shown or listed in the drawings and Specifications are in the Agreement and are part of the Work. The naming of any item(s) shall mean to Provide the item(s), that is furnishing (including all incidental and accessory items thereto) and installing (including all labor necessary to achieve full and complete functioning of the item(s) according to the best practices of the trades involved). When and if the indication “I.C.” is noted on the drawings or listed in the Specifications, such a designation is listed only for clarity, in order to set the item(s) apart from the “F.B.O.” and “N.I.C.” item(s).

**Fee:** The Design-Builder’s sole compensation for home office overhead, profit and any other non-reimbursable cost or risk.

**Fee Percentage:** The percentage based upon all costs of the work that is established by the DESIGN-BUILDER’s Contract Price Amendment.

**Final Completion:** OWNER’s final acceptance of all of the Work as evidenced by the issuance of a Notice of Completion.

**General Conditions of Contract:** Are these Design-Build General Conditions of Contract Between OWNER and DESIGN-BUILDER.

**“Guaranteed Maximum Price” (GMP):** The Guaranteed Maximum Price of the Contract, as stated with the DESIGN-BUILDER’s Proposal and agreed upon by the OWNER as the maximum price the OWNER shall pay under the Contract.

**Inspector:** An authorized representative of the OWNER, or a representative of the Authority Having Jurisdiction, assigned to make all necessary inspections and/or tests of the work performed or being performed, or of the materials furnished or being furnished by the DESIGN-BUILDER.

**Laws and Regulations:** Any and all applicable laws, rules, regulations, ordinances, codes and/or requirements of any and all governmental bodies, agencies, authorities and/or courts having jurisdiction over the subject of the Agreement and/or the Work.

**Locality:** The County in which the Work is performed.

**Lump Sum:** If used, the Lump Sum is the amount agreed for a scope of Work which shall be paid by the OWNER under the Contract.

**Materials:** Materials incorporated in the Project or used or consumed in the performance of the work.

**Notice to Proceed:** Written notice to the Design-Builder to begin the actual contract Work on a specific date subject to the requirements of the Contract Documents. If applicable, the Notice to Proceed shall state the date on which the Contract Time begins.

**"Owner," "Vendee," "CITY", "City of Fresno,"** shall each mean and refer to the City of Fresno, California.

**OWNER AUTHORIZED REPRESENTATIVE:** means an individual or entity designated by and duly authorized to represent the OWNER, such as but not limited to project manager, CONSTRUCTION MANAGER, engineer, etc.

**Owner Contingency:** means a fund to cover cost growth during the project used at the discretion of the OWNER usually for costs that result from Owner-directed changes. The amount of the Owner's Contingency will be set solely by the OWNER and managed by the OWNER. The Owner's Contingency is included in the Contract Price. Use and management of the Owner's Contingency is controlled by the OWNER.

**"Partial Acceptance" or "Partial Occupancy:** That point in the Agreement whereby the OWNER and CONSTRUCTION MANAGER determines acceptance that a portion of the work is complete and satisfactory such that the OWNER can then take possession of the area or facilities in question. OWNER may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the DESIGN-BUILDER, provided such occupancy or use is consented to by the insurer as required and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the OWNER and DESIGN-BUILDER have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. Partial occupancy shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The OWNER and DESIGN-BUILDER shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance. OWNER'S determination shall also define if warranty period begins for the work being accepted. In no way shall "Partial Acceptance" mean the OWNER accepts the Project or stops the Contract Time.

**Plans and/or Drawings:** The graphic descriptions of the Work to be performed by DESIGN-BUILDER.

**Plan Review Agency:** is the agency responsible for the review and Approval of the Plans, Specifications, Addendum, substitution requests (if appropriate), Change Orders and the like.

**Project:** The total construction project consisting of the Building, facility, and/or other improvements for which the DESIGN-BUILDER is to perform the Work under this Agreement. It may also include construction by the OWNER or other contractors

**Project Contingency:** Means a fund to cover risk and cost growth during the project used at the discretion of the DESIGN-BUILDER and approved by the OWNER, for costs that result directly from Project circumstances. The amount of the Project Contingency is included in the Contract Price.

**Project Execution Plan (PEP):** Is a document that is created by the DESIGN-BUILDER that establishes the means to execute, monitor and control the Project.

**Project Schedule:** The schedule for performance of the Work and completion of the Project prepared by the DESIGN-BUILDER and approved by the OWNER, or its designee, pursuant to the Agreement.

**PROPOSAL:** Means that Proposal developed by DESIGN-BUILDER and submitted as part of the Contract Price Amendment in accordance with Agreement between OWNER and DESIGN-BUILDER with an option for either a Guaranteed Maximum Price, Lump Sum or other contract method identified in the Agreement.

**Provide:** To "provide complete in place," that is, to "furnish and install."

**Purchasing Manager:** The Purchasing Manager of the OWNER.

**Quality Assurance (QA):** All those planned and systematic actions performed by the DESIGN-BUILDER to demonstrate to the OWNER that the Work complies with the Contract and that all elements of the Work will fully perform for the purpose intended. OWNER will conduct independent third-party testing and special inspections as required by the permitting agency.

**Quality Control (QC):** The total of all activities performed by the DESIGN-BUILDER to assess design, production and construction processes so as to control the level of quality being produced in the end product. Components may include design reviews and checks, establishing procedures, calibrations and maintenance of equipment, shop drawing review, document control, production process control, and any sampling, testing, certification and inspections done for these purposes.

**Quality Management Plan (QMP):** The plan developed by the Design-Builder, which identifies the DESIGN-BUILDER's overall framework for implementation of its Quality Control and Quality Assurance programs across all aspects of the Project, including, but not limited to, management, administration, design, construction, material testing, maintenance of public and private facilities, site investigations, and environmental monitoring and compliance.

**Safety Orders:** Orders, notices and/or directions issued by the Division of Industrial Safety and OSHA safety and health standards for construction.

**Schedule of Values:** The allocation by DESIGN-BUILDER of the Contract Price to the major activities described in the Project Schedule which shall be reviewed and approved by OWNER, or its designee, and thereafter used by the OWNER, in connection with the Project Schedule, as the basis for making payments to the DESIGN-BUILDER under the Agreement.

**Shop Drawings and Submittals:** All drawings, diagrams, illustration, schedules, and other data which are specifically prepared by and for the DESIGN-BUILDER and submitted by the DESIGN-BUILDER to illustrate some portion of the Work and all illustrations, brochures, schedules, performance charts, instructions, and diagrams to illustrate material or equipment relating to some portion of the Work.

**Similar:** Similar or alike in a general sense and not meaning identical, and all details of such Work shall be in proper relation to the location and connection of other parts of the Work.

**Site:** Lands or other areas designated in the Agreement as being furnished by the OWNER for the performance of the construction, storage and access.

**Specifications:** Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship requirements as applied to the Work.

**Subcontractor:** An individual, partnership, corporation, joint venture or other legal entity having a direct contractual relationship with DESIGN-BUILDER and which furnishes labor, materials, equipment or supplies for the Project, including subcontractors and suppliers of all tiers.

**Substantial Completion:** That point in the progress of the Work or designated portion thereof, where the Work is sufficiently complete, in accordance with the Contract Documents, so that the OWNER can occupy or utilize the Work for its intended use. It shall also mean the Work is complete to the point where only

minor work items or punchlist correction items remain to be completed, the determination of which shall be made by the CONSTRUCTION MANAGER, and/or the OWNER. Contract Time shall stop upon declaration of Substantial Completion through the issuance of a Certificate of Substantial Completion to the Design-Builder by the CONSTRUCTION MANAGER and/or OWNER and is accompanied by a list of punchlist correction items that shall be remedied in accordance with the Contract Documents in the period of time specified in the Contract Documents or otherwise established by the agreement between the OWNER and Design-Builder.

**Superintendent:** The DESIGN-BUILDER's executive representative who is present on Site during the performance of the Work, who is authorized to receive and fulfill instructions from the Owner's Representative, CONSTRUCTION MANAGER, or engineer, and who shall supervise and direct the construction of the Work.

**Surety:** The person, firm, or corporation, authorized by Law, that executes as surety the DESIGN-BUILDER's Bid Security, faithful performance bond and/or payment bond.

**Work:** Work is comprised of all DESIGN-BUILDER's design, construction and other services required by the Contract Documents and as included in the Contract Price Amendment. Work includes the entire completed construction or the various separately identifiable parts of the Project required to be furnished by DESIGN-BUILDER under the Contract Documents, whether performed or supplied by the DESIGN-BUILDER or its Subcontractors. Work includes the labor, services, equipment, and materials, including supervision, tools, appliances, temporary facilities, temporary utilities, and all incidentals necessary to perform and complete the Project. The Work is the result of performing or furnishing and incorporating materials and equipment into the construction of the Project, and performing or furnishing services and documents, all as required by the Contract Documents.

**Workers:** Laborers, workers, and mechanics performing the Work.

**Working Day:** A working day shall be any day, including legal holidays, Saturday, or Sunday on which the normal working forces of the DESIGN-BUILDER's may proceed with regular work for at least 6 hours toward completion of the contract. Unless work is suspended for causes beyond the DESIGN-BUILDER's control, Saturdays, Sundays and holidays on which the DESIGN-BUILDER's forces engage in regular work, requiring the presence of an Inspector, will be considered as working days.

**Value Engineering:** Means an organized effort directed at analyzing designed Building features, systems, equipment, and material selections for the purpose of achieving essential functions at the lowest life cycle cost consistent with required performance, quality, reliability, and safety. Value engineering will be implemented in this process to submit, review and approve changes to the Project upon acceptance of the GMP.

## **Item 2. DESIGN-BUILDER's STATUS**

(a) DESIGN-BUILDER is and shall at all times be deemed to be an independent contractor and shall be wholly responsible for the manner in which it performs the services required of it by the terms of the Contract Documents. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between the OWNER and DESIGN-BUILDER or any of DESIGN-BUILDER's agents or employees. DESIGN-BUILDER assumes exclusively the responsibility for the acts of its employees as they relate to the services to be provided during the course and scope of their employment. DESIGN-BUILDER, its authorized agents and employees shall not be entitled to any rights or privileges of OWNER employees and shall not be considered in any manner to be OWNER employees. OWNER shall be permitted to monitor the activities of the DESIGN-BUILDER to determine compliance with the terms of the Project Documents.

(b) CONTRACTORS are required by law to be licensed and regulated by the Contractors' State License Board. Any CONTRACTOR not so licensed is subject to penalties under the law, and the contract will be considered void pursuant to Section 7028.7 of the Business and Professions Code. Any questions

concerning a CONTRACTOR may be referred to the Registrar, Contractors' State License Board, 3132 Bradshaw Road, P. O. Box 2600, Sacramento, CA 95826.

### **Item 3. CHANGE IN NAME AND NATURE OF DESIGN-BUILDER LEGAL ENTITY**

Before Design-Builder makes any change in the name or legal nature of the DESIGN-BUILDER's entity, Design-Builder shall first notify the OWNER in writing and cooperate with OWNER in making such changes as the OWNER may request in the Contract Documents.

### **Item 4. DESIGN-BUILDER'S SUPERVISION, PROSECUTION AND PROGRESS**

(a) During progress of the Work, DESIGN-BUILDER shall keep on the Site a competent Superintendent satisfactory to OWNER, who shall remain on the Site during the performance of the DESIGN-BUILDER's Work and for the necessary coordination thereof. Before commencing the Work herein, DESIGN-BUILDER shall give written notice to CONSTRUCTION MANAGER of the name, qualifications and experience of such Superintendent. If the Superintendent is found unsatisfactory by OWNER, DESIGN-BUILDER shall replace the Superintendent with one acceptable to the OWNER. Superintendent shall not be changed or removed from the Project except with written consent of OWNER, unless a Superintendent proves to be unsatisfactory to DESIGN-BUILDER or ceases to be in its employ, in which case, DESIGN-BUILDER shall notify the CONSTRUCTION MANAGER in writing and replace said Superintendent with one acceptable to the OWNER. Superintendent shall represent DESIGN-BUILDER and all directions given to Superintendent shall be as binding as if given to DESIGN-BUILDER.

(b) DESIGN-BUILDER shall supervise, coordinate, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills as may be necessary to perform the Work in accordance with the Contract Documents. DESIGN-BUILDER shall be solely responsible for, and have control over, the entire design effort, construction means, methods, techniques, sequences, procedures, and the coordination of all portions of the Work including, but without limitation, landscape and site work, utilities, and Building systems.

(c) The DESIGN-BUILDER shall verify all indicated dimensions before ordering materials or equipment, or before performing Work. The DESIGN-BUILDER shall take field measurements, verify field conditions, and shall carefully compare such field measurements and conditions and other information known to the DESIGN-BUILDER with the Contract Documents before commencing Work. Errors, inconsistencies or omissions discovered shall be immediately reported to the OWNER or OWNER'S AUTHORIZED REPRESENTATIVE. DESIGN-BUILDER shall make best efforts to ensure that its Subcontractors comply with this responsibility for verification of dimensions, where applicable.

(d) Omissions from the Plans, Drawings or Specifications, or the mis-description of customary and usual details of Work which are manifestly necessary to carry out the intent of the plans, Drawings and Specifications, or which are customarily performed, shall not relieve the Design-Builder from performing such omitted or mis-described work, but they shall be performed as if full and correctly set forth and described in the Plans, Drawings and Specifications.

(e) Pursuant to Public Contract Code section 6109, no CONTRACTOR may perform work on a public works project with a subcontractor who is ineligible to perform work on the Project pursuant to sections 1777.1 or 1777.7 of the Labor Code.

(f) It is the responsibility of the DESIGN-BUILDER to coordinate work included in its contract with that of other Subcontractors prior to detailing, installation or fabrication of the work, material or equipment. The DESIGN-BUILDER shall provide coordination and/or layout documents for use by the DESIGN-BUILDER and other Subcontractors in coordinating the Work.

(g) The OWNER accepts the key personnel of the Design-Build Team as submitted by the DESIGN-BUILDER in its statement of qualifications or as amended during the selection process or as identified in

the Contract Price Amendment. Key personnel shall not be changed or removed from the Project except with written consent of OWNER. The OWNER shall have the right, but not the obligation, to require the removal from the Project of any key personnel, Superintendent, staff member, authorized agent, or employee of the DESIGN-BUILDER, any Subcontractor, material or equipment supplier, etc., for cause.

#### **Item 5. SUBCONTRACTORS**

**(a)** DESIGN-BUILDER agrees to bind every Subcontractor by terms of the Contract Documents as far as such terms are applicable to Subcontractor's work. If DESIGN-BUILDER subcontracts any part of the Work, DESIGN-BUILDER shall be as fully responsible to OWNER for acts and omissions of any Subcontractor and of persons either directly or indirectly employed by any Subcontractor, as it is for acts and omissions of persons directly employed by DESIGN-BUILDER. Nothing contained in the Contract Documents shall create any contractual relation between any Subcontractor and OWNER, nor shall the Contract Documents be construed to be for the benefit of any Subcontractor.

**(b)** OWNER'S consent to any Subcontractor selection shall not in any way relieve DESIGN-BUILDER of any obligations under the Contract Documents and no such consent shall be deemed to waive any provision of any Contract Documents.

**(c)** DESIGN-BUILDER must submit with the Proposal for the Contract Price Amendment, a designation of Subcontractors pursuant to the California Subletting and Subcontracting Fair Practices Act. If DESIGN-BUILDER specifies more than one Subcontractor for the same portion of work or fails to specify a Subcontractor, and such portion of the Work exceeds one-half of one percent of the total bid, DESIGN-BUILDER agrees that it is fully qualified to perform and shall perform such work itself, unless Design-Build provides for substitution as authorized under the Subletting and Subcontracting Fair Practices Act, California Public Contract Code Section 4100, et. seq.

**(d)** In accordance with California Business and Professions Code Section 7059, if CONTRACTOR is designated as a "specialty CONTRACTOR" (as defined in Section 7058 of the Business and Professions Code), all of the Work to be performed outside of the CONTRACTOR's license specialty shall be performed by a licensed Subcontractor in compliance with the Subletting and Subcontracting Fair Practices Act, California Public Contract Code Section 4100, et seq.

**(e)** The DESIGN-BUILDER shall administer a competitive procurement process to select Subcontractors to perform the work described where the value of that scope or category of work is greater than one half of one percent (0.5%) of the Contract Price, and where that Work is not a scope that the DESIGN-BUILDER intends on self-performing. For all Work that is bid, the DESIGN-BUILDER shall prepare the necessary bidding packages (qualification based or competitive bidding), advertise the packaged work, evaluate the bids received, and review with the OWNER the bid results within 10 days of open bids, in accordance with the Subcontractor Plan. Once funding is authorized by the OWNER, the DESIGN-BUILDER shall execute subcontract agreements with the selected firms in accordance with the provisions of the Contract Documents. DESIGN-BUILDER shall include, in each subcontract agreement, a reference to the Contract between the OWNER and the DESIGN-BUILDER. The terms of the Contract between the OWNER and DESIGN-BUILDER and all the parts of the Contract Documents, by their reference in the applicable subcontract agreement(s), shall become a part of such subcontract agreement(s) insofar as those terms and conditions are applicable to the Work covered by the Subcontract Agreement.

**(f)** The DESIGN-BUILDER must obtain prior, written approval from the OWNER to self-perform Work.

(1) For each Work the DESIGN-BUILDER proposes self-performance, the DESIGN-BUILDER must submit to the OWNER a Proposal for Self-performance that details the description of the Work to be self-performed, a detailed explanation of the effect of self-performance on the Project to include but not limited to cost savings, schedule savings, benefits to the Project and risks

associated with its decision to self-perform. The Proposal will explain cost controls and a reporting system to track the costs and how the costs for the self-performed Work will be verified.

(2) If the OWNER approves the DESIGN-BUILDER's Proposal for Self-Performance, the DESIGN-BUILDER will adhere to the Subcontractor open-book, competitive process established in the Contract Documents and submit its bid to the OWNER one day prior to the date of subcontractor bid open. The DESIGN-BUILDER bid will include a detailed, open-book and not-to-exceed cost estimate including supervisory, personnel, labor, materials and all other costs required to complete the Work.

(g) The DESIGN-BUILDER agrees that the OWNER has the right to review, obtain and copy all records pertaining to design and construction of the Project. The DESIGN-BUILDER agrees to provide the OWNER with any relevant information requested and shall permit the OWNER access to its premises upon reasonable notice for purposes of interviewing employees and inspecting records. The DESIGN-BUILDER agrees to maintain such records for a period of three years after final payment under the Agreement.

(h) Each subcontract agreement for a portion of the Work is assigned by the DESIGN-BUILDER to the OWNER provided that:

- (1) The OWNER gives written direction to the DESIGN-BUILDER for the assignment of a subcontract.
- (2) Assignment is effective only after termination of the Contract Documents with the DESIGN-BUILDER by the OWNER for cause and only for those subcontract agreements which the OWNER accepts by notifying the Subcontractor in writing; and
- (3) Assignment is subject to the prior rights of the Surety, if any, obligated under any Bond relating to the Contract Documents.

(i) Any consent or Approval required of the awarding authority pursuant to the Subletting and Subcontracting Fair Practices Act, California Public Contract Code Section 4100, et. seq., may be given by the OWNER Director/designee(s) thereof, as the OWNER's duly authorized officer, consistent with Law, Regulations and Contract Documents.

#### **Item 6. PROHIBITED INTERESTS**

No official of OWNER who is authorized in such capacity and on behalf of OWNER to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the Project, may be or become directly or indirectly interested financially in this Project or in any part thereof. No officer, employee, attorney, engineer, CONSTRUCTION MANAGER OWNER'S AUTHORIZED REPRESENTATIVE, or Inspector who is authorized in such capacity and on behalf of OWNER to exercise any executive, supervisory or other Similar functions in connection with construction of Project may be or become directly or indirectly interested financially in this Project or in any part thereof. DESIGN-BUILDER shall receive no compensation and shall repay OWNER for any compensation received by DESIGN-BUILDER hereunder, should DESIGN-BUILDER aid, abet or knowingly participate in violation of this Item.

