

DESIGN CONTRACT

THIS CONTRACT (Contract) is made and entered into by and between the CITY OF FRESNO, a California municipal corporation (City), and SWINERTON BUILDERS, a California corporation (Design-Builder), as follows:

RECITALS

WHEREAS, the City desires to obtain professional design services for the design of plans and general construction contract documents for the Parking Automation and Video Surveillance (Project); and

WHEREAS, the City desires to utilize a Progressive Design Build delivery method to design and build the Project; and

WHEREAS, the selected design-build team composed of SWINERTON BUILDERS and its sub-consultants, including architects and engineers from WALKER CONSULTANTS, shall provide design services and hereby represents that it desires to and is professionally and legally capable of performing the services call for by this Agreement; and

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

1. Contract Documents. The "Request for Qualifications", "Specifications", the "DBIA Progressive Design Build Agreement", as modified, and the "DBIA Standard Form of General Conditions of Contract Between Owner and Design-Builder", as modified, for design services related to a Parking Automation and Video Surveillance at Downtown Fresno Parking Facilities, copies of which are annexed hereto as part of Exhibit 1, together with all the documents specifically referred to in said annexed documents, are hereby incorporated into and made part of this Contract, and shall be known as the Contract Documents.
2. Price. For the monetary consideration of \$601,521, as set forth in **Exhibit 1**, Design-Builder 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 design of the Project more fully described in **Exhibit 1**, and this shall include all work incidental to, or necessary to perform, such design 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", City contracts for the services in Phase One for design. Design-Builder shall not perform any other Phase of the Agreement, and this Agreement shall not be a contract for any other Phase, until further performance is authorized by City's

issuance of a written "Notice to Proceed" for such additional phase(s). It shall, however, remain Design-Builder's offer to perform all remaining phases described herein. In the event Design-Builder performs without City's prior written authorization, Design-Builder will not be entitled to compensation for such 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.

[SIGNATURES FOLLOW ON THE NEXT PAGE]

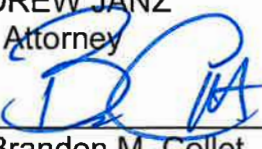
IN WITNESS WHEREOF, the parties have executed this Contract on the day and year here below written, of which the date of execution by the City shall be subsequent to that of the Design-Builder's, and this Contract shall be binding and effective upon execution by both parties.

CITY OF FRESNO,
A California municipal corporation

By: 
FRANCISCO V. MAGOS II, PE,
MBA, QSD
Assistant Director
Capital Projects Department

Dated: 6/13/24

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

By: 
Brandon M. Collet
Assistant City Attorney

Dated: 5/2/24

ATTEST:
TODD STERMER, CMC
City Clerk

By: 
Susan Mac
Deputy City Clerk

Dated: 6-14-2024

Addresses:
CITY:
City of Fresno
Attention: Armando Cervantes,
Project Manager
747 R Street, 2nd Floor
Fresno, CA 93721
Phone: (559) 621-8687
E-mail: Armando.cervantes@fresno.gov

SWINERTON BUILDERS,
a California corporation

By: Jeff Good 
Digitally signed by Jeff Good
DN: C=US, E=jgood@swinerton.com,
O=Swinerton Builders, CN=Jeff Good
Date: 2024.05.02 13:31:36 -0700

Name: Jeffrey F. Good

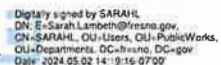
Title: VP, Division Manager
(If corporation or LLC., Board Chair,
Pres. or Vice Pres.)