#### **Item 7. OWNER'S INSPECTOR**

- (a) One or more Inspector(s), including special inspectors, as required, will be employed by OWNER in accordance with the requirements of Laws and Regulations and will be assigned to the Project.
- (b) No work shall be performed by the DESIGN-BUILDER solely upon the instructions or comments by the Inspector. Any extra work performed without the written instruction of the OWNER shall be at DESIGN-BUILDER's cost and expense and there will be no delay damages incurred by OWNER for such work.



**(c)** No work shall be carried on except with the knowledge and under the inspection of the Inspector(s). The Inspector shall have free and adequate access to any or all parts of work at any time. DESIGN-BUILDER shall furnish Inspector reasonable opportunities necessary for obtaining such information as may be necessary to keep Inspector fully informed respecting progress and manner of work and character of materials. DESIGN-BUILDER shall give the Project Inspector not less than 24 hours written notice of readiness of the Work for inspection, Approval or testing so that Project Inspector is able to witness all inspections, tests or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests. Inspection of work shall not relieve DESIGN-BUILDER from any obligation to comply with the Contract Documents. The OWNER shall have authority to stop work whenever provisions of Contract Documents are not being complied with and such noncompliance is discovered. DESIGN-BUILDER shall instruct its employees and Subcontractors accordingly.

**(d)** DESIGN-BUILDER shall be responsible for arranging and obtaining any inspections, tests, or approvals required by the OWNER, or by Laws and Regulations, or for the OWNER'S acceptance of materials of equipment to be incorporated in the Work, or acceptance of materials, mix designs, or equipment submitted for Approval prior to DESIGN-BUILDER'S purchase thereof for incorporation in the Work. Such initial and reasonable subsequent inspections, tests or approvals shall be paid for by the Owner. Unreasonable subsequent inspections, tests, or approvals necessary to assure conformance with the Contract Documents shall be paid for by the DESIGN-BUILDER until the Work being reviewed is accepted by the Owner.

#### **Item 8. PROJECT ADMINISTRATION**

**(a)** DESIGN-BUILDER is responsible for the design and construction of the Project and shall Provide all services pursuant to this Contract 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 (including its contracting mode). Design-Builder shall carefully study and compare each of the Contract Documents with the others and with information furnished by Owner, and shall promptly report in writing to Owner's Representative any errors, inconsistencies, or omissions in the Contract Documents or inconsistencies with applicable code requirements observed by Design-Builder.

**(b)** DESIGN-BUILDER is responsible for preparation of the Contract Documents for the entire Project and, as a cost of the work, shall be responsible for all plotting, printing, copying and distribution cost of documents required in direct connection with the Work.

**(c)** DESIGN-BUILDER agrees that it has single point responsibility for the design and construction of this Project.

**(d)** DESIGN-BUILDER shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents either by acts or omissions of Owner or Owner's Representative in the administration of the Contract.

**(e)** DESIGN-BUILDER is required to deliver to the Owner, if requested, standard design materials including, but not limited to, calculations, preliminary drawings, construction drawings, shop drawings, electronic media data, tenant improvement documents, sketches, illustrations, Specifications, descriptions, models, mock-ups, and other information developed, prepared, furnished, or delivered in the prosecution of the design work, as specified in the Contract Documents.

**(f)** DESIGN-BUILDER shall furnish a competent Design Professional to review the Work during its progress to assure that the Work is being performed in accordance with the Contract Documents and accepted standards of the construction industry. The DESIGN-BUILDER shall coordinate the Design Consultant's periodic review of the Work.

**(g)** DESIGN-BUILDER shall perform professional services to the satisfaction of the OWNER within the terms of this Contract and within the degree of care and skill that a registered professional in California would exercise under similar conditions.

**(h)** DESIGN-BUILDER shall provide construction administration as required for substantial compliance with the Contract Documents. This Design Consultant shall keep accurate, contemporaneous field reports of any site visits to the Project in regards to their review of the Work in place or in progress. Submit reports of jobsite visits, which must summarize the activities at the time of the visit.

**(i)** DESIGN-BUILDER shall promptly inform the Owner of matters relating to deviations from the Contract Documents.

**(j)** DESIGN-BUILDER shall review and monitor schedules; review or take other appropriate action on samples and shop drawings; and review and make recommendations on reports and other submissions for conformance with the design concept of the Project and for compliance with the information given by the Contract Documents.

**(k)** DESIGN-BUILDER shall attend joint inspections with OWNER to determine Substantial Completion or partial Substantial Completion and Final Completion.

**(l)** DESIGN-BUILDER shall Provide Project close out-related services.

**(m)** DESIGN-BUILDER shall conduct final close-out inspection(s), prepare a Project punchlist including the Owner's concerns and the DESIGN-BUILDER's punchlist items, and verify that the items indicated on the list are corrected before Final Completion.

**(n)** DESIGN-BUILDER shall verify that all documentation required per the Contract has been submitted.

**(o)** DESIGN-BUILDER shall review all warranties, files, operating manuals, logs and other close-out paperwork as described in the Project Specifications to be submitted (by the DESIGN-BUILDER) at Project completion.

**(p)** DESIGN-BUILDER shall verify that all correspondence, shop drawings, directives, and RFIs are organized and delivered to the Owner.

**(q)** DESIGN-BUILDER shall prepare and turn over to the Owner either original tracings or reproducible tracings revised to reflect "Project record" conditions. These tracings must be signed and certified as accurate by the DESIGN-BUILDER's design professional.

**(r)** DESIGN-BUILDER shall verify that additional construction materials have been delivered to the Owner.

**(s)** As a required Project service, the DESIGN-BUILDER shall notify the Owner of any unsafe conditions that the Design Consultant observes and recognizes as such at the Site and take immediate corrective action, if required.

## **Item 9. CONSTRUCTION MANAGER**

### **(a) The CONSTRUCTION MANAGER**

**(1)** The CONSTRUCTION MANAGER shall provide oversight on behalf of the OWNER of the design and construction process. CONSTRUCTION MANAGER shall have the authority to act on behalf of OWNER to the extent expressly provided for in the CONSTRUCTION MANAGER's agreement with OWNER, if any.

**(2)** The CONSTRUCTION MANAGER shall be the OWNER's representative during construction and shall observe the progress and quality of the work on behalf of the OWNER.

CONSTRUCTION MANAGER shall have the authority to act on behalf of OWNER only to the extent expressly provided in the Contract Documents. CONSTRUCTION MANAGER shall have the authority to stop work, but only after the CONSTRUCTION MANAGER has issued a written notice of non-compliance to the DESIGN-BUILDER. The DESIGN-BUILDER shall have up to five (5) days to remedy the deficiency(s).

(3) The CONSTRUCTION MANAGER shall be, in the first instance, the judge of the performance of the work. CONSTRUCTION MANAGER shall exercise authority under the Contract Documents to enforce DESIGN-BUILDER's faithful performance, in execution of the work per the Contract Documents.

(4) The CONSTRUCTION MANAGER has the authority to enforce compliance with the Contract Documents and the DESIGN-BUILDER shall promptly comply with written instructions from the CONSTRUCTION MANAGER or an authorized representative of the CONSTRUCTION MANAGER.

(5) The CONSTRUCTION MANAGER shall review and track DESIGN-BUILDER's compliance with the Project Schedule.

(6) The CONSTRUCTION MANAGER shall review and track DESIGN-BUILDER's compliance with the Schedule of Values.

(7) The CONSTRUCTION MANAGER shall have access to and may review RFI's, shop drawings and submittals.

(8) The CONSTRUCTION MANAGER shall review, track, and monitor the processing of CCD's, RFP's, PCO's, and CCO's.

(9) The CONSTRUCTION MANAGER shall review DESIGN-BUILDER's progress payment applications and process same.

(10) To the extent that the Project involves other contractors, the CONSTRUCTION MANAGER shall be responsible for the general sequences of construction and overall coordination of Project construction. The CONSTRUCTION MANAGER shall resolve disputes and coordination issues between separate contractors.

#### **Item 10. NOTICE OF TAXABLE POSSESSORY INTEREST**

The terms of the Agreement may result in the creation of a possessory interest. If such a possessory interest is vested in a private party to the Agreement, the private party may be subjected to the payment of property taxes levied on such interest.

#### **Item 11. ASSIGNMENT OF ANTITRUST ACTIONS**

Public Contract Code Section 7103.5 provides:

In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Design-Builder or Subcontractor offers and agrees to assign to the awarding body (Owner) 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. Section 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Design-Builder, without further acknowledgment by the parties. Design-Builder, for itself and all Subcontractors, agrees to assign to Owner all rights, title, and interest in and to all such causes of action Design-Builder and all Subcontractors may have under the Agreement. This assignment shall become effective at the time Owner tenders final payment

to the Design-Builder and Design-Builder shall require assignments from all Subcontractors to comply herewith.

## **Item 12. OTHER CONTRACTS**

(a) DESIGN-BUILDER is aware that this Project site may be split into several phases, multiple prime and or separate contracts. OWNER reserves the right to let other contracts in connection with this Project, and it shall be the duty of the DESIGN-BUILDER to participate in Project coordination meetings and to otherwise actively schedule and coordinate its work with the OWNER'S forces, OWNER'S other contractor(s) and or other multiple prime contracts. No extra costs or delays shall be considered as a result of DESIGN-BUILDER's failure to provide such scheduling, coordination and cooperation. DESIGN-BUILDER shall afford other contractors reasonable opportunity for introduction and storage of their materials and execution of their work and shall properly connect and coordinate its Work with such other contractors.

(b) If any part of DESIGN-BUILDER's work depends for proper execution or results upon work of any other contractor, the DESIGN-BUILDER shall review and accept or promptly report to CONSTRUCTION MANAGER in writing any defects in such work that renders it unsuitable for such proper execution and results. DESIGN-BUILDER's failure to review and accept or report shall constitute its acceptance of other contractor's work as fit and proper for reception and performance of its Work, except as to defects which may develop in other contractor's work after execution of DESIGN-BUILDER's work.

(c) To ensure proper execution of its subsequent work, DESIGN-BUILDER shall measure and inspect work already in place and shall at once report to the CONSTRUCTION MANAGER in writing any discrepancy between executed work and Contract Documents.

(d) The OWNER, at its discretion may elect to remove a duplicate item from a scope of Work with an appropriate contract adjustment.

(e) Nothing herein contained shall be interpreted as granting to DESIGN-BUILDER exclusive occupancy at the site of the Project Site. DESIGN-BUILDER shall not cause any unnecessary hindrance or delay to any other contractor working on the Project. If simultaneous execution of any contract for the Project is likely to cause interference with performance of some other contract or contracts, CONSTRUCTION MANAGER shall decide which contractor shall cease work temporarily and which contractor shall continue or whether work can be coordinated so that contractors may proceed simultaneously.

(f) If the Project is split into phases and/or bid packages then DESIGN-BUILDER has made Allowances for any delays or damages which may arise from reasonable anticipated coordination with contractors for other phases. If any delays should arise from a contractor working on a different phase, DESIGN-BUILDER's reasonable and proportionate remedy for damages, including delay damages, shall be against the contractor who caused such damage and not the OWNER. DESIGN-BUILDER shall provide access to contractors for other phases as necessary to prevent delays and damages to contractors working on other phases of construction.

## **Item 13. OCCUPANCY**

OWNER reserves the right to occupy and use buildings and/or portions of the Site at any time before Final Completion, and such occupancy shall not constitute final acceptance of any part of Work covered by this Agreement, nor shall such occupancy extend the date specified for completion of the Work. The warranty period for the Project will begin upon recording of the Notice of Completion. Prior to occupancy of any portion of the Project by the OWNER, OWNER and the DESIGN-BUILDER shall agree in writing to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Work, insurance, the period for correction of the Work. Immediately prior to such Partial Occupancy or use, the OWNER, the DESIGN-BUILDER, and the CONSTRUCTION MANAGER shall jointly inspect the

area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

#### **Item 14. BONDS**

(a) Unless otherwise specified in the Special Conditions, prior to commencing any portion of the Work, DESIGN-BUILDER shall apply for and furnish OWNER separate payment and performance Bonds for its Work on the Project. The performance bond shall be in an amount equal to one hundred percent (100%) of the Contract Price to cover 100% faithful performance of and payment of all obligations arising under the Contract Documents. The payment bond shall be in an amount equal to one hundred percent (100%) of the Contract Price to guarantee the payment in full of all claims for labor performed and materials supplied in connection with the Project.

(b) To the extent, if any, that the Contract Price is increased in accordance with the Contract Documents, DESIGN-BUILDER shall cause the amount of the performance and payments Bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to OWNER. To the extent available, the Bonds shall further provide that no change or alteration of the Contract Documents (including, without limitation, an increase in the Contract Price, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to DESIGN-BUILDER will release the Surety. If DESIGN-BUILDER fails to furnish the required Bonds, OWNER may terminate the Contract for cause.

(c) Only Bonds executed by admitted surety insurers as defined in California Code of Civil Procedure section 995.120 shall be accepted. OWNER reserves the right to approve or reject the Surety insurers selected by DESIGN-BUILDER and to require DESIGN-BUILDER to obtain Bonds from surety insurers satisfactory to OWNER.

#### **Item 15. SUBSTITUTION OF SECURITIES**

(a) Pursuant to the requirements of Public Contract Code Section 22300, upon DESIGN-BUILDER's written request, OWNER will make payment to DESIGN-BUILDER of any earned retention funds withheld from payments under this Agreement if DESIGN-BUILDER deposits with the OWNER or in escrow with a California or federally chartered bank acceptable to OWNER, securities eligible for the investment pursuant to Government Code Section 16430 or bank or savings and loan certificates of deposit, upon the following conditions:

(1) DESIGN-BUILDER shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.

(2) All expenses relating to the substitution of securities under Section 22300 and under this Item, including, but not limited to expenses of the escrow agent; and excluding OWNER's overhead and administrative expenses, shall be the responsibility of the DESIGN-BUILDER.

(3) If DESIGN-BUILDER chooses to enter into an escrow agreement, such agreement shall be satisfactory to OWNER, which agreement shall be in the form satisfactory to the Owner which shall allow for the conversion to cash to provide funds to meet defaults by the DESIGN-BUILDER including, but not limited to, termination of the DESIGN-BUILDER's control over the Work, stop notices filed pursuant to law, assessment of liquidated damages or amounts to be kept or retained under the provisions of the Contract Documents.

(4) Securities, if any, shall be returned to DESIGN-BUILDER only upon satisfactory completion of the Agreement.

(b) To minimize the expense caused by such substitution of securities, DESIGN-BUILDER shall, prior to or at the time DESIGN-BUILDER requests to substitute security, deposit sufficient security to cover the entire amount to be then withheld and to be withheld under the General Conditions of this Agreement.

Should the value of such substituted security at any time fall below the amount for which it was substituted, or any other amount which the OWNER determines to withhold, DESIGN-BUILDER shall immediately and at DESIGN-BUILDER's expense deposit additional security qualifying under Section 22300 until the total security deposited is no less than equivalent to the amount subject to withholding under the Agreement.

(c) In the alternative, under Section 22300, the DESIGN-BUILDER may request OWNER to make payment of earned retentions directly to the escrow agent at the expense of the DESIGN-BUILDER. Also at the DESIGN-BUILDER's expense, the DESIGN-BUILDER may direct investment of the payments in securities, and the DESIGN-BUILDER shall receive interest earned on such investment upon the same conditions as provided for securities deposited by DESIGN-BUILDER. Upon satisfactory completion of the Project, DESIGN-BUILDER shall receive from the escrow agent all securities, interest and payments received by escrow agent from CITY pursuant to the terms of Section 22300. If DESIGN-BUILDER elects to receive interest on monies withheld in retention by OWNER, DESIGN-BUILDER shall, at the request of any Subcontractor, make that option available to the Subcontractor regarding any monies withheld in retention by the DESIGN-BUILDER from the Subcontractor. If the DESIGN-BUILDER elects to receive any interest on any monies withheld in retention by the OWNER, then the Subcontractor shall receive the identical rate of interest received by the DESIGN-BUILDER on any retention monies withheld from the Subcontractor by the DESIGN-BUILDER, less any actual pro rata costs associated with administering and calculating that interest. In the event the interest rate is a fluctuating rate, the rate for the Subcontractor shall be determined by calculating the interest rate paid during the time that retentions were withheld from the Subcontractor. If the DESIGN-BUILDER elects to substitute securities in lieu of retention, then, by mutual consent of the DESIGN-BUILDER and Subcontractor, the Subcontractor may substitute securities in exchange for the release of monies held in retention by DESIGN-BUILDER. This shall apply only to those Subcontractors performing more than five percent (5%) of the DESIGN-BUILDER's total bid. The DESIGN-BUILDER shall not require any Subcontractor to waive any provision of this section.

#### **Item 16. LIABILITY, PROPERTY, FIRE, BUILDER'S RISK AND OTHER INSURANCE REQUIREMENTS**

Requirements as set forth in the Contract Documents (Reference Supplemental General Conditions).

#### **Item 17. WORKERS' COMPENSATION INSURANCE**

(a) In accordance with the provisions of Section 3700 of the California Labor Code, the DESIGN-BUILDER and every Subcontractor shall be required to secure the payment of compensation to its employees.

(b) The DESIGN-BUILDER shall provide, during the term of the Agreement, workers' compensation insurance for all of its employees engaged in Work under the Contract Documents on or at the Project Site, and, in case any of its Work is sublet, the DESIGN-BUILDER shall require the Subcontractor similarly to provide workers' compensation insurance for all the latter's employees engaged in Work under the subcontract in compliance with Laws and Regulations. Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by the DESIGN-BUILDER's insurance. In case any class of employees engaged in Work under the Contract Document on or at the Project Site is not protected under the workers' compensation laws, the DESIGN-BUILDER shall provide, or shall cause a Subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected before the commencement of the Work.

(c) The DESIGN-BUILDER shall file with the OWNER certificates of its insurance as required under this Item and in compliance with California Labor Code section 3700. A thirty (30) day notice shall be provided to OWNER before the cancellation or reduction of any such insurance of DESIGN-BUILDER or Subcontractor. DESIGN-BUILDER shall submit proof of insurance and shall provide endorsements on the forms provided by the OWNER or on forms approved by the OWNER.

(d) Prior to commencing work, the DESIGN-BUILDER shall sign and file with the OWNER the certificate required by the Labor Code section 1861, acknowledging the requirement to insure against liability for

workers' compensation and promising to comply with this requirement before commencing work under the contract, and continuing to comply thereafter. The form of this certificate is included below.

**(e) Form of Worker's Compensation Certificate.**

**WORKERS' COMPENSATION CERTIFICATE**

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

Date \_\_\_\_\_  
Name of Design-Builder

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

\_\_\_\_\_  
Print Name  
Title

(In accordance with Article 5 [commencing at Section 1860], Chapter 1, Part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any work under the contract.)

**Item 18. DRAWINGS AND SPECIFICATIONS**

**(a)** DESIGN-BUILDER is responsible for the completeness and accuracy of architectural or engineering plans and Specifications, notwithstanding any other provision in the Contract Documents.

**(b)** Plans and Specifications are intended to comply with all Laws and Regulations, and where referred to in the Contract Documents, these Laws and Regulations shall be considered as a part of the Agreement within the limits specified. The DESIGN-BUILDER shall bear all expenses of correcting work done contrary to applicable Laws and Regulations and if the DESIGN-BUILDER performed the work (1) without first consulting the CONSTRUCTION MANAGER for further instructions regarding the Work, or (2) in disregard of the CONSTRUCTION MANAGER s instructions regarding the Work.

**(c)** The order of precedence of documents shall be: (1) Rules and Regulations of Federal, State and Local Agencies relating to the source of funds for this Project; (2) Permits from other agencies as may be required by law; (3) Supplemental Agreements, Change Orders, Contract or Amendments such as the Contract Price Amendment; the one dated later having precedence over another dated earlier; (4) Special Conditions; (5) Supplemental General Conditions; (6) General Conditions; (7) Technical Specifications; (8) Plans; (9) Standard Specifications; (10) Standard Plans. Detailed Plans shall have precedence over general Plans. Whenever any conflict appears in any portion of the Contract, it shall be resolved by application of the order of precedence.

**(d)** Materials or work described in words, which so applied, have a well-known technical or trade meaning shall be deemed to refer to such recognized standards.