By: _____

Name: _____

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

REVIEWED BY:
Sarah Lambeth,
Project Management Analyst

SARAH L 
Digitally signed by SARAH L
DN: E=Sarah.Lambeth@fresno.gov,
CN=SARAH L, OU=Users, OU=PublicWorks,
OU=Departments, DC=fresno, DC=gov
Date: 2024.05.02 14:19:16 -0700

DESIGN-BUILDER:
SWINERTON BUILDERS
Attention: Jeffrey Good, Vice President
15 Business Park Way, Suite 101
Sacramento, California 95828
Phone: (720) 402-2818
E-mail: JGood@swinerton.com

Attachment:

Exhibit 1 – Contract Documents including Scope of Services

Exhibit A – Owner's Project Criteria

Exhibit B – Scope of Services

Exhibit C – Disclosure of Conflict of Interest

Exhibit D – General Conditions

Progressive Design- Build Agreement

EXHIBIT 1

Document No. 544

Second Edition, 2022

© Design-Build Institute of America
Washington, D.C.





Progressive Design-Build Agreement

This document has important legal consequences. Consultation with an attorney is recommended with respect to its completion or modification.

This **AGREEMENT** is made as of the _____ day of _____ in the year of 2024, by and between the following parties, for services in connection with the Project identified below:

OWNER OR CITY:

*City of Fresno
2600 Fresno Street
Fresno, CA 93721*

DESIGN-BUILDER:

*Swinerton Builders
15 Business Park Way,
Suite 101
Sacramento, CA, 95828*

PROJECT:

Parking Automation and Video Surveillance

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree as set forth herein.

Article 1

General

- 1.1 Duty to Cooperate. Owner and Design-Build commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith to permit each party to realize the benefits afforded under this Agreement
- 1.2 Definitions. Terms, words, and phrases used in this Agreement shall have the meanings given them in DBIA Document No. 535, Standard Form of General Conditions of Contract Between Owner and Design-Build (2022 Edition) ("General Conditions of Contract")
- 1.3 Design Services. Design-Build shall, consistent with applicable state licensing laws, provide design services, including architectural, engineering, and other design professional services required by this Agreement. Such design services shall be provided through qualified, licensed design professionals who are either (i) employed by Design-Build, or (ii) procured by Design-Build from independent sources. Nothing in this Agreement is intended to create any legal or contractual relationship between Owner and any independent design professional.

Article 2

Design-Build's Services and Responsibilities

2.1 General Services.

2.1.1 Owner shall provide Design-Build with Owner's Project Criteria describing Owner's program requirements and objectives for the Project as set forth in Exhibit A. Owner's Project Criteria shall include Owner's use, space, price, time, site, performance, and expandability requirements. Owner's Project Criteria may include conceptual documents, design specifications, design performance specifications, and other technical materials and requirements prepared by or for Owner.

2.1.2 If Owner's Project Criteria have not been developed prior to the execution of this Agreement, Design-Build will assist Owner in developing Owner's Project Criteria, with such service deemed to be an additional service for which additional compensation shall be paid by Owner to Design-Build. If Owner has developed Owner's Project Criteria prior to executing this Agreement, Design-Build shall review and prepare a written evaluation of such criteria, including recommendations to Owner for different and innovative approaches to the design and construction of the Project. The parties shall meet to discuss Design-Build's written evaluation of Owner's Project Criteria and agree upon what revisions, if any, should be made to such criteria.

2.2 Phased Services.

2.2.1 Phase 1 Services. Design-Build shall perform the services of design, pricing, and other services for the Project based on Owner's Project Criteria, as may be revised in accordance with Section 2.1 hereof, as set forth in Exhibit B, Scope of Services. Design-Build shall perform such services to the level of completion required for Design-Build and Owner to establish the Contract Price for Phase 2, as set forth in Section 2.3 below. The Contract Price for Phase 2 shall be developed during Phase 1 on an "open-book" basis. Design-Build's Compensation for Phase 1 Services is set forth in Section 7.1.1 herein. The level of completion required for Phase 1 Services is defined in Exhibit B, Scope of Services (either as a percentage of design completion or by defined deliverables).