**(e)** It is not the intention of the Agreement to go into detailed descriptions of any Materials and/or methods commonly known to the trade under "trade name" or "trade term." The mere mention or notation of such "trade name" or "trade term" shall be considered a sufficient notice to DESIGN-BUILDER that it will be required to complete the Work so named with all its incidental and accessory items according to the best practices of the trade.

(f) The naming of any material and/or equipment shall mean furnishing and installing, including all incidental and accessory items thereto and/or labor necessary to achieve full and complete functioning of the material and/or equipment according to the best practices of the trade(s) involved, unless specifically noted otherwise.

(g) One (1) full set of Contract Documents shall be provided to each Subcontractor by DESIGN-BUILDER via a link to an online electronic file project management system, Egnyte, ProCore, eBuilder, or other Similar online systems. Costs for all printing and reproductions of any Contract Documents shall be the responsibility of each Subcontractor.

(1) **Electronic copies** as provided for herein related to shop drawings, submittals, and close-out documents shall be in the following formats: All document copies shall be in PDF format.

#### **Item 19. OWNERSHIP OF PLANS/DRAWINGS**

(a) **Work Product.** Any and all original sketches, pencil tracings of working drawings, plans, computations, specifications, computer disk files, writings and other documents prepared or provided by Design-Builder pursuant to this Agreement are the property of Owner at the time of preparation and shall be turned over to Owner upon expiration or termination of the Agreement or default by Design-Builder. Design-Builder grants Owner a copyright license to use such drawings and writings. Design-Builder shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein. Owner may modify the design including any drawing or writings. Any use by Owner of the aforesaid sketches, tracings, plans computation, specifications, computer disk files, writings and other documents in completed form as to other projects or extensions of this Project, or in uncompleted form, without specific written verification by Design-Builder will be at Owner's sole risk and without liability or legal exposure to Design-Builder. Design-Builder may keep a copy of all drawings and specifications for its sole and exclusive use.

(b) **Owner's Limited License upon Owner's Termination for Convenience or Design-Builder's Election to Terminate.** If Owner terminates this Agreement for its convenience as set forth in Item 67, or if Design-Builder elects to terminate this Agreement in accordance with Item 68 of these Design-Build General Conditions, Design-Builder shall, upon Owner's payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights as set forth in Item 19 (a) herein, conditioned on the following:

(1) Use of the Work Product is at Owner's sole risk without liability or legal exposure to any Indemnified Party, and on the Owner's obligation to provide the indemnity set forth in (d) herein, and

(c) **Owner's Limited License upon Design-Builder's Default.** If this Agreement is terminated due to Design-Builder's default pursuant to Item 66 of these Design-Build General Conditions, then Design-Builder grants Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights and obligations as set forth in Item 19 (a) herein. Notwithstanding the preceding sentence, if it is ultimately determined that Design-Builder was not in default, Owner shall be deemed to have terminated the Agreement for convenience, and Design-Builder shall be entitled to the rights and remedies set forth in Item 19, herein.

(d) **Owner's Indemnification for Use of Work Product.** Owner recognizes that in the event of an early termination of the Work, whether for convenience or for cause, Design-Builder will not have the opportunity to finish or to finalize its Work Product. Therefore, if Owner uses the Work Product, in whole or in part, or if Owner is required to indemnify any Indemnified Parties based on the use or alteration of the Work Product under any of the circumstances identified in this Item 19, Owner shall defend, indemnify, and hold harmless the Indemnified Parties 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 Work Product, to the fullest extent permitted by applicable law.



## **Item 20. DETAIL DRAWINGS AND INSTRUCTIONS**

(a) DESIGN-BUILDER shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by DESIGN-BUILDER, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, Specifications and other design submittals to permit DESIGN-BUILDER to complete the Work consistent with the Contract Documents.

(b) The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under Similar conditions at the same time and Locality of the Project.

(c) All parts of the described and shown construction shall be of the best quality of their respective kinds and the DESIGN-BUILDER is hereby advised to use all diligence to become fully involved as to the required construction and finish.

## **Item 21. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

(a) The purpose of Shop Drawings, Product Data, Substitutions, Samples and Similar submittals is to demonstrate for those portions of the Work for which submittals are required the way the DESIGN-BUILDER proposes to conform to the information given and the design concept expressed in the Contract Documents.

(b) To cause no delay to the Work, the DESIGN-BUILDER shall review, approve, verify, each Shop Drawing, Product Data, Sample, and submittal required by the Contract Documents in accordance with the approved Project Schedule as prescribed in Item 29.

(c) The DESIGN-BUILDER shall notify the OWNER and make available all submittals for review.

(1) A Submittal Register shall be submitted within 20 working days of Phase 2 Notice to Proceed. The Owner shall note on the Submittal Register which submittals are "FOR INFORMATION ONLY" or "FOR REVIEW AND APPROVAL" by the OWNER.

(2) Submittals shall be submitted at a time sufficiently early to allow a 7-day review of same by the OWNER, and to accommodate the rate of construction progress required under the Contract Documents.

(d) All submittals shall be complete and conform to Contract Documents. By approving, verifying and submitting Shop Drawings, Product Data, Samples and Similar submittals, the DESIGN-BUILDER represents that it has determined and verified materials, field measurements, and field construction criteria related thereto (or will do so) and DESIGN-BUILDER has checked and coordinated the information contained in the submittals with the requirements of the Work and of the Contract Documents.

(e) The DESIGN-BUILDER is not relieved of responsibility for deviations from requirements of the Contract Documents unless the DESIGN-BUILDER has specifically informed the OWNER in writing of each deviation at the time of submittal and the OWNER has approved the specific deviation in writing.

(f) Any re-submittals shall reference the designation corresponding to the original Shop Drawing submittal with a modifier indicating the revision number. OWNER'S approval of such drawings, schedules, or materials list shall not relieve DESIGN-BUILDER from responsibility for deviations unless DESIGN-BUILDER has in writing called OWNER'S attention to such deviations at time of submission and secured OWNER'S written approval, nor shall it relieve DESIGN-BUILDER from responsibility for errors in Shop Drawings or schedules.

(g) By providing a submittal to the Owner or CONSTRUCTION MANAGER, DESIGN-BUILDER certifies that it has reviewed the document, sample or drawing(s) for conformance with the Contract Documents including any field verification of dimensions or other existing conditions.

(h) Submittal Actions:

(1) If the submittal is returned to the DESIGN-BUILDER marked "**NO EXCEPTIONS TAKEN**," formal revision of said submittal will not be required.

If the submittal is returned to the DESIGN-BUILDER marked "**MAKE CORRECTIONS NOTED**," formal resubmittal of said submittal will not be required.

If the submittal to the DESIGN-BUILDER marked "**REVISE AND RESUBMIT**," the DESIGN-BUILDER shall revise said submittal and shall resubmit one (1) electronic copy of the revised submittal to the CONSTRUCTION MANAGER.

If the submittal is returned to the DESIGN-BUILDER marked "**REJECTED**," and it will not be used.

(2) Fabrication of a "FOR REVIEW AND APPROVAL" submittal shall not be commenced before the OWNER has reviewed the pertinent submittal and returned copies to the DESIGN-BUILDER marked with "NO EXCEPTIONS TAKEN," or "MAKE CORRECTIONS NOTED." Revisions indicated on submittal shall be considered as changes necessary to meet the requirements of the Contract Documents and shall not be taken as the basis of claims for extra work. The review of such submittal by the OWNER will be limited to checking for general agreement with the Contract Documents, and shall in no way relieve the DESIGN-BUILDER of responsibility for errors or omissions contained therein, nor shall such review operate to waive or modify any provision contained in the Contract Documents. Fabricating dimensions, quantities of material, applicable code requirements, and other requirements of the Contract Documents shall be the DESIGN-BUILDER's responsibility. DESIGN-BUILDER shall coordinate integral and adjacent materials with other contracts prior to final shop drawings and fabrication.

(3) Calculations of a structural nature must be approved by the Authority Having Jurisdiction.

(4) THE DESIGN-BUILDER SHALL HAVE NO CLAIM FOR DAMAGES OR EXTENSION OF TIME DUE TO:

- ANY DELAY RESULTING FROM THE DESIGN-BUILDER HAVING TO MAKE THE REQUIRED REVISIONS TO SUBMITTAL;
- REVIEW BY THE OWNER DELAYED BEYOND THE TIME PROVIDED HEREIN UNLESS THE DESIGN-BUILDER CAN ESTABLISH THAT THE OWNER'S DELAY IN REVIEW ACTUALLY RESULTED IN A DELAY TO THE CRITICAL PATH OF THE DESIGN-BUILDER'S CONSTRUCTION SCHEDULE; and
- RESULTING FROM THE *AUTHORITY HAVING JURISDICTION* REVIEW.

THE OWNER MAY CONSIDER AN EXTENSION OF TIME DUE TO ANY DELAY CAUSED BY THE *AUTHORITY HAVING JURISDICTION* UPON A WRITTEN REQUEST FROM THE DESIGN-BUILDER.

## **Item 22. LAYOUT AND FIELD ENGINEERING**

(a) All field engineering required for establishment of: grades for earthwork operations, building corners, grid lines for each Building, (minimum of 4 grid lines) and site utilities shall be furnished by the DESIGN-BUILDER.

(b) The DESIGN-BUILDER performing the Work shall provide all layouts necessary to complete the Work. Layout shall include coordination drawings as well as the physical performance of the layout by the Design-Builder.

(c) **"Record Drawings"** of site development shall be prepared by the DESIGN-BUILDER, indicating revisions to the grading and the underground utility locations (horizontal and vertical locations) on the Record Drawings provided by the DESIGN-BUILDER as required to provide accurate as-built information. All other record drawing information including but not limited to Building and hardscape shall be noted on the Contract Documents using the following **color code: Green, for additions, Red, for deletions, and Blue for notations**. The CONSTRUCTION MANAGER shall, at its option, confirm all grades and utility locations are accurate prior to final payment to the DESIGN-BUILDER.

#### **Item 23. SOILS INVESTIGATION REPORT & CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS**

(a) When a soils investigation report has been obtained from test holes at the site, such report is available for the DESIGN-BUILDER's use in preparing its bid and work under this Agreement. Any information obtained from such report or any information given on drawings as to surface and subsurface soil condition or to elevations of existing grades or elevations of underlying rock is approximate only. If, during the course of Work under this Agreement, DESIGN-BUILDER encounters subsurface or latent conditions that differ materially from those indicated in the soils investigation report, if any, then DESIGN-BUILDER shall notify the CONSTRUCTION MANAGER immediately upon discovery of said condition.

(b) If, during the course of Work under this Agreement, DESIGN-BUILDER encounters subsurface or otherwise concealed physical conditions, that differ materially from those indicated in the Contract Documents, or unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in contract activities of the character provided for in the Contract Documents, then DESIGN-BUILDER shall notify the OWNER of the discovery of the condition before the condition is materially changed, disturbed and/or covered. DESIGN-BUILDER shall submit notice of possible claim for additional time and/or cost, no later than three (3) business days after the first observance of the above-referenced conditions.

(c) WARNING: OWNER DOES NOT WARRANT THE SOILS AT THE PROJECT SITE. SOILS INVESTIGATION REPORT IS PROVIDED FOR DESIGN-BUILDER'S INFORMATION ONLY. OWNER DOES NOT WARRANT THE SOILS CONDITIONS OF THE SITE AND DESIGN-BUILDER IS FULLY RESPONSIBLE TO ASCERTAIN SITE CONDITIONS FOR THE PURPOSES OF DETERMINING CONSTRUCTION MEANS AND METHODS PRIOR TO COMMENCING CONSTRUCTION.

#### **Item 24. TESTS AND INSPECTIONS**

(a) Tests and inspections will comply with all applicable Laws and Regulations.

(b) If the Agreement, OWNER'S instructions, Laws and Regulations, or any public authority require any Work to be specially tested or approved, DESIGN-BUILDER shall give notice in accordance with such authority of its readiness for observation or inspection at least twenty-four (24) hours prior to being tested or covered up. If inspection is by authority other than OWNER, DESIGN-BUILDER shall inform the OWNER'S Inspector of the date fixed for such inspection. DESIGN-BUILDER shall secure required certificates of inspection. Observations by OWNER'S Inspector shall be promptly made, and where practicable, at source of supply. If any Work should be covered up without Approval or consent of OWNER'S Inspector, it must be uncovered for examination and satisfactorily reconstructed at DESIGN-BUILDER's expense in compliance with the Agreement. Costs of tests, inspections and any materials found to be not in compliance with the Agreement shall be paid for by the DESIGN-BUILDER and be deducted from the Contract Price. Other costs for test and inspection shall be paid by the OWNER.

#### **Item 25. TRENCHES**

(a) DESIGN-BUILDER shall Provide adequate sheeting, shoring, and bracing, or equivalent method, for the protection of life and limb in trenches and open excavation that conform to applicable safety standards.

(b) If this Agreement involves the excavation of any trench or trenches five feet or more in depth, the DESIGN-BUILDER shall, in advance of excavation, submit to the OWNER or to whomever OWNER designates a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the Shoring System Standards established by the Construction Safety Orders of the Division of Industrial Safety, the plan shall be prepared by a registered civil or structural engineer employed by the DESIGN-BUILDER, and all costs therefore shall be included in the price named in the Contract Price for completion of the work as set forth in the Contract Documents. In no case shall such plan be less effective than that required by the Construction Safety Orders. No excavation of such trench or trenches shall be commenced until said plan has been accepted by CAL-OSHA and a CAL-OSHA permit for such plan delivered to the OWNER. (Labor Code Section 6705; Health and Safety Code Section 17922.5).

(c) If this Agreement involves the digging of trenches or excavations, the following shall apply:

(1) The DESIGN-BUILDER shall promptly, and before the following conditions are disturbed, notify the OWNER, in writing, of any:

(A) Material that the DESIGN-BUILDER believes may be 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 provisions of existing law.

(B) Subsurface or latent physical conditions at the site differ from those indicated.

(C) Unknown physical conditions at the Site of any unusual nature, differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.

(2) The OWNER shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contract Price or Contract Time required for performance of any part of the Work, City shall issue a Change Order under the procedures described in the Contract Documents.

(3) In the event a dispute arises between the OWNER and the DESIGN-BUILDER, whether the conditions materially differ or involve hazardous waste, or cause a decrease or increase in the Contract Price or Contract Time relating to any part of the Work, the DESIGN-BUILDER shall not be excused from any scheduled completion date provided for by the Contract Documents, but shall proceed with all the Work to be performed under the Contract Documents. The DESIGN-BUILDER shall retain any and all rights provided either by contract or by Law which pertain to the resolution of disputes and protests between the contracting parties (Public Contract Code section 7104).

## **Item 26. DOCUMENTATION OF THE WORK**

(a) DESIGN-BUILDER shall keep on the Site at all times one legible copy of all Contract Documents, including and annotated with Addenda and Change Orders, and all approved Drawings, Plans, Project Schedules and Specifications. Throughout the duration of the Project, DESIGN-BUILDER shall develop, maintain, and update a complete set of As-Built Drawings and Specifications representing the current status of the Work. Said documents shall be kept in good order and available to the OWNER and CONSTRUCTION MANAGER, and their representatives, and all authorities having jurisdiction over the Project.

## **Item 27. SUBSTITUTIONS**

Requests for changes in products, materials, equipment, and methods of construction required by Contract Documents proposed by the DESIGN-BUILDER after award of the Contract are considered requests for "substitutions." Substitutions will be processed in accordance with the Technical Specifications of the Project.

#### **Item 28. SAMPLES**

DESIGN-BUILDER shall furnish for approval, all samples as required in Specifications together with catalogs and supporting data required by OWNER and identify those Samples in the Submittal Register according to Item 21.

#### **Item 29. PROJECT SCHEDULES**

(a) The DESIGN-BUILDER shall establish, update and maintain the Project Schedule throughout the Work. A Project Schedule shall be part of the PROPOSAL. An updated Project Schedule in "critical path" format shall be provided to the OWNER within 45 days of the Notice to Proceed. The Project Schedule shall be revised as required by condition and progress of the Work. Revisions shall not relieve the DESIGN-BUILDER of its obligations to complete the Work within the Contract Time(s); as such dates may be adjusted in accordance with the Contract Documents.

(1) The OWNER'S review and response to the Project Schedule is only for general conformance with the scheduling requirements of the Contract Documents. The OWNER'S review does not relieve the DESIGN-BUILDER from compliance with the requirements of the Contract Documents. The DESIGN-BUILDER has complete and exclusive control over all means, methods, sequences and techniques for executing the Work.

(2) The Project Schedule shall become the baseline schedule for the Project, which shall be in the "Critical Path" format. The Project is subject to change during construction and will be continually updated and adjusted throughout the Project by DESIGN-BUILDER on at least a monthly basis.

(3) Project progress. The DESIGN-BUILDER will provide a monthly status report of the Project costs and progress of the Work, including photos. In the report, the DESIGN-BUILDER will indicate whether the Work is proceeding according to schedule and risk going forward including a Risk Register. The Risk Register will identify items that require resolution so as not to jeopardize the DESIGN-BUILDER's ability to complete the Work for the Contract Price and within the Contract Time and potential impact on contingency use.

(4) The DESIGN-BUILDER will prepare a monthly schedule update, which will comport with the monthly billing percentages shown on that month's approved Schedule of Values form.

(5) The DESIGN-BUILDER, at each weekly Project meeting shall provide OWNER with three-week look-ahead schedules identifying its planned prosecution of the Work.

(d) DESIGN-BUILDER will exchange scheduling information with Subcontractors and suppliers. DESIGN-BUILDER will order work, equipment and materials with sufficient lead-time to avoid interruption of the Work.

(e) Any activities shown in the Contract Documents but not specifically noted in the Project Schedule shall be performed in the proper sequence of work to allow proper execution of the Work.

#### **Item 30. MATERIALS AND WORK**

(a) Except as otherwise specifically stated in the Contract Documents, DESIGN-BUILDER shall provide and pay for all Materials, supplies, tools, equipment, labor, transportation, superintendence, temporary constructions of every nature, and all other services and facilities of every nature whatsoever necessary to execute and complete the Project within the Contract Time.

(b) Unless otherwise specified in the Contract Documents, all Materials shall be new and the best of their respective kinds and grades as noted or specified, and workmanship shall be of good quality.

(c) Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of Work and shall be stored properly and protected as required.

(d) DESIGN-BUILDER shall, after issuance of the Notice to Proceed by CONSTRUCTION MANAGER, place orders for Materials and/or equipment as specified so that delivery may be made without delays to the Work. DESIGN-BUILDER shall, upon demand by the CONSTRUCTION MANAGER, furnish to the CONSTRUCTION MANAGER documentary evidence showing that orders have been placed.

(e) No Materials, supplies, or equipment for Work under this Agreement shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier. DESIGN-BUILDER warrants good title to all material, supplies, and equipment installed or incorporated in the Work and agrees upon completion of all Work to deliver the premises, together with all improvements and appurtenances constructed or placed thereon by it, to OWNER free from any claims, liens, or charges. DESIGN-BUILDER further agrees that neither it nor any person, firm, or corporation furnishing any materials or labor for any Work covered by this Agreement shall have any right to any lien upon the premises or any improvement or appurtenance thereon.

(f) Nothing contained in this Item, however, shall defeat or impair the rights of persons furnishing material or labor under any bond given by DESIGN-BUILDER for their protection or any rights under any Law or Regulation permitting such persons to look to funds due DESIGN-BUILDER in the hand of OWNER, and this provision shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing materials or labor when no formal contract is entered into for such materials or labor.

(g) Materials and/or equipment and the attendant liability for its protection and safety shall remain the responsibility of the DESIGN-BUILDER until incorporated in the Work and accepted by the OWNER; no part of the Materials and/or equipment shall be removed from its place of storage except for immediate installation in the Work; and DESIGN-BUILDER shall keep an accurate inventory of all Materials and/or equipment in a manner satisfactory to the OWNER or its authorized representative.

### **Item 31. INTEGRATION OF WORK**

(a) DESIGN-BUILDER shall do all cutting, fitting, patching, and preparation of Work as required to make its several parts come together properly, and fit it to receive or be received by work of other CONTRACTORS; including both the DESIGN-BUILDER's and OWNER's forces.

(b) DESIGN-BUILDER shall be solely responsible for protecting existing Work on adjacent properties and shall obtain all required permits for shoring and excavations near property lines.