2.2.2 Phase 2 Services. Design-Build's Phase 2 services shall consist of the completion of design services for the Project, the procurement of all materials and equipment for the Project, the

performance of construction services for the Project, the start-up, testing, and commissioning of the Project, and the provision of warranty services, all as further described in the Contract Price Amendment. Upon receipt of Design-Builder's proposed Contract Price for Phase 2, Owner may proceed as set forth in Section 2.3.

2.3 Proposal. Upon completion of the Phase 1 Services and any other Basis of Design Documents upon which the parties may agree, Design-Builder shall submit a proposal to Owner (the "Proposal") for the completion of the design and construction for the Project for the Contract Price, which may be based on Lump Sum or Design-Builder's Fee and Cost of the Work with an option for a Guaranteed Maximum Price (GMP).

2.3.1 The Proposal shall include the following unless the parties mutually agree otherwise:

2.3.1.1 The Contract Price shall be in accordance with Section 7.1

2.3.1.2 The Basis of Design Documents, which may include, by way of example, Owner's Project Criteria, which are set forth in detail and are attached to the Proposal;

2.3.1.3 A list of the assumptions and clarifications made by Design-Builder in the preparation of the Proposal, which list is intended to supplement the information contained in the drawings and specifications and is specifically included as part of the Basis of Design Documents;

2.3.1.4 The Scheduled Substantial Completion Date upon which the Proposal is based, to the extent said date has not already been established under Section 6.2.1 hereof, and a schedule upon which the Scheduled Substantial Completion Date is based and a Project Schedule for the Work;

2.3.1.5 If applicable, a list of Allowance Items, Allowance Values, and a statement of their basis;

2.3.1.6 If applicable, a schedule of alternate prices;

2.3.1.7 If applicable, a schedule of unit prices;

2.3.1.8 If applicable, a statement of Additional Services which may be performed but which are not included in the Proposal, and which, if performed, shall be the basis for an increase in the Contract Price and/or Contract Time(s);

2.3.1.9 If applicable, a Savings provision;

2.3.1.10 If applicable, Performance Incentives;

2.3.1.11 The time limit for acceptance of the Proposal; and

2.3.1.12 An Owner's permit list, a list detailing the permits and governmental approvals that Owner will bear responsibility to obtain.

2.3.2 Review and Adjustment to Proposal.

2.3.2.1 After submission of the Proposal, Design-Builder and Owner shall meet to discuss and review the Proposal. If Owner has any comments regarding the Proposal or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Design-Builder of such comments or findings. If appropriate, Design-Builder shall, upon receipt of Owner's notice, make appropriate adjustments to the Proposal.

2.3.2.2 Acceptance of Proposal. If Owner accepts the Proposal, as may be amended by Design-Builder, the Contract Price and its basis shall be set forth in an amendment to this Agreement, when mutually agreed between the parties (Contract Price Amendment). Once the parties have agreed upon the Contract Price and Owner has issued a Notice to Proceed with Phase 2, Design-Builder shall perform the Phase 2 Services, all as further described in the Contract Price Amendment, as it may be revised.

2.3.2.3 Failure to Accept the Proposal. If Owner rejects the Proposal or fails to notify Design-Builder in writing on or before the date specified in the Proposal that it accepts the Proposal, the Proposal shall be deemed withdrawn and of no effect. In such event, Owner and Design-Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:

- i Owner may suggest modifications to the Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 2.3.2.2 above;
- ii Owner may authorize Design-Builder to continue to proceed with the Work on the basis of reimbursement as provided in Section 7.1.2 hereof without a Contract Price, in which case all references in this Agreement to the Contract Price shall not be applicable; or
- iii Owner may terminate this Agreement for convenience in accordance with Article 9 hereof; provided, however, in this event, Design-Builder shall not be entitled to the payment provided for in Section 9.2 hereof.