(c) When modifying existing work or installing new work adjacent to existing work, DESIGN-BUILDER shall match, as closely as conditions of the site and materials will allow, the finishes, textures, and colors of the original work, refinishing existing work as required, at no additional cost to OWNER.

### **Item 32. OBTAINING OF PERMITS, LICENSES AND EASEMENTS**

(a) Permits, licenses, and certificates necessary for prosecution of Work, shall be secured and paid for by DESIGN-BUILDER, and reimbursed to DESIGN-BUILDER by OWNER. City of Fresno Building and Grading permits shall be paid directly by the OWNER and secured by DESIGN-BUILDER. All such permits, licenses, and certificates, or copies thereof, shall be delivered to the CONSTRUCTION MANAGER prior to the Work being performed or demand is made for the certificate of final payment whichever comes first. DESIGN-BUILDER shall, and shall require its Subcontractors to, maintain in effect all appropriate DESIGN-BUILDER's licenses in effect as required by Law or Regulations.

(b) Easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by OWNER, unless otherwise specified.

(c) Permits and charges for utility services by serving utilities shall be secured and paid for by OWNER, including development and capitol facility fees, Electrical and Gas Rule 16 fees, Cable and Telephone fees.

(d) If applicable, the DESIGN-BUILDER shall file a Notice of Intent to comply with the terms of the general permit to discharge storm water associated with construction activity (WQ Order No. 920-08-DWQ). The Notice of Intent must be sent to the following address along with the appropriate payment (warrant to be furnished by the OWNER upon request by the DESIGN-BUILDER, allow warrant processing time.): California State Water Resources Control Board, Division of Water Quality, Storm Water Permit Unit, P.O. Box 1977, Sacramento, CA 95812-1977. The DESIGN-BUILDER may also call the State Water Board's Construction Activity Storm Water Hotline at (916) 657-1146. The Notice of Intent shall be filed prior to the start of any construction activity.

### **Item 33. SURVEYS**

Surveys to determine location of property lines and corners and existing "As-Built" conditions will be supplied by the OWNER. Surveys to determine locations of construction, grading, site utilities and site work, shall be provided by the DESIGN-BUILDER as Called For in the Contract Documents.

### **Item 34. EXISTING UTILITY LINES; REMOVAL, RESTORATION**

(a) Pursuant to Government Code Section 4215, the OWNER assumes the responsibility for removal, relocation, and protection of existing main or trunkline utility facilities located on the construction site at the time of commencement of construction under this Agreement with respect to any such utility facilities which are not identified in the plans and Specifications. The DESIGN-BUILDER shall not be assessed for liquidated damages for delay in completion of the Project caused by failure of the OWNER to Provide for removal or relocation of such utility facilities. If the DESIGN-BUILDER, while performing Work under this Agreement, discovers utility facilities not identified by the OWNER in the plans or Specifications, DESIGN-BUILDER shall immediately notify the OWNER and the utility in writing. To the extent that said unforeseen conditions result in extra costs or delays to the Work, DESIGN-BUILDER shall be compensated according to the provisions governing changes in the Work.

(b) This Item shall not be construed to preclude assessment against the DESIGN-BUILDER for any other delays in completion of the Work. Nothing in this Item shall be deemed to require the OWNER to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the construction site can be inferred from the presence of other visible facilities, such as buildings, meter junction boxes, on or adjacent to the site of the construction.

(c) As part of the work to be performed, DESIGN-BUILDER shall provide the notices and proceed in accordance with Government Code Sections 4216.2, 4216.3 and 4216.4 (available at <http://www.usanorth.org>), and shall pay all fees charged pursuant to Government Code Section 4216, et seq. Any fees paid by DESIGN-BUILDER shall be reimbursed by OWNER.

(d) Prior to any underground excavation and/or trenching within the DESIGN-BUILDER's scope of Work, the DESIGN-BUILDER shall provide the CONSTRUCTION MANAGER with a two (2) Working Day written notice. The DESIGN-BUILDER shall request the OWNER identify known City underground services to within a 5'0" +/- tolerance of the said service. Should the OWNER not identify a service, and the DESIGN-BUILDER damage such a service DESIGN-BUILDER shall immediately provide both the OWNER and the CONSTRUCTION MANAGER with notice thereof. The OWNER shall have the authority to repair the damaged service, or the OWNER and/or CONSTRUCTION MANAGER can direct DESIGN-BUILDER to repair the damaged service according to the provisions governing changes in the Work. In the event DESIGN-BUILDER damages a service(s) that have been identified by the OWNER, DESIGN-BUILDER

shall promptly repair service at no cost to the OWNER. DESIGN-BUILDER is required to schedule, notify and coordinate with "U.S.A. Locates" for the location(s) of all off-site services and or service connections.

### **Item 35. WORK TO COMPLY WITH APPLICABLE LAWS AND REGULATIONS**

(a) DESIGN-BUILDER shall give all notices and comply with all Laws and Regulations applicable to the Work, including Provisions for Fair Employment Practices as listed herein:

#### **FAIR EMPLOYMENT PRACTICES**

In connection with the performance of work under this Contract, the Design-Builder agrees as follows:

1. The Design-Builder will not willfully discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation or on any other basis prohibited by law. The Design-Builder will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation or on any other basis prohibited by law. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Design-Builder agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this Fair Employment Practices section.

2. The Design-Builder will send to each labor union or representative of Workers with which he/she has a collective bargaining agreement or other Contract or understanding, a notice advising the said labor union or Workers' representative of the Design-Builder's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

3. The Design-Builder will permit access to his/her records of employment, employment advertisement, application forms, and other pertinent data and records by the City or any other appropriate agency designated by the City, for the purposes of investigation to ascertain compliance with the Fair Employment Practices section of this Contract.

4. A finding of willful violation of the Fair Employment Practices section of this Contract or of the California Fair Employment and Housing Act shall be regarded by the City as a basis for determining the Design-Builder to be not a "responsible Bidder" as to future contracts for which such Design-Builder may submit bids, for revoking the Design-Builder prequalification rating, if any, and for refusing to establish, reestablish, or renew a prequalification rating for the Design-Builder.

The City will deem a finding of willful violation of the California Fair Employment and Housing Act to have occurred upon receipt of written notice from the Fair Employment and Housing Commission that it has investigated and determined that the Design-Builder has violated the California Fair Employment and Housing Act and has issued an order under Government Code Section 12973, Section 12970, or obtained an injunction under Government Code Section 12973.

Upon receipt of such written notice from the Fair Employment and Housing Commission, the City shall notify the Design-Builder that unless he/she demonstrated to the satisfaction of the City within a stated period that the violation has been corrected, that he/she will be reported to the City Council as not a "responsible Bidder" on any future Contract.

5. The Design-Builder agrees, that should the City determine that the Design-Builder has not complied with the Fair Employment Practices section of this Contract, then pursuant to Labor Code Section 1735 and 1775, the Design-Builder shall forfeit, as a penalty to the City, for each calendar day, or portion thereof, for each person who was denied employment as a result of such noncompliance, the penalties provided in the Labor Code for violation of prevailing wage rates. Such monies may be recovered from



the Design-Builder. The City may deduct any such damages from any monies due the Design-Builder from the City.

### **Item 36. ACCESS TO WORK**

OWNER and its representatives shall at all times have access to the Work wherever it is in preparation or progress. DESIGN-BUILDER shall provide safe and proper facilities for such access so that OWNER's representatives may perform their functions.

### **Item 37. TIMELY PAYMENTS BY DESIGN-BUILDER**

DESIGN-BUILDER shall pay:

(a) For all transportation and utility services not later than the 20th day of the calendar month following that in which such services are rendered; using funds received from OWNER;

(b) For all materials, tools, and other expendable equipment to the extent of ninety percent (90%) of cost thereof, not later than the twentieth (20<sup>th</sup>) day of the calendar month following that in which such materials, tools, and equipment are delivered at the site of the Project, and the balance of the cost thereof not later than the thirtieth (30<sup>th</sup>) day following completion of that part of the work in or on which such materials, tools, and equipment are incorporated or used; ~~and~~ using funds received from OWNER; and

(c) To each of its Subcontractors, not later than the 7th day following each payment to DESIGN-BUILDER by OWNER the respective amounts allowed DESIGN-BUILDER on account of work performed by the respective Subcontractor's to the extent of such Subcontractor's percentage interest therein.

### **Item 38. TEMPORARY UTILITIES**

EXCEPT as specifically noted in the SUMMARY OF WORK, all utilities, including but not limited to electricity, water, gas, temporary heat, lighting, and telephone used on the Work shall be furnished and paid for by DESIGN-BUILDER. DESIGN-BUILDER shall furnish and install necessary temporary distribution systems, including meters, if necessary, from distribution points to all points on the site where the utility is necessary to carry on the Work. Upon completion of the Work, DESIGN-BUILDER shall remove all temporary distribution systems.

### **Item 39. SANITARY FACILITIES**

The DESIGN-BUILDER shall provide sanitary temporary toilet facilities in no fewer numbers than required by Law. Use of permanent toilet facilities in the Work under construction shall not be permitted.

### **Item 40. CLEANING UP**

(a) DESIGN-BUILDER shall at all times keep the site free from DESIGN-BUILDER-generated debris such as waste, rubbish, and excess materials and equipment related to the Work, at the least, on a daily basis upon completion of DESIGN-BUILDER'S work. DESIGN-BUILDER shall clean all interior and exterior materials installed by DESIGN-BUILDER, and any areas and surfaces where debris and/or over-spray has collected as a result of the DESIGN-BUILDER'S Work. If the Project consists of any street improvements (paving / gutter and / sidewalk surfaces), drain inlets and any pipeline facilities, such Work shall also be free of any debris and sediments. DESIGN-BUILDER shall be responsible for the remediation and removal of all hazardous wastes, hazardous substances or other contaminants released as a direct result of DESIGN-BUILDER'S Work from the Project Site.

(b) The DESIGN-BUILDER shall provide final cleaning after the DESIGN-BUILDER's construction clean-up has been completed.

(c) DESIGN-BUILDER will provide dumpsters for the collecting and disposal of non-hazardous DESIGN-BUILDER generated waste from the Work, except as otherwise noted. DESIGN-BUILDER shall be responsible for placing waste into such dumpsters. If DESIGN-BUILDER fails to clean up, the OWNER shall do so and all of the costs thereof shall be charged to the DESIGN-BUILDER.

(d) DESIGN-BUILDER provided dumpsters shall be used ONLY for debris such as waste, rubbish, and excess materials generated by the new construction work. Any debris generated from demolition operations shall be placed in dumpsters provided by the DESIGN-BUILDER and shall be removed from the Site and disposed of by the DESIGN-BUILDER at the DESIGN-BUILDER'S expense.

#### **Item 41. PATENTS, ROYALTIES, AND INDEMNITIES**

The DESIGN-BUILDER shall defend, hold and save the OWNER, the OWNER, and its governing board, officers, authorized agents, and employees harmless from liability of any nature or kind, including cost and expense, for or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of this Agreement, including its use by the OWNER, unless otherwise specifically provided in the Contract Documents, and unless such liability arises from the sole negligence or willful misconduct of the OWNER.

#### **Item 42. GUARANTEE**

(a) DESIGN-BUILDER warrants that the Work (which includes any equipment furnished by DESIGN-BUILDER as part of the materials) shall:

- (1) Be free from defects in workmanship and material;
- (2) Be free from defects for any portion of the design performed by DESIGN-BUILDER;
- (3) Be new, and conform and perform to the requirements stated in the Specifications and where detail requirements are not so stated, shall conform to applicable industry standards; and
- (4) Be suitable for the use stated in the Specifications.

(b) The warranty period relating to the Work shall commence on the date of the Notice of Completion and continue for the period set forth in the Specifications or for one year if not so specified. If, during the warranty period, the Work is not available for use due to defective work, such time of unavailability shall not be counted as part of the warranty period. The warranty period for corrected defective work shall continue for a duration equivalent to the original warranty period.

(c) OWNER shall give DESIGN-BUILDER prompt written notice after discovery of any defective work. DESIGN-BUILDER shall correct any such defective work, as well as any damage to any other part of the Work or the Project directly resulting from such defective work, and shall provide repair, replacement, or reimbursement, at its reasonable and proportionate expense, in a manner approved by the OWNER, ordinary wear and tear, unusual abuse or neglect excepted. Such corrections shall include, but not be limited to, any necessary adjustments, modifications, changes of design (unless of OWNER'S design), removal, repair, replacement or reinstallation, and shall include all necessary parts, materials, tools, equipment, transportation charges and labor as may be necessary, and cost of removal and replacement of work shall be performed at a time and in such a manner so as to minimize the disruption to OWNER'S use of the Work.

(d) In the event of failure of DESIGN-BUILDER or Surety to commence and pursue with diligence any such repairs or replacements within five (5) business days for urgent items and fifteen (15) business days for non-urgent items, after being notified in writing, OWNER is hereby authorized to proceed to have defects repaired or replaced and made good at the expense of the DESIGN-BUILDER and the Surety who hereby agree to pay any costs and charges therefore immediately on demand.

(e) If, in the opinion of the OWNER, defective work creates a dangerous condition or requires immediate correction or attention to prevent further loss to the OWNER or to prevent interruption of operations of the

OWNER, the OWNER will attempt to give the written notice required by this Item. If the DESIGN-BUILDER or Surety cannot be contacted or does not comply with the OWNER's requirements for correction within a reasonable time as determined by the OWNER, the OWNER may, notwithstanding the provisions of this Item, proceed to make such correction or provide such attention and the costs of such correction or attention shall be charged against the DESIGN-BUILDER and Surety. Such action by the OWNER will not relieve the DESIGN-BUILDER and Surety of the guarantees provided in this Item or elsewhere in the Contract Documents.

(f) This Item does not in any way limit the guarantees on any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period. DESIGN-BUILDER shall furnish to OWNER, two (2) hard copies plus 3 electronic copies on compact disc, and all appropriate guarantee or warranty certificates upon completion of the Project or upon request by OWNER.

(g) As a condition of Final Completion, all guarantees required under this Item shall be in writing on the Guarantee form acceptable to the OWNER.

(h) As a condition of Final Completion, DESIGN-BUILDER shall provide to CONSTRUCTION MANAGER two (2) hard copies plus three (3) electronic copies on CD or Flash Drive of instruction, operation and maintenance manuals for all items that require same.

(i) Nothing herein shall limit any other rights or remedies available to OWNER.

#### **Item 43. DUTY TO PROVIDE COMPETENT WORKERS**

(a) DESIGN-BUILDER and Subcontractors shall at all times enforce strict discipline and good order among their employees and shall not employ on the Project any person not skilled or competent in the work assigned to such person. It shall be the responsibility of DESIGN-BUILDER to ensure compliance with this Item.

(b) Any person in the employ of the DESIGN-BUILDER or Subcontractors whom OWNER or CONSTRUCTION MANAGER may deem incompetent, troublesome or otherwise undesirable shall be excluded from Project Site and shall not again be employed on the Project except with the written consent of OWNER.

#### **Item 44. EMPLOYMENT OF LABOR/PREVAILING WAGE RATES:**

(a) GENERAL PROVISIONS: The following Nonfederal Labor Standards Provisions, including the following provisions concerning: maximum hours of work, minimum rates of pay, and overtime compensation, with respect to the categories and classifications of employees hereinafter mentioned are included in the Agreement pursuant to the requirements of applicable State or local laws, but the inclusion of such provisions shall not be construed to relieve the Design-Builder or any Subcontractor from the pertinent requirements of any corresponding Federal Labor-Standard Provisions of this Contract. In cases the minimum rates of pay set forth below shall be higher than the minimum rates of pay required by or set forth in the Federal Labor-Standards Provisions of this Agreement for corresponding classifications, the minimum rates of pay set forth below shall be deemed, for the purpose of this Agreement, to be the applicable minimum rates of pay for such classifications. The limitations, if any, in these Nonfederal Labor Standards Provisions upon the hours per day, per week or month which employees engaged on the work covered by this Agreement may be required or permitted to work thereon shall not be exceeded.

- (b) SCHEDULE OF WAGES AND SALARIES: In accordance with the provisions of Section 1770 to 1781, inclusive of the Labor Code of the State of California and/or Section (1)(b) of the United States Labor Code, the Director of Industrial Relations and/or the United States Secretary of Labor shall ascertain the general prevailing rate of wages applicable to the work to be done under this Contract to be included in these Specifications by reference. Copies of the wage rates or specific wage rate determinations may be obtained from <https://www.dir.ca.gov/OPRL/2020-1/PWD/index.htm>.
- (c) LABOR CODE SECTION 1775: PENALTIES FOR UNDER-PAYMENT OF WAGES: The Design-Builder and each Subcontractor shall comply with California Labor Code Section 1775 and pay not less than the wages established by the Director of the Department of Industrial Relations and/or the Federal government. In accordance with such Section 1775, Design-Builder or such Subcontractor shall, as a penalty to the Owner, forfeit up to two hundred dollars (\$200), as determined by the Labor Commissioner, for each calendar day or portion thereof for each worker under this Contract paid less than the established wage rates. These penalties shall be withheld from progress payments then due. The Design-Builder shall contain in each subcontract the requirements hereunder.
- (d) PENALTIES FOR VIOLATION OF EIGHT HOUR DAY: Eight hours labor constitutes a regular day's work under this Agreement. Design-Builder or any Subcontractor under him/her shall forfeit as a penalty to the Agency twenty-five (25) dollars for each worker employed in the execution of this Agreement by Design-Builder or such Subcontractor for each calendar day during which any such worker is required or permitted to labor more than eight hours in violation of Section 1810 to 1815 inclusive, of the Labor Code of the State of California.
- (e) LABOR CODE SECTION 1777.5; EMPLOYMENT OF APPRENTICES: If this Contract involves \$30,000 or more, the Design-Builder and each Subcontractor shall comply with California Labor Code Section 1777.5, as it may be amended from time to time, the entire provisions of which are incorporated by this reference as if fully set forth herein, and Article 10, Subchapter 1, Chapter 2, Title 8 of the California Code of Regulations for all apprenticeable occupations applicable to the work as defined in such Laws and Regulations. Design-Builder shall be responsible for the compliance with such Labor Code Section for all apprenticeable occupations and shall contain in each subcontract the requirements hereunder. In accordance with Section 1777.5 of the Labor Code of the State of California and the rules and regulations of the California Apprenticeship Council, properly indentured apprentices shall be employed in the execution of this Agreement in at least the ratio of not less than one hour of apprentice work for every five hours of journeyman work (unless the respective contractor or Subcontractor has been exempted from such ratio) and paid the prevailing rate of per diem wages for apprentices in the trade to which he/she is registered. The employment and training of each apprentice shall be in accordance with, either the apprenticeship standards and apprentice agreements under which he/she is training, or the rules and regulations of the California Apprenticeship Council. Prior to commencing work on the Agreement, Design-Builder and each Subcontractor shall submit contract award information to the City, if requested, and to an applicable apprenticeship program that can supply apprentices to the job site. The information shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. Within 60 days after concluding work on the Agreement, the Design-Builder and each Subcontractor shall submit to the City, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the Contract. Design-Builder shall employ apprentices for the number of hours computed before the end of the Agreement or, in the case of the Subcontractor, before the end of the subcontract and endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the job site.

(f) FRESNO MUNICIPAL CODE SECTION 4-113; LABOR CODE SECTION 1777.5; EMPLOYMENT OF APPRENTICES: If this Contract involves an expenditure of five hundred thousand dollars (\$500,000) or more, the Design-Builder shall contain in each subcontract the requirements hereunder and be responsible for providing all documentation required hereunder from Subcontractor to the City. The Design-Builder and each Subcontractor shall provide documentation to City demonstrating compliance with the requirements of California Labor Code Section 1777.5 and Article 10, Subchapter 1, Chapter 2, Title 8 of the California Code of Regulations by providing City copies of each of the following:

(i) All contract award information (e.g., completed form DAS 140) sent by Contractor Design-Builder and by Subcontractors to the State Division of Apprenticeship Standards and each applicable apprenticeship program in accordance with California Labor Code Section 1777.5, as may be amended from time to time, including identification of addressee.

(ii) All requests by Design-Builder and by Subcontractors for Approval, and all responses and certificates from any applicable apprenticeship program disapproving or approving Design-Builder or Subcontractor(s), to train apprentices; if any.

(iii) All requests by Design-Builder and by Subcontractors for dispatch of apprentices from any applicable apprenticeship program (e.g., completed form DAS 142); and all responses thereto, if any.

(iv) All certifications, if any, of Design-Builder and of Subcontractor(s) as an individual employer apprenticeship program by the State Division of Apprenticeship Standards or the California Apprenticeship Council.

(v) All apprenticeship agreements of apprentices employed by Design-Builder and by Subcontractor(s) and performing work under the Agreement.

(vi) A verified statement by the Design-Builder and by the Subcontractor within sixty (60) days after concluding the work of the respective journeyman and apprentice hours performed on the Agreement or subcontract.

(vii) All certificates of any exemption by the State Division of Apprenticeship Standards, California Apprenticeship Council or any apprenticeship program of Design-Builder or Subcontractor from any requirements of California Labor Code Section 1777.5, as may be amended from time to time.

(viii) Other documentation as may be requested by City.

(g) LABOR CODE SECTION 6705: If this Contract involves an estimated expenditure in excess of twenty five thousand dollars (\$25,000.00) and excavation of any trench or trenches five feet or more in depth, then your attention is directed to California Labor Code Section 6705 relating to a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches, the entire provisions of which are incorporated by this reference as if fully set forth hereinafter.

Before execution of the Contract by the OWNER, the Design-Builder shall submit to the OWNER and the OWNER'S AUTHORIZED REPRESENTATIVE shall accept, if satisfactory to him/her, said detailed plan.

If, in the OWNER'S AUTHORIZED REPRESENTATIVE's opinion, there is any noncompliance with said detailed plan, then the Design-Builder shall stop forthwith all trench work until, either in the OWNER'S AUTHORIZED REPRESENTATIVE's or the State Division of Industrial Safety's opinion, there is compliance. The OWNER shall not be liable for costs incurred by the Design-Builder due to

the work stoppage and the Design-Builder will not be given nor is entitled to an extension of time to complete the work within the time set forth in this Contract due to the work stoppage.

- (h) Each DESIGN-BUILDER must have an authorized agent of the firm to sign documents required by the California Labor Code and to receive proper state forms for the reporting of certified payroll. Except as may be otherwise required by law, all claims and disputes pertaining to the classification of labor employed on the Project under the Contract Documents shall be decided by CITY's Labor Compliance Officer.

Nothing contained herein shall be deemed to supersede any applicable Laws, orders or Regulations issued by the authority governing wages, hours of work of the employment of labor, nor to condone any violation of such Laws, orders or Regulations.

- (i) DESIGN-BUILDER shall post at appropriate conspicuous weatherproof points on the site of the Project Site a schedule showing the Prevailing Wage Determinations published by the Director of the California Department of Industrial Relations, which are applicable to the Project.
- (j) After the OWNER awards the Agreement and before the commencement of Work, a mandatory pre-job conference will be conducted. The pre-job conference must be attended by the DESIGN-BUILDER and the Subcontractors listed in its bid documents.
- (k) At the pre-job conference the Labor Compliance Officer, or its designee, shall discuss the federal and state labor law requirements applicable to the Agreement, including prevailing wage requirements, the record keeping responsibilities, the requirement for the reporting of certified payroll records to the City, and state apprenticeship requirements. The Labor Compliance Officer, or its designee, shall provide the DESIGN-BUILDER with a Labor Compliance Program package of information and documents. The DESIGN-BUILDER shall provide a copy of the package to all listed Subcontractors and to any substituted Subcontractors.
- (l) The DESIGN-BUILDER shall maintain payrolls and basic records (e.g., time cards, cancelled checks, cash receipts, trust fund forms, accounting ledgers, tax forms, etc.) during the course of the Work and shall preserve them for a period of three (3) years from Final Completion for Workers of all trades at the OWNER's Project Site. Such records shall contain the name, address, and social security number of each worker, his or her classification, the rate of pay (including the rates of contributions for, or costs assumed to provide, fringe benefits), daily and weekly hours worked, deductions made, and actual wages paid.
- (m) The DESIGN-BUILDER shall be responsible for ensuring that the labor standards provisions are followed by its Subcontractors, and shall be responsible for the Labor Code violations of its Subcontractors.
- (n) The City, through its Labor Compliance Officer, or its designee, shall conduct periodic inspections/audits to determine whether the Workers of all trades on project sites have been paid according to the prevailing wage rates.
- (o) The City, through its Labor Compliance Officer and its consultants, has the duty to enforce the Labor Code public works requirements (Chapter 1 of Part 7 of Divisions 2 and 3 of the California Labor Code). It is the policy of the City to strictly enforce the prevailing wage requirements set for in the California Labor Code. To that end, the DESIGN-BUILDER and Subcontractors found to be repeat violators of the Labor Code are subject to debarment from bidding on, or being awarded, any public works construction contract to the extent provided by law.

#### **Item 45. HOURS OF WORK**

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

(b) The DESIGN-BUILDER shall keep and shall cause each Subcontractor to keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by DESIGN-BUILDER in connection with the Work or any part of the Work contemplated by this Agreement. The record shall be kept open at all reasonable hours to the inspection of the OWNER and to the Division of Labor Standards Enforcement, Department of Industrial Relations. Daily reports shall be transmitted to the CONSTRUCTION MANAGER, using the form provided in the Specification Section entitled "**FORMS AND REPORTS**", or on a form provided by the OWNER.

(c) Unless otherwise agreed to in writing, any work performed after regular working hours, or on Saturdays, Sundays or other holidays shall be performed without additional expense to OWNER.

(d) Should overtime work be required due to delays caused by DESIGN-BUILDER, DESIGN-BUILDER will be responsible for the costs associated with supervision and inspection by the OWNER. These costs will be deducted from the Contract Price.

#### **Item 46. PAYROLL RECORDS**

(a) Pursuant to the provisions of California Labor Code Section 1776, the DESIGN-BUILDER shall keep and shall cause each Subcontractor performing any portion of the Work under this Agreement to keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by DESIGN-BUILDER in connection with the Work. Each payroll record shall contain or be verified by a written declaration that is made under penalty of perjury, stating both of the following:

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

(2) The employer has complied with the requirements of sections 1771, 1811 and 1815 for any work performed by his or her employees on the public works project.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the DESIGN-BUILDER on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the City, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection upon request by the public or copies thereof made; provided, however, that a request by the public shall be made through the City, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the DESIGN-BUILDER, Subcontractors, and the entity through which the request was

made. The public shall not be given access to the records at the principal office of the DESIGN-BUILDER.

(4) The form of certification shall be as follows:

I, \_\_\_\_\_ (Name-print), the undersigned, am \_\_\_\_\_ (position in business) with the authority to act for and on behalf of \_\_\_\_\_ (Name of business and/or DESIGN-BUILDER), certify under penalty of perjury that the records or copies thereof submitted and consisting of

\_\_\_\_\_ (description, number of pages) are the originals or true, full and correct copies of the originals which depict the payroll record(s) of the actual disbursements by way of cash, check, or whatever form to the individual or individuals named.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

(c) DESIGN-BUILDER or Subcontractor shall file a certified copy of the payroll records enumerated in subdivision (a) with the entity that requested the records within ten (10) days after receipt of a written request. In the event that the DESIGN-BUILDER or Subcontractor fails to comply within the 10-day period, the DESIGN-BUILDER or Subcontractor shall, as a penalty to the City, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. Design-Builder is not subject to a penalty assessment pursuant to this provision due to the failure of a Subcontractor to comply. Any copy of payroll records made available for inspection as copies and furnished upon request to the public by the City, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of the DESIGN-BUILDER awarded the Contract or the Subcontractor performing the Contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. A joint labor management committee may maintain an action in a court of competent jurisdiction against an employer who fails to comply with California Labor Code section 1774. The court may award restitution to an employee for unpaid wages and may award the joint labor management committee reasonable and proportionate attorney's fee and costs incurred in maintaining the action. An action may not be based on the employer's misclassification of the craft of a worker on its certified payroll records. Nothing stated herein limits any other available remedies for a violation.

(d) The DESIGN-BUILDER shall inform the Owner of the location of the payroll records enumerated under subdivision (a), including the street address, city and county, and shall, within five (5) working days, provide a written notice of a change of location and address.

(e) LABOR CODE SECTION 1771.1: CONSTRUCTION REGISTRATION WITH CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS: A Design-Builder 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 Design-Builder to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the Design-Builder is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded. This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. **The prime Design-Builder is required to post job site notices prescribed by California Code**



**of Regulations. Design-Builder and Subcontractors must furnish electronic certified payroll records directly to the Division of Labor Standards Enforcement.**

**Item 47. FIRST AID**

The DESIGN-BUILDER shall maintain emergency first aid treatment for DESIGN-BUILDER's Workers on the Project which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C.A., Sec. 651 et seq.).

**Item 48. PROTECTION OF PERSONS AND PROPERTY**

(a) The DESIGN-BUILDER shall be reasonably and proportionately responsible for all damages to persons or property that occur as a result of its fault or negligence directly resulting from the prosecution of this Agreement and shall take all necessary measures and be responsible for the proper care and protection of all Materials delivered and work performed until completion and final acceptance by the OWNER. The DESIGN-BUILDER shall remove all mud, water, or other elements as may be required for the proper protection and prosecution of its Work. The DESIGN-BUILDER will provide general site maintenance, so long as it is in control of the Site while under construction. DESIGN-BUILDER shall provide such heat, covering, and enclosures as are necessary to protect all Work, materials, equipment, appliances, and tools against damage by weather conditions, at the DESIGN-BUILDER's risk with the exception of damage to the Work caused by "acts of God" as defined in Public Contract Code Section 7105.

(b) DESIGN-BUILDER shall take, and require Subcontractors to take, all necessary precautions for the safety of Workers and shall comply with all applicable federal, state, local and other safety laws, standards, orders, rules, regulations, and building codes to prevent accidents or injury to persons on, about, or adjacent to the Project Site and to provide a safe and healthful place of employment. DESIGN-BUILDER shall furnish, erect, properly maintain at all times, and remove as required by other scheduled activities, as directed by CONSTRUCTION MANAGER or as required by the conditions and progress of Work, all necessary safety devices, safeguards, construction canopies, signs, audible devices for protection of the blind, safety rails, belts and nets, barriers, lights, and watchmen for protection of Workers and the public and shall post danger signs warning against hazards created by such features in the course of construction, as it relates to the DESIGN-BUILDER's scope of Work. DESIGN-BUILDER shall designate a responsible employee for Project safety, whose duty shall be to post information regarding protection and obligations of Workers and other notices required under occupational safety and health laws, to comply with reporting and other occupational safety requirements, and to protect the life, safety and health of Workers. DESIGN-BUILDER shall report the name and position of the person so designated in writing to CONSTRUCTION MANAGER. DESIGN-BUILDER shall correct any violations of safety laws, standards, orders, rules, or regulations. Upon the issuance of a citation or notice of violation by the Division of Occupational Safety and Health, the DESIGN-BUILDER at DESIGN-BUILDER's expense shall correct such violation immediately.

(c) In an emergency affecting safety of person or of Work or of adjoining property, DESIGN-BUILDER, without special instruction or authorization from OWNER or OWNER'S AUTHORIZED REPRESENTATIVE, is hereby permitted to act, at its discretion, to prevent such threatened loss or injury; and DESIGN-BUILDER shall so act if so authorized or instructed by OWNER or OWNER'S AUTHORIZED REPRESENTATIVE. Any compensation claimed by DESIGN-BUILDER on account of emergency work shall be determined by written agreement with the OWNER.

(d) DESIGN-BUILDER shall take adequate precautions to protect existing roads, sidewalks, curbs, pavements, utilities, adjoining property and structures (including, without limitation, protection from settlement or loss of lateral support), and to avoid damage thereto, and repair any damage thereto caused by construction operations.

(e) OWNER or OWNER'S AUTHORIZED REPRESENTATIVE are not responsible for insuring the safety of the Work performed by DESIGN-BUILDER or its Subcontractors.

## **Item 49. SCHEDULE OF VALUES**

**(a)** DESIGN-BUILDER shall furnish on a form approved by OWNER:

**(1)** Within ten (10) days of Notice to Proceed, for construction, DESIGN-BUILDER shall provide a detailed preliminary estimate of its proposed Schedule of Values giving a complete breakdown of the elements of the Contract Price for each area of the Project and/or Site.

**(2)** A periodic itemized estimate of work done for purpose of making partial payments thereon.

**(3)** Within ten (10) days of a request by OWNER, a schedule of estimated monthly payments which shall be due DESIGN-BUILDER under the Agreement.

**(b)** Unless otherwise agreed in writing, payment for DESIGN-BUILDER's mobilization costs shall be cost loaded as follows:

- i) Actual mobilization of office trailers and related work paid 10% in first Progress Pay Request.
- ii) Remaining mobilization costs paid in equal payment amounts over next four Progress Pay Requests.

## **Item 50. PROGRESS PAYMENTS**

**(a)** DESIGN-BUILDER shall submit to the OWNER, and if directed, its CONSTRUCTION MANAGER, a monthly application for payment. The monthly application for payment shall be conducted in two parts. First, the Design-Builder shall submit to the CONSTRUCTION MANAGER and Owner by the 25<sup>th</sup> of the month a DRAFT application (referred to as a 'Pencil Draw') indicating the percent complete for each item in the period being billed. There will be no additional backup, releases, etc. included with this DRAFT. The DRAFT shall include a projection as to completion at the end of the period for which payment is being requested. The OWNER shall review this DRAFT application together with the DESIGN-BUILDER and jointly make any adjustments as agreed regarding the requested percentages billed. This review shall be completed no later than the first day of the following month. Then, and no later than the seventh (7<sup>th</sup>) day of the calendar month for the preceding thirty (30) days, the Design-Builder shall provide a complete Application for Payment for the preceding pay period including all required backup, releases, etc. The progress payment application shall be on a form approved and/or provided by the OWNER, and submitted to the CONSTRUCTION MANAGER for review and processing. The application for payment shall consist of the cost of the DESIGN-BUILDER's Bond (the first pay request the Owner shall pay 100% of the Bond cost), the cost of the Work performed up to the last Working Day of the preceding month, including the cost of Materials suitably stored as defined herein, with a proportionate share of DESIGN-BUILDER's Fee. Within seven (7) days of submission, the CONSTRUCTION MANAGER will review the DESIGN-BUILDER invoice for legitimacy, and if any corrections or adjustments are required DESIGN-BUILDER shall be required to resubmit the corrected invoice within three (3) days of the request. Upon receipt of the corrected invoice, the CONSTRUCTION MANAGER will verify the corrections and then forward the invoice to the OWNER.

**(b)** Within thirty (30) days after receipt of a complete and properly supported application for payment, the OWNER shall pay DESIGN-BUILDER a sum equal to ninety five percent (95%) of value of the DESIGN-BUILDER progress payment application, less any other amounts authorized to be withheld by the Contract Documents. If the progress payment application is rejected in whole or in part, the OWNER shall provide DESIGN-BUILDER with the reasons for the rejection.

**(c)** Consistent with the other requirements of the Contract Documents, and upon receipt of the CONSTRUCTION MANAGER'S Approval of the Request for Payment, the OWNER will subtract a sum equal to five percent (5%) of the value of the Work performed up to the last day of the previous month, less the aggregate of previous payments. The value of the Work completed shall be an estimate only. No inaccuracy or error in said estimate shall operate to release the DESIGN-BUILDER, or any Surety, from

damages arising from such Work or from enforcing each and every provision of this Agreement, and the OWNER shall have the right subsequently to correct any error made in any estimate for payment. The DESIGN-BUILDER shall not be entitled to have any payment application requests processed, or be entitled to have any payment made for work performed, so long as DESIGN-BUILDER fails to comply with any lawful or proper direction given by the OWNER concerning the Work, or any portion thereof.

(d) If at any time the OWNER, in its sole discretion, finds that satisfactory progress is being made, the OWNER may choose not to subtract the retention from remaining payment requests, and upon receipt of the DESIGN-BUILDER's Surety's letter of approval for such.

(e) Progress payment applications shall be in a form acceptable to OWNER and shall include, as a minimum, the following:

- (1) Design-Builder's updated Project Schedule
- (2) Design-Builder's updated Schedule of Values
- (3) Amounts for which payment is being requested on behalf of Subcontractors
- (4) The Application shall identify the Contract Price, the amounts of all approved Change Orders, total amount paid by OWNER to date, total amount withheld to date for retention, amount of current application for payment, and amount to be withheld as retention under the current progress payment application
- (5) Appropriate waivers and releases.

(f) The OWNER has discretion to require from the DESIGN-BUILDER any of the following information with the application for payment:

- (1) certified payrolls covering the period of the prior application for payment;
- (2) unconditional waivers and releases from all Subcontractors/suppliers for which payment was requested, received and paid under the prior application for payment and paid by OWNER;
- (3) **invoices, daily time and material records**
- (4) receipts or bills of sale for any items that are billed as stored materials where applicable.
- (5) written acknowledgement of the DESIGN-BUILDER, confirming that the maintenance of the Record Drawings is being kept up-to-date, and that the Record Drawings are not being used as a construction set.

(g) Payment for Stored Materials. Materials included in the progress payment applications, but not incorporated in the Work, shall be stored properly and protected as required to prevent damage, including but not limited to, rust, dents, scratches, and decay. Materials stored on-site and subject to payment, shall be gated and secured to prevent theft and/or vandalism. When the DESIGN-BUILDER requests payment for materials not incorporated in the Work, the following terms and conditions shall apply:

(1) For permanent materials delivered to the Project Site, or stored in an approved location off-site, an allowance of one hundred percent (100%) of the material costs plus freight charges as invoiced may be made. The allowance will be based upon validated invoices or bills for such materials, including freight charges, and a copy thereof shall be made a part of the documented records for the Project. Payment will only be made for permanent materials that conform to the requirements of the Contract Documents.

(2) No allowance in the payment application shall be made for fuels.

(3) All permanent materials, for which an allowance is requested, shall be stored in an approved manner where damage is not likely to occur. If any of the stored materials are lost or become damaged in any manner, DESIGN-BUILDER shall be responsible for repairing or replacement of such damaged materials. The value of the lost or damaged permanent materials shall be held from the DESIGN-BUILDER's subsequent progress payments until replacement has been accomplished.

(4) Permanent materials, for which payment has been made, either wholly or partially, shall not be removed from the approved location until such time that it is incorporated into the Work, unless approved by the OWNER.

(5) The following must accompany the progress payment application seeking payment for stored materials:

- (a) Consent of the Surety specifying the material type and the bid items in which the material is to be used.
- (b) Validating invoices showing that payment for the material has been made.
- (c) A notarized statement from DESIGN-BUILDER attesting that the invoices, as submitted do not include charges and/or fees for placing, handling, erecting or any other charges and/or markups other than the actual material cost, sales tax(es) if applicable, and freight charges.
- (d) Bill of lading showing delivery of the material.
- (e) Inspection test reports, and certifications if required by the Contract Documents.
- (f) DESIGN-BUILDER shall obtain a negotiable warehouse receipt or a bill of sale transferring ownership of the materials to the Design-Builder upon payment, with either document endorsed over to OWNER for materials and/or equipment stored in an off-site warehouse. Certificate of insurance clearly indicating that the materials or equipment is fully insured against theft, fire, vandalism, malicious mischief, as well as other coverage required under the Contract Documents.

(6) Nothing in this Item shall be interpreted as requiring OWNER to pay for stored materials. OWNER shall decide on a case-by-case basis whether it will pay for stored materials.

(7) If the permanent materials are stored off-site, DESIGN-BUILDER shall pay OWNER'S representative's transportation and lodging to inspect the permanent materials and/or the location of storage of said materials.

(8) Full title to the materials and/or equipment shall vest with OWNER at the time of delivery to the Site, approved warehouse or other approved storage location once the materials and/or equipment have been paid for by OWNER.

#### **Item 51. FINAL APPLICATION FOR PAYMENT AND FINAL PAYMENT**

(a) After DESIGN-BUILDER has completed all of the remaining Work items identified in Item 54 as well as and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, and As-Built drawings, marked up Record documents, and any other close out documents required by the Contract Documents, and after the OWNER has indicated that DESIGN-BUILDER has achieved Final Completion, DESIGN-BUILDER may make application for final payment following the procedure for progress payments. The final application for payment shall be accompanied by all documentation Called For in the Contract Documents for making of progress payments together with complete and legally effective releases and waivers of all encumbrances arising out of or related to the Work.