2.3.2.4 If Owner fails to exercise any of the above options, Design-Builder shall have the right to (a) continue with the Work as if Owner had elected to proceed in accordance with Section 2.3.2.3 ii. above, and be paid by Owner accordingly, unless and until Owner notifies it in writing to stop the Work; (b) suspend performance of Work in accordance with Section 11.3.1 of the General Conditions of Contract, provided, however, that in such event Design-Builder shall not be entitled to the payment provided for in Section 9.2 hereof; or (c) may give written notice to Owner that it considers this Agreement completed. If Owner fails to exercise any of the options under Section 2.3.2.3 within ten (10) days of receipt of Design-Builder's notice, then this Agreement shall be deemed completed. If Owner terminates the relationship with Design-Builder under Section 2.3.2.3(iii), or if this Agreement is deemed completed under this paragraph, then Design-Builder shall have no further liability or obligations to Owner under this Agreement.

Article 3

Contract Documents

3.1 The Contract Documents are comprised of the following:

3.1.1 All written modifications, amendments, minor changes, and Change Orders to this Agreement issued in accordance with DBIA Document No. 535, *Standard Form of General Conditions of Contract Agreement Between Owner and Design-Builder* (2022 Edition) ("General Conditions of Contract");

3.1.2 The Contract Price Amendment referenced in Section 2.3.2.2 herein or the Proposal accepted by Owner in accordance with Section 2.3 herein.

3.1.3 This Agreement, including all exhibits (list for example, performance standard requirements, performance incentive arrangements, markup exhibits, allowances, unit prices, or exhibit detailing offsite reimbursable personnel) but excluding, if applicable, the Contract Price Amendment;

- 3.1.4 The General Conditions of Contract;
- 3.1.5 Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract;
- 3.1.6 Exhibit B, Scope of Services; and
- 3.1.7 The following other documents, if any:

Article 4

Interpretation and Intent

4.1 Design-Builder and Owner, at the time of acceptance of the Proposal by Owner in accordance with Section 2.3 hereof, shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement, or if applicable, prior to Owner's acceptance of the Proposal.

4.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after Owner's acceptance of the Proposal, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict, or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 3.1 hereof. *(Note, the parties are strongly encouraged to establish in the Contract Price Amendment or Proposal (as applicable) the priority of the various documents comprising such exhibit or proposal.)*

4.3 Terms, words, and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract.

4.4 If Owner's Project Criteria contain design specifications: (a) Design-Builder is entitled to reasonably rely on the accuracy of the information represented in the design specifications and their compatibility with other information set forth in Owner's Project Criteria, including any design performance specifications; and (b) Design-Builder shall be entitled to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by such inaccurate design specification.

4.5 The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

Article 5

Ownership of Work Product

5.1 Any reports, information, or other data prepared or assembled by the Design Builder pursuant to this Agreement shall not be made available to any individual or organization by the Design Builder without the prior written approval of the City. During the term of this Agreement, and thereafter, the Design Builder shall not, without the prior written consent of the City, disclose to anyone any Confidential Information. The term Confidential Information for the purposes of this Agreement shall include all proprietary and confidential information of the City, including but not limited to business plans, marketing plans, financial information, designs, drawings, specifications, materials, compilations, documents, instruments, models,

source or object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential and proprietary in the City.

5.2 Any and all original sketches, pencil tracings of working drawings, plans, computations, specifications, computer disk files, writings and other documents prepared or provided by the Design Builder pursuant to this Agreement are the property of the City at the time of preparation and shall be turned over to the City upon expiration or termination of the Agreement or default by the Design Builder. The Design Builder grants the City a copyright license to use such drawings and writings. The Design Builder shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein. The City may modify the design including any drawings or writings. Any use by the City of the aforesaid sketches, tracings, plans, computations, 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 the Design Builder will be at the City's sole risk and without liability or legal exposure to the Design Builder. The Design Builder may keep a copy of all drawings and specifications for its sole and exclusive use.

5.3 If the Design Builder should subcontract all or any portion of the services to be performed under this Agreement, the Design Builder shall cause each subcontractor to also comply with the requirements of this Section 5.