(b) After DESIGN-BUILDER has satisfied all of the conditions of subparagraph (a) above, DESIGN-BUILDER shall submit its application for final payment and release of retention. Said application shall set forth the following information, at a minimum:

(1) Cost of the Work in permanent place as of the end of the immediately preceding month as shown on the updated Project Schedule and Schedule of Values submitted with the DESIGN-BUILDER's application;

(2) Less amounts previously paid and previously withheld as retention;

(3) The amount currently due;

(4) An itemized list of disputed amounts, if any.

(c) DESIGN-BUILDER's application for final payment shall also be accompanied by Conditional Waivers and Releases. Upon Final Payment executed by DESIGN-BUILDER and by all Subcontractors for whom payment is requested;

(d) OWNER shall be entitled to withhold any payment to DESIGN-BUILDER as described in Item 59.

(e) In the event of a dispute between the OWNER and DESIGN-BUILDER over the amount due, the OWNER may withhold from the final payment an amount not to exceed one hundred and fifty percent (150%) of the disputed amount.

(f) Subject to the provisions of the Contract Documents, OWNER shall make final payment of undisputed amounts to DESIGN-BUILDER no later than forty-five (45) Days after OWNER's receipt of DESIGN-BUILDER's properly submitted application for final payment.

#### **Item 52. CHANGES AND EXTRA WORK**

(a) OWNER may, as provided by Law, and without affecting the validity of this Agreement, order changes, modifications, deletions and extra work by issuance of written Change Orders from time to time during the progress of the Project, with the Contract Price and the Contract Time being adjusted accordingly. All such extra work shall be executed under conditions of the Contract Documents. OWNER has discretion to order changes on a "Unit Price", "Negotiated Sum", or "Time and Material" basis with adjustments to the Contract Time made after DESIGN-BUILDER has justified the impact of such extra work or changes on the critical path of the Project. DESIGN-BUILDER shall not be entitled to adjustments to Contract Time unless said changes or extra work directly impact the critical path of the Project Schedule.

The following records shall also be kept by DESIGN-BUILDER:

(1) DESIGN-BUILDER shall maintain its records in such a manner as to provide a clear distinction between the direct costs of any extra work and/or deductive work and its original scope of Work. This requirement pertains to the costs for wholly or partially approved Potential Change Order (PCO's), Construction Change Directives (CCD's), Contract Change Orders (CCO's) and work DESIGN-BUILDER considered to be potential Contract Change Orders.

(2) DESIGN-BUILDER shall furnish within seven (7) days after the Notice to Proceed for construction, a certified statement and detailed calculation from its accountant establishing the job site and pro rata home office overhead rates for DESIGN-BUILDER and major Subcontractors. Such rates shall be updated quarterly and filed with OWNER.

(3) Any claims submitted pursuant to this Item are subject to the provisions of the California False Claims Act, Cal. Gov't. Code Sections 12650-12655 (1992).

(b) Notwithstanding any other provision in the Contract Documents, the adjustment in the Contract Price, if any, and the adjustment in the Contract Time, if any, set out in a Change Order shall constitute the entire compensation and/or adjustment in the Contract Price and Contract Time due DESIGN-BUILDER arising out of the change in the work covered by the Change Order unless otherwise provided in the Change Order. The amount of the compensation due DESIGN-BUILDER shall be calculated pursuant to subparagraph (e) of this Item. The entire compensation shall not include any additional charges not set forth in subparagraph (e) and shall not include delay damages (due to processing of a Change Order, refusal to sign a Change Order) indirect, consequential, and incidental costs including any Project management costs, extended home office and field office overhead, administrative costs and profit other than those amounts authorized under subparagraph (e) of this Item.

**(c)** The OWNER'S authorized representative may authorize changes in Work involving a change in Contract Price and/or Contract Time. Except in an emergency endangering life or property, no extra work or change shall be made unless pursuant to a written order from OWNER, authorized by action of a subcommittee, and no claim for addition to Contract Price shall be valid unless so ordered.

**(d)** If the OWNER determines that work required to be done constitutes extra work outside the scope of the Agreement, the OWNER shall issue a request for a detailed Proposal (RFP) or issue a Construction Change Directive (CCD) to the DESIGN-BUILDER. DESIGN-BUILDER will respond with a detailed Proposal (PCO) upon receipt of the RFP or CCD within fourteen (14) days of receipt of such documents. If the work is to be performed by a Subcontractor, DESIGN-BUILDER must include a detailed bid from the Subcontractor.

**(e)** Value of any such extra work, change, or deduction shall be determined at the discretion of OWNER in one or more of the following ways:

**(1)** By "Unit Prices" contained in DESIGN-BUILDER's original bid and incorporated in the Project Documents or fixed by subsequent "Negotiated Sum" agreement between OWNER and DESIGN-BUILDER.

**(2)** By cost of labor and material and percentage for overhead and profit ("time and material"). If the value is determined by this method the following requirements shall apply:

**(A)** Daily Reports by DESIGN-BUILDER.

(i) General. At the close of each Working Day, the DESIGN-BUILDER shall submit a daily report to the CONSTRUCTION MANAGER, on forms approved by the OWNER, together with applicable delivery tickets, listing all labor, materials, and equipment involved for that day, and for other services and expenditures when authorized concerning extra work items including any schedule Delay Days required. An attempt shall be made to reconcile the report daily, and the CONSTRUCTION MANAGER and the DESIGN-BUILDER shall sign it. In the event of disagreement, pertinent notes shall be entered by each party to explain points that cannot be resolved immediately. Each party shall retain a signed copy of the report. Reports by Subcontractors or others shall be submitted through the DESIGN-BUILDER.

(ii) Labor. The report shall show names of Workers, classifications, and hours worked.

(iii) Equipment. The report shall show type of equipment, size, identification number, and hours of operation, including loading and transportation, if applicable, and hourly/daily cost.

(iv) Other Services and Expenditures. Other services and expenditures shall be described in such detail as the OWNER may require.

**(B)** Basis for Establishing Costs

(i) Labor. The costs of labor will be as shown on Exhibit H – Labor Rates to the Contract. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.

(ii) Materials. The cost of materials reported shall be at invoice or lowest current price at which such materials are locally available and delivered to the Site in the quantities involved, plus sales tax, freight and delivery. The OWNER reserves the right to approve materials and sources of supply, or to supply materials to the DESIGN-BUILDER if necessary for the progress of the work. No markup shall be applied to any material provided by the OWNER.

(iii) Tools and Equipment Rental. No payment will be made for the use of tools which have a replacement value of \$250 or less or where an invoice is not provided. Regardless of ownership, the rates to be used in determining equipment rental costs shall be as set forth on Exhibit I – Tool and Equipment Rental. Rates not identified in Exhibit I, shall not exceed listed rates prevailing locally at equipment rental source, 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. Necessary loading and transportation costs for equipment used on the extra work shall be included in the COR. If equipment is used intermittently and, when not in use, could be returned to its rental source at less expense to the OWNER than holding it at the work site, it shall be returned, unless the DESIGN-BUILDER elects to keep it at the work site at no expense to the OWNER. All equipment shall be acceptable to the OWNER and/or CONSTRUCTION MANAGER, in good working condition, and suitable for the purpose for which it is to be used manufacturer's ratings and manufacturer's approved modifications shall be used to classify equipment and it shall be powered by a unit of at least the minimum rating recommended by the manufacturer.

(iv) Other Items. The OWNER may authorize other items, which may be required on the extra work. Such items include labor, services, material and equipment which are different in their nature from those required by the Work and which are of a type not ordinarily available from the DESIGN-BUILDER or any of the Subcontractors. Invoices covering all such items in detail shall be submitted with the request for payment.

(v) Invoices. Vendors' invoices for material, equipment rental, and other expenditures shall be submitted with the request for payment. If invoices or other documentation does not substantiate the request for payment, the OWNER may establish the cost of the item involved at the lowest price, which was current at the time of the report.

**(3)** An Owner form or a version presented by DESIGN-BUILDER and accepted by OWNER, for "EXTRA WORK and/or DEDUCTIVE WORK" and the "OVERHEAD & PROFIT (O&P) PERCENTAGE SCHEDULE" shall be used as applicable by the OWNER and DESIGN-BUILDER to communicate proposed additions and deductions to the Agreement. State and City sales taxes and payroll taxes and insurance shall be shown separately and will be allowed on extra work and shall be credited on Deductive Work. No mark-up for overhead and profit will be allowed on insurance.

#### **OVERHEAD & PROFIT (O&P) PERCENTAGE SCHEDULE**

- (i) Refer to the O&P Schedule below. The term "Work" in this section, shall be considered the cost of the work, and does not include the overhead and profit mark-up's.
- (ii) Work performed by the DESIGN-BUILDER subject to competitive bid, is considered Subcontractor work.
- (iii) The O&P Schedule shall be used for "Negotiated Sum" and/or "Time and Materials" work. Unit Price work shall not have the overhead and profit mark-up applied to the work, on the basis that the Unit Price includes overhead and profit margins.

	Work by Subcontractor	Work by Design-Builder
<b>Subcontractor Overhead &amp; Profit</b>	15%	
<b>Design-Builder Overhead &amp; Profit</b>	5%	5%
<b>Total Overhead and Profit, not to exceed:</b>	20%	5%

**(4)** For “Negotiated Sum” and “Time and Material” pricing methods, the specified overhead and profit figures are defined and are agreed to include, but not limited to, the following:

- (i) Home office administration costs
- (ii) Small tools (Less than \$250 capital cost per item)
- (iii) Project vehicles, excluding trucks and equipment.
- (iv) Change Order preparation, procurement and set-up (including all payroll costs and fringe benefits), estimating, supervising, expediting, drafting and clerical/secretarial services.
- (v) As-Built Drawing maintenance
- (vi) General Supervision of the work (Direct Supervision may be included)
- (vii) Time and Material documentation procedures excluding processing and compiling of extra work tags.
- (viii) The handling, transportation and warehousing of materials other than direct identifiable cost of specific deliveries, or as included in the price of the material.
- (ix) Time extension request or recovery schedule preparation excluding outside consultants.

**(5)** IT IS EXPRESSLY UNDERSTOOD THAT THE VALUE OF SUCH EXTRA WORK OR CHANGES, AS DETERMINED BY ANY OF THE AFOREMENTIONED METHODS, EXPRESSLY INCLUDES ANY AND ALL OF DESIGN-BUILDER’S COSTS AND EXPENSES, BOTH DIRECT AND INDIRECT, RESULTING FROM ADDITIONAL TIME REQUIRED ON THE PROJECT, OR RESULTING FROM DELAYS TO THE PROJECT, INCLUDING BUT NOT LIMITED TO ACCELERATION, CUMULATIVE AFFECT OF THE CHANGE(S), EXPEDITING THE WORK, ETC.

**(f)** If the DESIGN-BUILDER should claim that any instruction, request, drawing, Specification, action, condition, omission, default, or other situation obligates the OWNER to pay additional compensation to DESIGN-BUILDER or to grant an extension of time, or constitutes a waiver of any provision in the Agreement, the DESIGN-BUILDER shall provide written “Notice” to the OWNER within ten (10) business days after sustaining of such damage, or being notified of an adverse decision, or discovering said alleged waiver, and provide within twenty-one (21) days of the event the factual basis supporting the claim (unless otherwise specified). The written “Notice” shall state the summary points for which the factual bases will support the claim and cite in detail the Contract Documents (including plans and Specifications) upon which the claim is to be based. DESIGN-BUILDER’s failure to notify the OWNER within such a period shall be deemed a waiver and relinquishment of such a claim. If such notice is given within the specified time, the procedure for its consideration shall be as stated above in these General Conditions. Refer to the Items entitled, “DEFINITIONS”, “DESIGN-BUILDER CLAIMS”, “CLAIMS/DISPUTES RESOLUTION”, “NOTICES” and “WAIVER AND RELEASE FORMS” for related Contract requirements. The claim, once submitted, shall be a “Certified Claim”. In addition, on or before the end of the month for which the claim has been filed, the DESIGN-BUILDER shall also file with the OWNER the WAIVER AND RELEASE FORMS, for which the claim and the amount of the claim is identified. If the claim is not indicated on the WAIVER AND RELEASE FORMS, DESIGN-BUILDER’s claim shall be forfeited and invalidated and it shall not be entitled to consideration for time or payment on account of any such claim.



(g) If OWNER and DESIGN-BUILDER fail to agree to the quantification of costs and/or time to be placed into a Change Order, the OWNER at its own discretion may issue a Construction Change Directive (CCD) for those costs and/or time impacts that is deemed appropriate for the changed work conditions. Notwithstanding the lack of agreement upon a Change Order, the DESIGN-BUILDER shall proceed immediately with the changed work upon receipt of a CCD. If Design-Builder disputes the CCD, DESIGN-BUILDER may make a claim pursuant to the Item entitled "DESIGN-BUILDER CLAIMS."

### **Item 53. CHANGES IN CONTRACT TIME**

(a) The Contract Times and all notice periods stated in the Contract Documents are of the essence of this Agreement.

(b) When DESIGN-BUILDER is prevented from completing any part of the Work within the Contract Time (or milestones) due to delay beyond the control of DESIGN-BUILDER, the Contract Time will be extended in an amount equal to the time lost on the critical path of the Project Schedule due to such delay as demonstrated by a critical path schedule analysis. Delays beyond the control of DESIGN-BUILDER shall include, but not be limited to, acts or neglect by the OWNER, or its agents or other contractors; fires, floods, epidemics, acts of God, acts of War or abnormal weather conditions. Delays which could be avoided by DESIGN-BUILDER or which are attributable to and within the control of DESIGN-BUILDER or its Subcontractors shall be deemed to be delays within the control of the DESIGN-BUILDER.

(c) In no event will OWNER be liable to DESIGN-BUILDER, or its Subcontractors, or their sureties for any increase in the Contract Price or other damages arising out of or resulting from the following:

- (1) Delays caused by or within the control of the DESIGN-BUILDER, or its Subcontractors;
- (2) Delays beyond the control of both OWNER and DESIGN-BUILDER;
- (3) Delays in (1) and (2) above which do not impact the critical path of the Work.

(d) The DESIGN-BUILDER'S Project Schedule shall anticipate delay due to normal weather conditions for Fresno, California. Per NOAA's 10-year averages.

(e) DESIGN-BUILDER shall give written notice to OWNER and CONSTRUCTION MANAGER of said delay no later than 5 business days from the commencement of the delay. Within fourteen (14) days of the occurrence of the event causing such a delay, DESIGN-BUILDER shall provide documentation and justification to substantiate the delay and its relation to the Project Schedule's critical path, including, but not limited to a "Fragnet" schedule demonstrating the delay to the DESIGN-BUILDER'S Work. Failure to provide such timely notice shall constitute a waiver by DESIGN-BUILDER of its right to claim for said delay. DESIGN-BUILDER shall only be entitled to an extension to the Contract Time if the delay affects the DESIGN-BUILDER'S critical path Work on the Project Schedule and DESIGN-BUILDER shall not be entitled to an extension if the delay does not impact the Work on the Project Schedule's critical path.

### **Item 54. COMPLETION**

(a) When DESIGN-BUILDER considers the Work ready for its intended use, the DESIGN-BUILDER shall notify the OWNER in writing that the Work is substantially complete. The DESIGN-BUILDER shall attach to this request a list of all work items that remain to be completed and a request that the OWNER prepare a Certificate of Substantial Completion. Within a reasonable time thereafter, the OWNER and DESIGN-BUILDER shall inspect the Work to determine the status of completion and to the extent that OWNER agrees the Project is substantially complete. If the OWNER does not consider the Work substantially complete, the OWNER will notify DESIGN-BUILDER in writing of the reasons therefore and DESIGN-BUILDER shall promptly correct all items identified by the OWNER. The OWNER and DESIGN-BUILDER shall repeat the above-referenced procedure until all items are completed to the OWNER'S satisfaction, whereupon OWNER shall issue a Certificate of Substantial Completion.

(b) On the date that the OWNER issues the Certificate of Substantial Completion, the OWNER shall provide DESIGN-BUILDER with the final punch list identifying the remaining minor corrective items to be completed for final completion of the Project.

(c) When the DESIGN-BUILDER considers the final punch list work to be complete, it shall request OWNER to perform a final walk through of the Project to determine if said punch list work is complete and whether DESIGN-BUILDER has otherwise completed all of its obligations under the Contract Documents.

(d) If the DESIGN-BUILDER fails to complete the minor corrective items prior to the expiration of the thirty-five (35) day period immediately following issuance of the Certificate of Substantial Completion, the OWNER shall withhold from the final payment an amount equal to 150% the estimated cost, as determined by the OWNER, of each item until such time as the item is completed. Alternatively, at the end of such thirty-five (35) day period, if there are items remaining to be corrected, the OWNER may elect to proceed as provided in the Item entitled "PAYMENTS WITHHELD," (Item 59).

(e) OWNER shall record the Notice of Completion when the entire Work including, but not limited to DESIGN-BUILDER'S closeout document obligations are fully satisfied, DESIGN-BUILDER'S punch list(s) and OWNER'S AUTHORIZED REPRESENTATIVE'S final review comments shall have been completed to the satisfaction of the OWNER.

(f) However, the OWNER, at its sole option, may accept completion of the Agreement and have the Notice of Completion recorded when the entire Work including individual portions of the Work shall have been completed to the satisfaction of the OWNER, except for minor corrective items, as distinguished from incomplete items.

(g) Regardless of the cause therefore, the DESIGN-BUILDER may not maintain any claim or cause of action against the OWNER for damages incurred as a result of its failure or inability to complete its Work on the Project in a shorter period than established in the Contract Documents, the parties stipulating that the period set forth in the Project Documents is a reasonable time within which to perform the work on the Project.

#### **Item 55. EXTENSION OF TIME - LIQUIDATED DAMAGES**

(a) The DESIGN-BUILDER and OWNER hereby agree that the exact amount of damages for failure to complete the work within the time specified is extremely difficult or impossible to determine. DESIGN-BUILDER shall be assessed the sum as set forth in the Contract Price Amendment, as liquidated damages for each and every day the work required under the Contract Documents remains unfinished past the Contract Time, as set forth in the Agreement, and any extensions of time granted by the OWNER to the DESIGN-BUILDER under the terms of the Contract Documents. The DESIGN-BUILDER will pay to the OWNER or OWNER may retain from amounts otherwise payable to the DESIGN-BUILDER, said amount stipulated in the Contract Price Amendment for each day after failure to meet the requirements of the contract completion as scheduled in the Agreement. For purposes of this Item, the Work shall be considered "complete" in accordance with the provisions of Item 54, "COMPLETION". Liquidated damage amounts, if any, shall be stipulated in the Contract Price Amendment.

(b) DESIGN-BUILDER shall not be charged for liquidated damages, as set forth above, because of any delays in completion of Work which are not the fault or negligence of DESIGN-BUILDER, or its Subcontractors, or persons or entities for which it is responsible, including, but not restricted to acts of God, as set forth herein.

#### **Item 56. FAILURE TO PERFORM / DELAYED PERFORMANCE OF WORK**

(a) If DESIGN-BUILDER defaults or neglects to carry out the Work in accordance with the requirements of the Contract Documents, the OWNER may, after providing two (2) business days' written notice to DESIGN-BUILDER, without prejudice to any other remedy it may have, order the DESIGN-BUILDER to stop the Work or any portion thereof, until the cause for such order has been eliminated. The right of the

OWNER to stop the Work shall not give rise to a duty on the part of the OWNER to exercise this right for the benefit of the DESIGN-BUILDER or any other person or entity.

(b) If DESIGN-BUILDER defaults or neglects to carry out the Work in accordance with the requirements of the Contract Documents, CITY may, after three (3) business days' written notice to the DESIGN-BUILDER and without prejudice to any other remedy it may have, if Design-Builder has not, within that three-day period cured the default or, if the cure is reasonably expected to take more than three days to complete, started and pursued diligently the cure, correct the deficiencies itself or through the work of another contractor. The right of the OWNER to correct the Work shall not give rise to a duty on the part of the OWNER to exercise this right for the benefit of the Design-Builder or any other person or entity. The OWNER shall adjust the Contract Price by reducing the amount thereof by the cost of correcting such deficiencies. If the OWNER, in its sole discretion, decides not to correct work not done in accordance with the Contract Documents, it may instead reduce the Contract Price in an amount commensurate with the damages caused by the deficiencies. Exercise by the OWNER of its rights under this Item shall not prejudice its rights to terminate the Agreement for cause.

#### **Item 57. DESIGN-BUILDER CLAIMS**

(a) If the Design-Builder claims compensation for any damage or delay sustained by reason of the acts of the OWNER or its agents, or if the DESIGN-BUILDER disagrees with the OWNER'S decisions regarding a DESIGN-BUILDER'S POC, the DESIGN-BUILDER shall provide written "Notice" to the OWNER and the CONSTRUCTION MANAGER within ten (10) business days after sustaining of such damage or delay, or being notified of an adverse decision, and provide, within fourteen (14) days after the Notice, the factual basis supporting the claim in writing. The written "Notice" shall state the summary points for which the factual bases will support the claim and cite in detail the Contract Documents (including Plans and Specifications) and DESIGN-BUILDER'S supporting documentation upon which the claim is based. DESIGN-BUILDER'S failure to notify the OWNER within such a period shall be deemed a waiver and relinquishment of such a claim. The claim, once submitted, shall be a "Certified Claim". In addition, on or before the end of the month for which the claim has been filed, the DESIGN-BUILDER shall also file with the OWNER the WAIVER AND RELEASE FORMS, for which the claim and the amount of the claim is identified. If the claim is not indicated on the WAIVER AND RELEASE FORMS, DESIGN-BUILDER'S claim shall be forfeited and invalidated and it shall not be entitled to consideration for time or payment on account of any such claim. Pending final resolution of any Claim, and notwithstanding any dispute between OWNER and DESIGN-BUILDER, the DESIGN-BUILDER shall proceed diligently with performance of the Work, and the OWNER shall continue to make any undisputed payments in accordance with the Contract Documents.

(b) The DESIGN-BUILDER shall certify, at the time of submission of a claim, as follows:

I, \_\_\_\_\_, being the \_\_\_\_\_ (Must be an officer) of \_\_\_\_\_ (DESIGN-BUILDER), declare under penalty of perjury under the laws of the State of California, and do personally certify and attest that: I have thoroughly reviewed the attached claim for additional cost and/or extension of time, and know its contents, and said claim is made in good faith; the supporting data is truthful, accurate and complete; that the amount requested accurately reflects the adjustment for which the DESIGN-BUILDER believes the OWNER is liable; and further, that I am familiar with California Penal Code section 72 pertaining to false claims, and further know and understand that submission or certification of a false claim may lead to fines, imprisonment and/or other severe legal consequences.  
By: \_\_\_\_\_

DESIGN-BUILDER understands and agrees that any claim submitted without this certification does not meet the terms of the Contract Documents, that OWNER or OWNER'S representatives, may reject the claim on that basis and that unless DESIGN-BUILDER properly and timely files the claim with the certification, DESIGN-BUILDER cannot further pursue the claim in any forum. A condition precedent will not have been satisfied.

## **Item 58. CLAIMS/DISPUTES RESOLUTION**

**(a)** Except for tort claims, all claims by the DESIGN-BUILDER for a time extension, payment of money or damages arising from Work done by, or on behalf of, the DESIGN-BUILDER pursuant to the Agreement and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or as to the amount of payment which is disputed by the OWNER of Three Hundred Seventy Five Thousand Dollars (\$375,000) or less shall be subject to the settlement and arbitration provisions procedures set forth in Public Contract Code Section 20104, et seq. Sections 20104 et seq. are adopted, to the extent consistent with this Specification solely for purposes of claims/dispute resolution. Those sections require that the claim be in writing, include the documents necessary to substantiate the claim, and be filed on or before the final date of payment, subject to all time limits and notice requirements for filing claims under the Contract Documents.

**(1)** For claims less than Fifty Thousand Dollars (\$50,000) the CONSTRUCTION MANAGER shall respond in writing to written claims within twenty one (21) days of receipt of the claim or may request in writing within fourteen (14) days of receipt of the claim additional documentation supporting the claim or relating to any defenses to the claim the OWNER may have against the DESIGN-BUILDER. If the claim is unresolved at the CONSTRUCTION MANAGER level, the claim can be presented within thirty (30) days to the OWNER'S Planning Manager for review. The OWNER'S Planning Manager shall issue a written response to the claim within fifteen (15) days after receipt of the further documentation or within a time period equivalent to that taken by the DESIGN-BUILDER to provide the additional documentation, whichever is greater. If the claim is unresolved at the OWNER'S Planning Manager's level, the claim can be then presented within thirty (30) days to the Director of Aviation for review and resolution.

**(2)** For claims over Fifty Thousand Dollars (\$50,000) and less than or equal to Three Hundred Seventy Five Thousand Dollars (\$375,000), the OWNER shall respond in writing to all written claims within sixty (60) days of receipt of the claim or may request in writing within thirty (30) days of the receipt of the claim any additional documentation supporting the claim or relating to any defenses to the claim the OWNER may have against the DESIGN-BUILDER. The OWNER'S written response to the claim shall be submitted to the DESIGN-BUILDER within thirty (30) days after receipt of further documentation or within a period of time no greater than that taken by the DESIGN-BUILDER in producing the additional documentation, whichever is greater. If the DESIGN-BUILDER disputes the OWNER'S written response or the OWNER fails to respond within a timely fashion, the DESIGN-BUILDER within fifteen (15) days after the response or failure to respond may demand in writing an informal conference to meet and confer for settlement of the issues in dispute, which conference shall be scheduled within thirty (30) days of said demand. If the claim or any portion of the claim remains in dispute following the meet and confer conference, the DESIGN-BUILDER may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the DESIGN-BUILDER submits its written claim until the time that the claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process. Further, should legal action be pursued, the provisions relating to mediation and arbitration contained in Public Contract Code section 20104.4 shall be followed.

**(c)** For claims over Three Hundred Seventy Five Thousand Dollars (\$375,000), the OWNER shall respond in writing to all written claims within sixty (60) days of receipt of the claim or may request in writing within thirty (30) days of the receipt of the claim any additional documentation supporting the claim or relating to any defenses to the claim the OWNER may have against the DESIGN-BUILDER. The OWNER'S written response to the claim shall be submitted to the DESIGN-BUILDER within thirty (30) days after receipt of further documentation or within a period of time no greater than that taken by the DESIGN-BUILDER in producing the additional documentation, whichever is greater. If the DESIGN-BUILDER disputes the OWNER'S written response or the OWNER fails to respond within a timely fashion, the DESIGN-BUILDER within fifteen (15) days after the response or failure to respond may demand in writing an informal

conference with OWNER management to meet and confer for settlement of the issues in dispute, which conference shall be scheduled within thirty (30) days of said demand. If the claim or any portion of the claim remains in dispute following the meet and confer conference, the DESIGN-BUILDER may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the DESIGN-BUILDER submits its written claim until the time that the claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process. Prior to instituting legal proceedings, and as a condition of doing so, DESIGN-BUILDER shall submit its claims to non-binding mediation before a mediator, mutually acceptable to OWNER and DESIGN-BUILDER, which mediator shall have substantial construction claims experience. If the parties are not able to select a mutually acceptable mediator within thirty (30) days after the conclusion of the meet and confer conference, any party may submit a request for appointment of a mediator to the Fresno office of the American Arbitration Association. DESIGN-BUILDER and OWNER agree to join all parties necessary to obtain a global resolution of all outstanding claims in said mediation. OWNER and DESIGN-BUILDER agree to split the cost of the mediation equally. The mediation shall be completed under such rules and regulations as the mediator shall specify. The statute of limitations relating to any such claims submitted to mediation shall be tolled during the period of time that the claims are pending before the mediator.

**(d)** In the event of a dispute between the parties as to performance of the Work, the interpretation of the Contract Documents or payment or nonpayment for Work performed or not performed, the parties shall attempt to resolve the dispute via the procedures set forth in this Item. Pending resolution of the dispute, DESIGN-BUILDER agrees to continue the Work and/or disputed work diligently to completion. If the dispute is not resolved, DESIGN-BUILDER agrees it will neither rescind the Agreement nor stop the progress of the Work and/or the disputed work, but DESIGN-BUILDER'S sole remedy, following exhaustion of the procedures set forth in this Item, shall be to submit such controversy to determination by a court of the State of California, in Fresno County, having competent jurisdiction of the dispute, after the Project has been completed, and not before.

**(e)** All meetings and correspondence relative to disputes and claims, which involve offers of good faith and negotiations, are subject to the Evidence Code 1152 exclusions.

#### **Item 59. PAYMENTS WITHHELD**

**(a)** In addition to any amount which OWNER may retain under the Item entitled "COMPLETION" (Item 54) and the Item entitled "PROGRESS PAYMENTS," (Item 50), OWNER may withhold a sufficient amount or amounts of the Contract Price otherwise due to DESIGN-BUILDER, which in OWNER'S judgment may be necessary to cover:

- (1)** Payments which may be past due and payable for just claims against DESIGN-BUILDER or any Subcontractors, or against and about the performance of work on the Project, including, without limitation, payments made pursuant to the Item entitled "TIMELY PAYMENTS BY DESIGN-BUILDER," (Item 37).
- (2)** The cost of defective work, which DESIGN-BUILDER has not remedied.
- (3)** Liquidated damages assessed against DESIGN-BUILDER.
- (4)** Penalties for violation of labor laws and / or deficient certified payroll.
- (5)** The cost of materials ordered by the OWNER pursuant to the Item entitled "MATERIALS AND WORK," (Item 30).
- (6)** Damage caused by DESIGN-BUILDER or its Subcontractors and the parties they are responsible for to another contractor or Subcontractor.
- (7)** Site clean-up as provided in the Item entitled "CLEANING UP," (Item 40).
- (8)** Payments to indemnify, defend, or hold harmless the City.
- (9)** Any payments due to the OWNER including but not limited to payments for failed tests, utilities or imperfections.

(10) Extra services for any Inspector including but not limited to re-inspection required due to DESIGN-BUILDER's failed tests or installation of unapproved or defective materials and DESIGN-BUILDER's requests for inspection and DESIGN-BUILDER's failure to attend the inspection.

(11) Costs to complete and/or submit to OWNER Project Record Documents and other closeout documents required under the Contract Documents.

(12) Submission of daily reports and completeness thereof.

(13) Breach of any provision of the Project Documents.

(b) If the above grounds are in the opinion of the OWNER removed by or at the expense of DESIGN-BUILDER, payment shall be made for amounts withheld because of them.

(c) OWNER may apply such withheld amount or amounts to payment of such claims or obligations at its discretion. In so doing, OWNER shall make such payments on behalf of DESIGN-BUILDER. If any payment is so made by OWNER, then such amount shall be considered as a payment made under contract by OWNER to DESIGN-BUILDER and OWNER shall not be liable to DESIGN-BUILDER for such payments made in good faith. Such payments may be made without prior judicial determination of claim or obligations. OWNER will render DESIGN-BUILDER an accounting of such funds disbursed on behalf of DESIGN-BUILDER.

(d) As an alternative to payment of such claims or obligations, OWNER, in its sole discretion, may reduce the total Contract Price or set-off the amount against payments due.

#### **Item 60. ASBESTOS CONTAINING MATERIALS**

(a) Should removal of asbestos containing materials be part of the Project, decontamination and removal will meet the following criteria:

(1) Decontamination and removal of work found to contain asbestos or work installed with asbestos containing equipment shall be done only under the supervision of a qualified consultant, knowledgeable in the field of asbestos abatement and accredited by the Environmental Protection Agency (EPA).

(2) The asbestos removal contractor shall be an EPA accredited contractor qualified in the removal of asbestos and shall be chosen and approved by the asbestos consultant who shall have sole discretion and final determination in this matter.

(3) The asbestos consultant shall be chosen and approved by the OWNER who shall have sole discretion and final determination in this matter.

(4) The work will not be accepted until asbestos contamination is reduced to levels deemed acceptable by the asbestos consultant.

(b) The cost of all asbestos removal, including, but not necessarily limited to the cost of the asbestos removal contractor, the cost of the asbestos consultant, analytical and laboratory fees, time delays and additional costs as may be incurred by the OWNER or Design-Builder shall be borne entirely by the OWNER.

(c) Hold Harmless: Interface of work for the Project with work containing asbestos shall be executed by the DESIGN-BUILDER at his/her risk and at his/her discretion with full knowledge of the currently accepted standards, hazards, risks and liabilities associated with asbestos work and asbestos containing products. By execution of the Agreement, the DESIGN-BUILDER acknowledges the above and agrees to hold harmless the OWNER, employees, authorized agents, and OWNER'S AUTHORIZED REPRESENTATIVE and assigns for all asbestos liability which may be associated with this work. The DESIGN-BUILDER further agrees to instruct its employees with respect to the above mentioned standards, hazards, risks and liabilities.

## **Item 61. HAZARDOUS MATERIALS**

(a) In the event DESIGN-BUILDER encounters or suspects the presence on the Site of material reasonably believed to be asbestos, polychlorinated biphenyl (PCB), or any other material defined as being hazardous by Section 25249.5 of the California Health and Safety Code, which has not been rendered harmless, the DESIGN-BUILDER shall immediately stop Work in the area affected and report the condition to the CONSTRUCTION MANAGER and the OWNER in writing, whether or not the material was generated by the DESIGN-BUILDER or the OWNER. The Work in the affected area shall not thereafter be resumed, except by written agreement of the OWNER and the DESIGN-BUILDER and the Work shall only be resumed only in the absence of said hazardous materials, or when it has been rendered harmless by written agreement of the OWNER and the DESIGN-BUILDER.

(b) In the event that the hazardous materials are suspected or discovered on Site, the OWNER shall retain an independent testing laboratory to determine the nature and extent of the material encountered and whether corrective measures or remedial action is required. The DESIGN-BUILDER shall not be required to perform without consent any Work in the affected area of the Site which is affected until said hazardous materials are removed, remediated or rendered harmless, and only upon written notice from the OWNER.

(c) In the event the presence of hazardous materials on the Project Site is not caused by the DESIGN-BUILDER, its Subcontractors, or others for which it is responsible, OWNER shall pay for all costs of testing and remediation, if any, and shall compensate DESIGN-BUILDER for any additional costs incurred or for Project delay in accordance with the applicable provisions of the Contract Documents.

(d) In the event that the hazardous materials on the Project Site is caused by the DESIGN-BUILDER, its Subcontractors, or others for which it is responsible, the Design-Builder shall be proportionately responsible and liable for all costs of investigation and remediation relating to said hazardous materials; and DESIGN-BUILDER shall, to the extent of its fault, indemnify, defend and hold harmless OWNER from and against any claims, damages. Losses, costs and expenses incurred, including proportionate attorney's fees, directly resulting from the presence of hazardous materials on the Project Site. DESIGN-BUILDER shall be entitled to prompt reimbursement from OWNER of any cost paid above or amount retained from DESIGN-BUILDER's payments above the DESIGN-BUILDER's percentage of liability for the underlying claim or issue.

(e) The terms of this Item shall survive the completion of the Work and/or any termination of this Agreement.

## **Item 62. ESCROW OF BID DOCUMENTS (NOT REQUIRED FOR THIS PROJECT)**

## **Item 63. ALLOWANCES**

(a) The following costs shall be included in all Allowances;

- (1) Cost of the product to DESIGN-BUILDER or Subcontractor, less applicable trade discounts
- (2) Delivery to the site
- (3) Applicable taxes

(b) DESIGN-BUILDER costs included in the Contract Price include, but are not limited to;

- (1) Arrangement of product(s) shipping and handling at site, including unloading, uncrating, and storage.
- (2) Protection of products from the elements and from damage
- (3) Labor for installation, adjustments and finishing products
- (4) Product warranties
- (5) Scheduling changes and updates

- (6) Other expenses required to complete installation
- (7) DESIGN-BUILDER and Subcontractor(s) overhead and profit.
- (8) Taxes

(c) The adjustments in costs will be made if the net cost is more or less than the specified amount of the allowance. The net cost of the adjustment shall be the amount of the difference between the specified allowance and the actual cost of the material, with the exception of a not-to-exceed 15% mark-up for overhead and profit for Subcontractors and 5% mark-up for DESIGN-BUILDER. The Contract Price will be adjusted by Change Order, upon DESIGN-BUILDER's fulfillment of the following conditions:

- (1) Submit any claims for anticipated additional costs, or other expenses caused by the selection of the allowance, prior to execution of the Work.
- (2) Submit documentation for actual additional costs, or other expenses caused by the selection of the allowance, promptly following execution of the Work.
- (3) Failure to submit claims within the designated time will constitute a waiver of claims for additional costs.

#### **Item 64. WAIVER AND RELEASE FORMS**

(a) Consistent with the statutes of Public Contract Code section 7100 et seq., provisions in public works contracts with public entities which provide that acceptance of a payment otherwise due a DESIGN-BUILDER is a waiver of all claims against the public entity arising out of the Work performed under the contract or which condition the right to payment upon submission of a release by the DESIGN-BUILDER of all claims against the public entity arising out of performance of the public work are against public policy and null and void. However, Section 7100 does not prohibit a public entity from placing in a public works contract and enforcing a contract provision which provides that payment of undisputed contract amounts is contingent upon the DESIGN-BUILDER furnishing the public entity with a release of all claims against the public entity arising by virtue of the public works contract related to those amounts. The DESIGN-BUILDER from the operation of the release may specifically exclude disputed contract claims in stated amounts.

(b) Neither the OWNER nor original DESIGN-BUILDER by any term of this Agreement, or otherwise, shall waive, affect, or impair the claims and liens of other persons whether with or without notice except by their written consent, and any term of the contract to that effect shall be null and void. Any written consent given by any claimant pursuant to this subdivision shall be null, void, and unenforceable unless and until the claimant executes and delivers a waiver and release. Such a waiver and release shall be binding and effective to release the OWNER, construction lender, and Surety on a payment bond from claims and liens only if the waiver and release follows substantially one of the forms set forth in this section and is signed by the claimant or his or her authorized agent, and, in the case of a conditional release, there is evidence of payment to the claimant. Evidence of payment may be by the claimant's endorsement on a single or joint payee check that has been paid by the bank upon which it was drawn or by written acknowledgment of payment given by the claimant.

(c) No oral or written statement purporting to waive, release, impair or otherwise adversely affect a claim is enforceable or creates any estoppel or impairment of a claim unless:

- (1) It is pursuant to a waiver and release prescribed herein, or
- (2) The claimant had actually received payment in full for the claim.

(d) This section does not affect the enforceability of either an accord and satisfaction regarding a bona fide dispute or any agreement made in settlement of an action pending in any court provided the accord and satisfaction or agreement and settlement make specific reference to the, stop notice, or bond claims.