5.4 This Section 5 shall survive expiration or termination of this Agreement.

Article 6

Contract Time

6.1 Date of Commencement. The Phase 1 Services shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed unless the parties mutually agree otherwise in writing. The Work shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed for Phase 2 Services ("Date of Commencement") if the Proposal is accepted and the Contract Price Amendment is amended to this Agreement unless the parties mutually agree otherwise in writing.

6.2 Substantial Completion and Final Completion.

6.2.1 Substantial Completion of the entire Work shall be achieved no later than _____ (_____) calendar days after the Date of Commencement ("Scheduled Substantial Completion Date").

6.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work shall be achieved as follows: (Insert any interim milestones ("Scheduled Interim Milestone Dates") for portions of the Work with different scheduled dates for Substantial Completion.)

6.2.3 Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.14 of the General Conditions of Contract.

6.2.4 All of the dates set forth in this Article 6 ("Contract Time(s)") shall be subject to adjustment in accordance with the General Conditions of Contract.

6.3 Time is of the Essence. Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

6.4 Liquidated Damages. Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained by _____

() days after the Scheduled Substantial Completion Date (the "LD Date"), Design-Builder shall pay Owner _____ Dollars (\$) as liquidated damages for each day that Substantial Completion extends beyond the LD Date. (If a GMP is not established upon execution of this Agreement, the parties should consider setting liquidated damages after GMP negotiations.)

6.5 Any liquidated damages assessed pursuant to this Agreement shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties, and any other damages, whether special or consequential, and of whatsoever nature, incurred by Owner which are occasioned by any delay in achieving Substantial Completion, Interim Milestone Dates (if any), or Final Completion.

Article 7

Contract Price

7.1 Contract Price.

7.1.1 Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of Six Hundred One Thousand Five Hundred Twenty One Dollars (\$601,521) for the Phase 1 Services, subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Phase 1 Services compensation is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

7.1.2 For Phase 2 Services, Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract a contract price ("Contract Price") equal to the Lump Sum amount set forth in Section 7.2 hereof or in the Contract Price Amendment, or equal to the Design-Builder's Fee (as defined in Section 7.4 hereof) plus the Cost of the Work (as defined in Section 7.5 hereof), subject to any GMP established in Section 7.6 hereof or as set forth in the Contract Price Amendment and any adjustments made in accordance with the General Conditions of Contract.

7.1.3 For the specific Work set forth below, Owner agrees to pay Design-Builder, as part of the Contract Price, on the following basis: *(This is an optional section intended to provide the parties with flexibility to identify and price limited services.)*

7.2 Lump Sum. Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of _____ Dollars (\$) ("Contract Price") for the Work for Phase 2 Services, subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

7.3 Markups for Changes. If the Contract Price requires an adjustment due to changes in the Work, and the cost of such changes is determined under Sections 9.4.1.3 or 9.4.1.4 of the General Conditions of Contract, the following markups shall be allowed on such changes:

7.3.1 For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee of TEN percent (10%) of the additional costs incurred for that Change Order, plus any other markups set forth at Exhibit hereto.

7.3.2 For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include:

[Check one box only.]



No additional reduction to account for Design-Builder's Fee or any other markup.

or

☐ An amount equal to the sum of: (a) _____ percent (_____%) applied to the direct costs of the net reduction (which amount will account for a reduction associated with Design-Builder's Fee); plus (b) any other markups set forth at Exhibit _____ hereto applied to the direct costs of the net reduction.

7.4 Design-Builder's Fee: Not used

7.5 Cost of the Work.

7.5.1 The term Cost of the Work shall mean costs reasonably incurred by Design-Builder in the proper performance of the Work. The Cost of the Work shall include only the following:

7.5.1.1 Wages of direct employees of Design-Builder performing the Work at the Site or, with Owner's agreement, at locations off the Site, provided, however, that the costs for those employees of Design-Builder performing design services shall be calculated on the basis of prevailing market rates for design professionals performing such services or, if applicable, those rates set forth in an exhibit to this Agreement.

7.5.1.2 Wages or salaries of Design-Builder's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work.

7.5.1.3 Wages or salaries of Design-Builder's personnel stationed at Design-Builder's principal or branch offices, but only to the extent said personnel are identified in the Design-Builder's Proposal and performing the function set forth in said Proposal. The reimbursable costs of personnel stationed at Design-Builder's principal or branch offices shall include a TEN percent (10%) markup to compensate Design-Builder for the Project-related overhead associated with such personnel.

7.5.1.4 Costs incurred by Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by Design-Builder, to the extent such costs are based on wages and salaries paid to employees of Design-Builder covered under Sections 7.5.1.1 through 7.5.1.3 hereof.

7.5.1.5 The reasonable portion of the cost of travel, accommodations and meals for Design-Builder's personnel necessarily and directly incurred in connection with the performance of the Work.

7.5.1.6 Payments properly made by Design-Builder to Subcontractors and Design Consultants for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors and Design Consultants.

7.5.1.7 Costs incurred by Design-Builder in repairing or correcting defective, damaged or nonconforming Work (including any warranty or corrective Work performed after Substantial Completion), provided that such Work was beyond the reasonable control of Design-Builder, or caused by the ordinary mistakes or inadvertence, and not the negligence, of Design-Builder or those working by or through Design-Builder. If the costs associated with such Work are recoverable from insurance, Subcontractors or Design Consultants, Design-Builder shall exercise best efforts to obtain recovery from the appropriate source and provide a credit to Owner if recovery is obtained.

7.5.1.8 Costs, including transportation, inspection, testing, storage, and handling of materials, equipment, and supplies incorporated or reasonably used in completing the Work.

7.5.1.9 Costs less salvage value of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Design-Builder, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling, and removing such items.

7.5.1.10 Costs of removal of debris and waste from the Site.

7.5.1.11 The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying, and reasonable petty cash expenses.

7.5.1.12 Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Design-Builder at the Site, whether rented from Design-Builder or others, and incurred in the performance of the Work.

7.5.1.13 Premiums for insurance and bonds required by this Agreement or the performance of the Work.

7.5.1.14 All fuel and utility costs incurred in the performance of the Work.

7.5.1.15 Sales, use, or similar taxes, tariffs, or duties incurred in the performance of the Work.

7.5.1.16 Legal costs, court costs, and costs of mediation and arbitration reasonably arising from Design-Builder's performance of the Work, provided such costs do not arise from disputes between Owner and Design-Builder.

7.5.1.17 Costs for permits, royalties, licenses, tests and inspections incurred by Design-Builder as a requirement of the Contract Documents.

7.5.1.18 The cost of defending suits or claims for infringement of patent rights arising from the use of a particular design, process, or product required by Owner, paying legal judgments against Design-Builder resulting from such suits or claims, and paying settlements made with Owner's consent.

7.5.1.19 Deposits which are lost, except to the extent caused by Design-Builder's negligence.

7.5.1.20 Costs incurred in preventing damage, injury, or loss in case of an emergency affecting the safety of persons and property.

7.5.1.21 Accounting and data processing costs related to the Work.

7.5.1.22 Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner.

[Design-Builder and Owner may want to consider adding the following Section 7.5.1.23 to address the payment of warranty work.]

☒ 7.5.1.23 Owner and Design-Builder agree that an escrow account in the amount of Six Hundred One Thousand Five Hundred Twenty One Dollars (\$601,521) shall be established prior to Final Completion, which escrow shall be used to reimburse Design-Builder for the Costs of the Work incurred after Final Completion to perform warranty Work. The escrow agreement will provide that any sums not used at the expiration of the warranty period shall be returned to Owner, subject to any savings Design-Builder may be entitled to under this Agreement. In the event the warranty escrow account is exhausted, but funds remain under the GMP, Owner shall be obligated to pay Design-Builder the Costs of the Work incurred after Final Completion to perform warranty Work up to the GMP.