(e) The waiver and release given by any claimant hereunder shall be null, void, and unenforceable unless it follows substantially the following forms in the following circumstances. Each waiver in this provision



shall contain the following language, in at least as large a type as the largest type otherwise on the document. **(Example 1.)** Where the claimant is required to execute a waiver and release in exchange for, or in order to induce the payment of, a progress payment and the claimant is not, in fact, paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall follow substantially the following form:

**CONDITIONAL WAIVER AND RELEASE UPON "PROGRESS PAYMENT"**

Upon receipt by the undersigned of a check from: \_\_\_\_\_  
(Maker of Check)

in the sum of: \$ \_\_\_\_\_ payable to: \_\_\_\_\_  
(Amount of Check) (Payee or Payees of Check)

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

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

to the following extent. This release covers a progress payment for labor, services, equipment, or material furnished to

\_\_\_\_\_ through: \_\_\_\_\_  
(Your Customer) (Date)

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

\_\_\_\_\_ (Company Name) \_\_\_\_\_ (Date)

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

**Exclusions:** Listing of Claims, of which Notice has been given:

1. Claim for: \_\_\_\_\_ In the amount of: \$ \_\_\_\_\_
2. Claim for: \_\_\_\_\_ In the amount of: \$ \_\_\_\_\_
3. Claim for: \_\_\_\_\_ In the amount of: \$ \_\_\_\_\_

**(Example 2.)** Where the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a progress payment and the claimant asserts in the waiver it has, in fact, been paid the progress payment, the waiver and release shall follow substantially the following form:

**UNCONDITIONAL WAIVER AND RELEASE UPON "PROGRESS PAYMENT"**

The undersigned has been paid and has received a progress payment in the sum of \$\_\_\_\_\_ for labor, services, equipment, or material furnished to

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

on the job of: \_\_\_\_\_  
(OWNER)

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

and does hereby release any mechanic's lien, stop notice, or bond right that the undersigned has on the above referenced job to the following extent. This release covers a progress payment for labor, services, equipment, or materials furnished to

\_\_\_\_\_ through: \_\_\_\_\_  
(Your Customer) (Date)

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

\_\_\_\_\_  
(Company Name)

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

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

**Exclusions:** Listing of Claims, of which Notice has been given:

1. Claim for: \_\_\_\_\_ In the amount of: \$ \_\_\_\_\_
2. Claim for: \_\_\_\_\_ In the amount of: \$ \_\_\_\_\_
3. Claim for: \_\_\_\_\_ In the amount of: \$ \_\_\_\_\_

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

**(Example 3.)** Where the claimant is required to execute a waiver and release in exchange for, or in order to induce the payment of, a final payment and the claimant is not, in fact, paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall follow substantially the following form:

**CONDITIONAL WAIVER AND RELEASE UPON "FINAL PAYMENT"**

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

in the sum of \$\_\_\_\_\_ payable to: \_\_\_\_\_

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

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

This release covers the final payment to the undersigned for all labor, services, equipment, or material furnished on the job, except for disputed claims for additional work in the amount of \$\_\_\_\_\_

Before any recipient of this document relies on it, the party should verify evidence of payment to the undersigned.

\_\_\_\_\_  
(Company Name) (Date)

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

**Exclusions:** Listing of Claims, of which Notice has been given:

1. Claim for: \_\_\_\_\_ In the amount of: \$ \_\_\_\_\_
2. Claim for: \_\_\_\_\_ In the amount of: \$ \_\_\_\_\_
3. Claim for: \_\_\_\_\_ In the amount of: \$ \_\_\_\_\_

**(Example 4.)** Where the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a final payment and the claimant asserts in the waiver it has, in fact, been paid the final payment, the waiver and release shall follow substantially the following form:

**UNCONDITIONAL WAIVER AND RELEASE UPON "FINAL PAYMENT"**

The undersigned has been paid in full for all labor, services, equipment or material

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

on the job of: \_\_\_\_\_ located at: \_\_\_\_\_  
(OWNER) (Job Description)

and does hereby waive and release any right to a mechanic's lien, stop notice, or any right against a labor and material bond on the job, except for disputed claims for extra work in the amount of \$ \_\_\_\_\_.

\_\_\_\_\_  
(Company Name) (Date)

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

**Exclusions:** Listing of Claims, of which Notice has been given:

1. Claim for: \_\_\_\_\_ In the amount of: \$ \_\_\_\_\_
2. Claim for: \_\_\_\_\_ In the amount of: \$ \_\_\_\_\_
3. Claim for: \_\_\_\_\_ In the amount of: \$ \_\_\_\_\_

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

## **Item 65. PUBLIC SAFETY REQUIREMENTS**

The DESIGN-BUILDER shall at all times maintain the safety of the Project Site and the traveling public while traveling through or adjacent the Project Site.

## **Item 66. TERMINATION BY OWNER FOR CAUSE**

(a) If the DESIGN-BUILDER 1) refuses or fails to supply enough properly skilled Workers or proper materials and/or equipment; 2) fails to supply a competent Superintendent, 3) fails to perform the Work according to the approved Project Schedule, 4) fails to make timely payment to Subcontractors for materials, supplies, equipment or labor in accordance with California Business and Professions Code section 7108.5; 5) fails to comply with or disregards Laws and Regulations, or orders of a public authority having jurisdiction; 6) fails to comply with its safety obligations set forth herein, 7) declares bankruptcy, becomes insolvent, or assigns its assets for the benefit of creditors, or if a receiver is appointed on account of DESIGN-BUILDER's insolvency, or 8) is otherwise in material breach of a provision of the Contract Documents, DESIGN-BUILDER may be deemed to be in default of this Agreement. If the DESIGN-BUILDER fails within seven (7) days after written notification of said default to cure said default, or to the extent that the complete cure cannot be achieved within said period as determined by the OWNER, and DESIGN-BUILDER fails to make significant progress in implementing the cure, then the termination of the Agreement shall automatically become effective on the eighth (8<sup>th</sup>) day following the notice of default.

(b) Upon said termination, the OWNER may, without prejudice to any other rights or remedies hereunder or under Law, and, subject only to any prior rights of the Surety:

(1) take possession of the Site and of all material,

(2) accept assignment of subcontracts; and

(3) complete the Work by whatever reasonable method the OWNER may deem expedient.

(c) If the OWNER terminates the Agreement for one of the reasons stated above, the DESIGN-BUILDER shall not be entitled to receive further payment until the Work is complete.

(d) If the unpaid balance of the Contract Price exceeds the costs of completing the Work, including compensation for professional services and other expenses made necessary thereby, such excess shall be paid to the DESIGN-BUILDER. If such costs exceed the unpaid balance, the DESIGN-BUILDER shall promptly pay the difference to the OWNER. The amount to be paid to the DESIGN-BUILDER, or OWNER, as the case may be, shall be certified by the OWNER'S AUTHORIZED REPRESENTATIVE upon application. This payment obligation shall survive completion of the Project.

(e) Upon termination as provided above, OWNER shall promptly give written notice to DESIGN-BUILDER's Surety which shall have the right to take over and perform the Work; provided however, that if the Surety within fifteen (15) days after receipt of the notice of termination does not notify the OWNER in writing of its intention to take over and perform the Agreement, or does not commence performance of the Agreement within thirty (30) days from the date of serving said notice, the OWNER may take over the Work and prosecute the same to completion of the Project or by any other method it may deem advisable for the account and expense of the DESIGN-BUILDER, and the Surety shall be liable to the OWNER pursuant to the terms of the applicable Bond.

(f) The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to the OWNER.

## **Item 67. TERMINATION BY OWNER FOR CONVENIENCE**

(a) OWNER may, at any time, upon written notice to DESIGN-BUILDER, terminate the Agreement and its obligations under the Agreement and the Contract Documents, for the OWNER'S convenience and without cause.

(b) Upon receipt of written notice from the OWNER of such termination for the OWNER'S convenience, DESIGN-BUILDER shall:

- (1) Cease operations as directed by the OWNER in the notice;
- (2) Take actions necessary, or that the OWNER may direct, for the protection and preservation of the Work; and
- (3) Except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

(c) In case of such termination for the OWNER'S convenience, the DESIGN-BUILDER shall be entitled to receive payment for Work completed, and the reasonable costs incurred by reason of such termination, including reasonable demobilization costs, along with reasonable overhead and profit on the Work completed. However, DESIGN-BUILDER shall not be entitled to recover lost profits or consequential damages relating to the terminated Work or the termination of the Agreement.

#### **Item 68. TERMINATION BY DESIGN-BUILDER**

(a) If repeated suspensions, delays, or interruptions by the OWNER constitute in the aggregate more than 100 percent (100%) of the total number of days scheduled for completion of the Project, or one hundred twenty (120) days in any three hundred sixty-five (365) day period, whichever is less, the DESIGN-BUILDER may, upon written notice of seven (7) additional days to the OWNER, terminate the Agreement and recover from the OWNER payment for Work executed and for reasonable costs with respect to materials, equipment, tools, construction equipment, and machinery, including reasonable overhead, profit, and damages relating to the completed Work. If the Work is stopped for a period of ninety (90) consecutive days through no act or fault of the DESIGN-BUILDER, Subcontractor, sub-subcontractor, their authorized agents or employees, or any other persons performing portions of the Work for whom the DESIGN-BUILDER is contractually responsible because the OWNER has persistently failed to fulfill the OWNER'S obligations under the Contract Documents with respect to matters essential to the progress of the Work, the DESIGN-BUILDER may, upon written notice of seven (7) additional days to the OWNER, terminate the Agreement and recover from the OWNER payment for Work executed and for reasonable costs with respect to materials, equipment, tools, construction equipment, and machinery, including reasonable overhead, profit, and damages relating to the completed Work.

(b) If Owner has failed to pay undisputed amounts due to DESIGN-BUILDER, as submitted in accordance with Item 50, for 90 days past the due date of the earliest missed payment, the DESIGN-BUILDER may, upon written notice of seven (7) additional days to the OWNER, terminate the Agreement and recover from the OWNER payment for Work executed and for reasonable costs verified by the CONSTRUCTION MANAGER with respect to materials, equipment, tools, construction equipment, and machinery, including reasonable overhead, profit, and damages relating to the completed Work.

#### **Item 69. ASSIGNMENTS OF PAYMENTS**

DESIGN-BUILDER hereby agrees he/she will not assign the payment of any monies due it (him/her) from the OWNER under the terms of this Agreement to any other individual(s), corporation(s) or entity(s). The OWNER retains the right to pay any and all monies due DESIGN-BUILDER directly to DESIGN-BUILDER.

#### **Item 70. EXCISE TAXES**

If under federal excise tax law any transaction hereunder constitutes a sale on which a federal excise tax is imposed and the sale is exempt from such excise tax because it is a sale to a state or local government for its exclusive use, the OWNER, upon request, will execute documents necessary to show that the sale is for the exclusive use of the City. No excise tax for such materials shall be included in any bid price.

#### **Item 71. ASSIGNMENT**

The DESIGN-BUILDER shall not assign, transfer, convey, sublet or otherwise dispose of this Agreement or of its rights, title or interest in or to the same or any part thereof. If the DESIGN-BUILDER assigns, transfers, conveys, sublets or otherwise disposes of the Agreement or its right, title or interest therein, or any part thereof, such attempted or purported assignment, transfer, conveyance, sublease or other disposition shall be null, void and of no legal effect whatsoever; and the Agreement may, at the option of the OWNER, be terminated, and the OWNER shall thereupon be relieved and discharged from any and all liability and obligations growing out of the same to the DESIGN-BUILDER, and to its purported assignee or transferee.

#### **Item 72. NO WAIVER**

The failure of the OWNER in any one or more instances to insist upon strict performance of any of the terms of this Agreement or the Contract Documents or to exercise any option herein conferred shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion.

#### **Item 73. NOTICES**

Any notice from one party to the other or otherwise under the Agreement shall be in writing and shall be dated and signed by party giving such notice or by a duly authorized representative of such party. Any such notice shall not be effective for any purpose whatsoever unless served in one of the following manners:

(a) If notice is given to OWNER, by personal delivery thereof to OWNER or by deposit in the United States mail, enclosed in a sealed envelope addressed to OWNER at the address set forth in the Agreement, and sent by registered or certified or overnight mail with postage prepaid;

(b) If notice is given to DESIGN-BUILDER, by personal delivery thereof to said DESIGN-BUILDER or to DESIGN-BUILDER's Superintendent at the Site of the Project, or by deposit in the United States mail, enclosed in a sealed envelope addressed to said DESIGN-BUILDER at its regular place of business or at such address as may have been established for the conduct of work under this Agreement, and sent by registered or certified or overnight mail with postage prepaid;

(c) If notice is given to the Surety or other persons, by personal delivery to such surety or other person or by deposit in the United States mail, enclosed in a sealed envelope, addressed to such surety or person at the address of such surety or person last communicated by the Surety or other person to the party giving notice, and sent by registered or certified or overnight mail with postage prepaid.

#### **Item 74. BOOKS AND RECORDS; RIGHT TO AUDIT**

(a) DESIGN-BUILDER shall prepare and maintain proper, accurate and complete books and records using generally accepted accounting principles regarding the Work and other transactions related to the permitting, designing (if applicable), construction, startup and testing of the Project, including all books of account, bills, vouchers, invoices, rate sheets, cost estimates, subcontracts, purchase orders, time books, daily job diaries, and reports, correspondence and any other documents showing all acts and transactions in connection with or relating to the Work, including any extra work.

(b) If the DESIGN-BUILDER submits a claim to the OWNER for additional compensation, the OWNER, upon seven (7) days written notice, shall have the right to audit the books and records of DESIGN-BUILDER relating to the relevant claim on the Project. This right shall include the right to examine books, records, documents, electronic files, and other evidence of accounting procedures and practices sufficient to discover and verify all amounts for which DESIGN-BUILDER seeks payment from OWNER.

(c) DESIGN-BUILDER shall retain all such books and records for at least three (3) years after final payment is made and all other pending matters under the Contract are closed.

#### **Item 75. NON-DISCRIMINATION**

In the performance of the terms of this Agreement, DESIGN-BUILDER agrees that it will not engage in nor permit such Subcontractor as it may employ to engage in unlawful discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons.

#### **Item 76. ATTORNEYS' FEES**

In addition to any other relief to which a party under this Agreement may be entitled, the prevailing party in any dispute arising from or related to this Agreement shall be entitled to recover its reasonable attorneys' fees, costs and expert witness fees.

#### **Item 77. GOVERNING LAW AND VENUE**

The Contract Documents shall be governed by the law of the State of California. Venue for any actions concerning or arising out of the Contract Documents or the Project shall be in Superior Court of the State of California in and for the County of Fresno.

#### **Item 78. SEVERABILITY**

The partial or complete invalidity of any one or more provisions of the Contract Documents shall not affect the validity or continuing force and effect of any other provision.



**EXHIBIT D**  
**DESIGN-BUILD**  
**SPECIAL CONDITIONS**  
**(SUPPLEMENTAL GENERAL CONDITIONS)**

**DESIGN-BUILD**  
**SUPPLEMENTAL GENERAL CONDITIONS**

# SUPPLEMENTAL GENERAL CONDITIONS

## **ITEM 1. INSURANCE REQUIREMENTS**

(a) Throughout the life of this Agreement, DESIGN-BUILDER shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, DESIGN-BUILDER or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to DESIGN-BUILDER shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve DESIGN-BUILDER of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by DESIGN-BUILDER shall not be deemed to release or diminish the liability of DESIGN-BUILDER, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by DESIGN-BUILDER. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of DESIGN-BUILDER, vendors, suppliers, invitees, contractors, sub-contractors, subcontractors, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."
2. The most current version of ISO \*Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

## **MINIMUM LIMITS OF INSURANCE EXHIBIT A**

DESIGN-BUILDER shall procure and maintain for the duration of the contract, and for 5 years thereafter, insurance with limits of liability not less than those set forth below. However, insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

**1. COMMERCIAL GENERAL LIABILITY**

- (i) \$2,000,000 per occurrence for bodily injury and property damage;
- (ii) \$2,000,000 per occurrence for personal and advertising injury;
- (iii) \$4,000,000 aggregate for products and completed operations; and,
- (iv) \$4,000,000 general aggregate applying separately to the work performed under the Agreement.

**2. COMMERCIAL AUTOMOBILE LIABILITY**

\$1,000,000 per accident for bodily injury and property damage.

**3. Workers' Compensation Insurance as required by the State of California with statutory limits and EMPLOYER'S LIABILITY with limits of liability not less than:**

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

**4. BUILDERS RISK (Course of Construction) insurance in an amount equal to the completed value of the project with no coinsurance penalty provisions. (Only required if the project includes new construction of a building, or renovation of, or addition to, an existing building.)**

**5. DESIGN-BUILDERS' POLLUTION LEGAL LIABILITY with coverage for bodily injury, property damage or pollution clean-up costs that could result from of pollution condition, both sudden and gradual. Including a discharge of pollutants brought to the work site, a release of pre- existing pollutants at the site, or other pollution conditions with limits of liability of not less than the following:**

- (i) \$1,000,000 per occurrence or claim; and,
  - (ii) \$2,000,000 general aggregate per annual policy period.
- (a) In the event this Agreement involves the transportation of hazardous material, either the Commercial Automobile policy or other appropriate insurance policy shall be endorsed to include Transportation Pollution Liability insurance covering materials to be transported by DESIGN-BUILDER pursuant to the Agreement.

## **UMBRELLA OR EXCESS INSURANCE**

In the event DESIGN-BUILDER purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents and volunteers.

## **DEDUCTIBLES AND SELF-INSURED RETENTIONS**

DESIGN-BUILDER shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and DESIGN-BUILDER shall also be responsible for payment of any self-insured retentions. Any self-insured retentions must be declared on the Certificate of Insurance, and approved by, the CITY'S Risk Manager or his/her designee. At the option of the CITY'S Risk Manager or his/her designee, either:

- (i) The insurer shall reduce or eliminate such self-insured retentions as respects CITY, its officers, officials, employees, agents and volunteers; or
- (ii) DESIGN-BUILDER shall provide a financial guarantee, satisfactory to CITY'S Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall CITY be responsible for the payment of any deductibles or self-insured retentions.

## **OTHER INSURANCE PROVISIONS/ENDORSEMENTS**

- (i) All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice has been given to CITY, except ten (10) days for nonpayment of premium. DESIGN-BUILDER is also responsible for providing written notice to the CITY under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, DESIGN-BUILDER shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, DESIGN-BUILDER shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.
- (ii) The Commercial General, Pollution and Automobile Liability insurance policies shall be written on an occurrence form.
- (iii) The Commercial General, Pollution and Automobile Liability insurance policies shall be endorsed to name City, its officers, officials, agents, employees and volunteers as an additional insured. DESIGN-BUILDER shall establish additional insured status for the City and for all ongoing and completed operations under both Commercial General and Pollution Liability policies by use of ISO Forms or an executed manuscript insurance company endorsement providing additional insured status. The Commercial General endorsements must be as broad as that contained in ISO Forms: GC 20 10 11 85 or both CG 20 10 & CG 20 37.
- (iv) The Commercial General, Pollution and Automobile Liability insurance shall contain, or be endorsed to contain, that the DESIGN-BUILDERS' insurance shall be primary to and require no contribution from the City. The Commercial General and Pollution Liability policies are required to include primary and non-contributory coverage in favor of the City for both the ongoing and completed operations coverage. These coverages shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents and volunteers. If DESIGN-BUILDER maintains higher limits of liability than the minimums shown above, City requires and shall be entitled to coverage for the higher limits of liability maintained by DESIGN-BUILDER.
- (v) Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.
- (vi) For any claims related to this Agreement, DESIGN-BUILDER'S insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, agents, employees and

volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, agents, employees and volunteers shall be excess of the DESIGN-BUILDER'S insurance and shall not contribute with it.

- (vii) The Workers' Compensation insurance policy shall contain, or be endorsed to contain, a waiver of subrogation as to CITY, its officers, officials, agents, employees and volunteers.
- (viii) The Builder's Risk Insurance shall have the policy endorsed to provide the City of Fresno to be named as a Loss Payee.
- (ix) The Commercial General, Pollution and Automobile Liability insurance policies shall contain, or be endorsed to contain, a waiver of subrogation as to CITY, its officers, officials, agents, employees and volunteers.

**PROVIDING OF DOCUMENTS** - DESIGN-BUILDER shall furnish CITY with all certificate(s) and applicable endorsements effecting coverage required herein All certificates and applicable endorsements are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the Agreement and before work commences. All non- ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of CITY, DESIGN-BUILDER shall immediately furnish CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement. All subcontractors working under the direction of DESIGN-BUILDER shall also be required to provide all documents noted herein.

**CLAIMS-MADE POLICIES** - If any coverage required is written on a claims-made coverage form:

- (i) The retroactive date must be shown and must be before the effective date of the Agreement or the commencement of work by DESIGN-BUILDER.
- (ii) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the work or termination of the Agreement, whichever first occurs.
- (iii) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement, or work commencement date, DESIGN-BUILDER must purchase "extended reporting" period coverage for a minimum of five (5) years after completion of the work or termination of the Agreement, whichever first occurs.
- (iv) A copy of the claims reporting requirements must be submitted to CITY for review.
- (v) These requirements shall survive expiration or termination of the Agreement.

**SUBCONTRACTORS** - If DESIGN-BUILDER subcontracts any or all of the services to be performed under this Agreement, DESIGN-BUILDER shall require, at the discretion of the CITY Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the City to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by CITY Risk Manager or designee. If no Side Agreement is required, DESIGN-BUILDER will be solely responsible for ensuring that its subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.

## END OF SECTION