7.5.2 Non-Reimbursable Costs. The following shall be excluded from the Cost of the Work:

7.5.2.1 Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for in Sections 7.5.1.1, 7.5.1.2, and 7.5.1.3 hereof.

7.5.2.2 Overhead and general expenses, except as provided for in Section 7.5.1 hereof, or which may be recoverable for changes to the Work.

7.5.2.3 The cost of Design-Builder's capital used in the performance of the Work.

7.5.2.4 If the parties have agreed on a GMP, costs that would cause the GMP, as adjusted in accordance with the Contract Documents, to be exceeded.

7.6 The Guaranteed Maximum Price.

7.6.1 Design-Builder guarantees that it shall not exceed the GMP of _____ Dollars (\$_____). Documents used as a basis for the GMP shall be identified in the Contract Price Amendment to this Agreement. Design-Builder does not guarantee any specific line item provided 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 adjusted in accordance with the Contract Documents. *(While the Contract Price Amendment will be developed in advance or concurrently with the execution of this Agreement, it is recommended that such exhibit include the items set forth in Section 2.3 above, to ensure that the basis for the GMP is well understood).*

7.6.2 The GMP includes a Contingency in the amount of _____ Dollars (\$_____) which is available for Design-Builder's exclusive use for unanticipated costs it has incurred that are not the basis for a Change Order under the Contract Documents. By way of example, and not as a limitation, such costs may include: (a) trade buy-out differentials; (b) overtime or acceleration; (c) escalation of materials; (d) correction of defective, damaged or nonconforming Work, design errors or omissions, however caused; (e) Subcontractor defaults; or (f) those events under Section 8.2.2 of the General Conditions of Contract that result in an extension of the Contract Time but do not result in an increase in the Contract Price. The Contingency is not available to Owner for any reason, including 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 Contingency and shall provide Owner as part of the monthly status report required by Section 2.1.2 of the General Conditions of Contract an accounting of the Contingency, including all reasonably foreseen uses or potential uses of the Contingency in the upcoming three (3) months. Design-Builder agrees that with respect to any expenditure from the 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 Contingency.

7.6.3 Savings.

7.6.3.1 If the sum of the actual Cost of the Work and Design-Builder's Fee (and, if applicable, any prices established under Section 7.1.3 hereof) is less than the GMP, as such GMP may have been adjusted over the course of the Project, the difference ("Savings") shall be shared as follows:

[Choose one of the following.]

☒ _____ FIFTY _____ percent (50%) to Design-Builder and
_____ FIFTY _____ percent (50%) to Owner.

or

☐ The first _____ Dollars (\$) of Savings shall be provided to (choose either Design-Builder or Owner) _____ with the balance of Savings, if any, shared _____ percent (____%) to Design-Builder and _____ percent (____%) to Owner.

7.6.3.2 Savings shall be calculated and paid as part of Final Payment under Section 8.4 hereof, with the understanding that to the extent Design-Builder incurs costs after Final Completion which would have been payable to Design-Builder as a Cost of the Work, the parties shall recalculate the Savings in light of the costs so incurred, and Design-Builder shall be paid by Owner accordingly.

7.7 Allowance Items and Allowance Values.

7.7.1 Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in the Contract Price Amendment or the Proposal.

7.7.2 Design-Builder and Owner have worked together to review the Allowance Items and Allowance Values based on design information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. Design-Builder and Owner will continue working closely together during the preparation of the design to develop Construction Documents consistent with the Allowance Values. Nothing herein is intended in any way to constitute a guarantee by Design-Builder that the Allowance Item in question can be performed for the Allowance Value.

7.7.3 No work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advanced authorization to proceed from Owner. Owner agrees that if Design-Builder is not provided written authorization to proceed by the date set forth in the Project schedule, due to no fault of Design-Builder, Design-Builder may be entitled to an adjustment of the Contract Time(s) and Contract Price.

7.7.4 The Allowance Value includes the direct cost of labor, materials, equipment, transportation, taxes, and insurance associated with the applicable Allowance Item. All other costs, including design fees, Design-Builder's overall project management and general conditions costs, overhead and Fee, are deemed to be included in the original Contract Price, and are not subject to adjustment notwithstanding the actual amount of the Allowance Item.

7.7.5 Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 7.7.4. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

7.8 Performance Incentives.

7.8.1 Owner and Design-Builder have agreed to the performance incentive arrangements set forth in the Design-Builder's Proposal.

Article 8

Procedure for Payment

8.1 Payment for Preliminary Services. Design-Builder and Owner agree upon the following method for partial and final payment to Design-Builder for the services hereunder: (Insert terms.)

8.2 Contract Price Progress Payments.

8.2.1 Design-Builder shall submit to Owner on the FIFTEENTH (15TH) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

8.2.2 Owner shall make payment within ten (10) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

8.2.3 If Design-Builder's Fee under Section 7.4 hereof is a fixed amount, the amount of Design-Builder's Fee to be included in Design-Builder's monthly Application for Payment and paid by Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of Design-Builder's Fee.

8.3 Retainage on Progress Payments.

8.3.1 Owner will retain FIVE percent (5%) of each Application for Payment provided, however, that when fifty percent (50%) of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner will not retain any additional retention amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Work completed early in the Project.

8.3.2 Within fifteen (15) days after Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.6 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to: (a) the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion; and (b) all other amounts Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions of Contract.

[If Owner and Design-Builder have established a warranty reserve pursuant to Section 7.5.1.23 above, the following provision should be included.]

☐ If a warranty reserve has been established pursuant to Section 7.5.1.23 above, Owner shall at the time of Substantial Completion retain the agreed-upon amounts and establish an escrow account as contemplated by Section 7.5.1.23 above.

8.4 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment (less any amount the parties may have agreed to set aside for warranty work) within ten (10) days after Owner's receipt of the Final

Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

8.5 Interest. Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payments, shall bear interest commencing five (5) days after payment is due at the rate of ONE percent (1%) per month until paid.

8.6 Record Keeping and Finance Controls. Design-Builder acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access to, and the right to audit from time to time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data relating to the Work, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, but the composition of such multiplier or markup is not subject to audit. Any lump sum agreed to by Owner and Design-Builder as part of this Agreement is not subject to audit.

8.7 Prompt Progress Payment to Subcontractors.

All Contracts and Subcontracts (all tiers), shall contain the following provisions:

8.7.1 Prompt Payment To Subcontractors A Design-Builder, prime contractor or subcontractor shall pay a subcontractor not later than 10 days of receipt of each progress payment in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10 days is applicable unless, a longer period is agreed to in writing. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanction and other remedies of that section. Federal regulation (49 CFR 26.29) requires that any delay or postponement of payment over 30 days of receipt of each payment may take place only for good cause and with the Owner's prior written approval. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the prime contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by the Design-Builder, deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both low-and very low-income prime contractors and subcontractors as well as those that are not.

8.7.2 Prompt Payment Of Funds Withheld To Subcontractors. The Owner shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the Owner of the contract work and pay retainage to the Design-Builder based on these acceptances. The Design-Builder, prime contractor or subcontractor shall return all monies withheld in retention from a subcontractor within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the Owner. Federal regulations (49 CFR 26.29) require that any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the prime contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both low-and very low-income prime contractors and subcontractors as well as those that are not.

Article 9

Termination for Convenience

9.1 Upon ten (10 days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Design-Builder for the following:

9.1.1 All services performed and Work executed and for proven loss, cost, or expense in connection with the services and Work;

9.1.2 The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and

[Choose one of the following.]

☐ The fair and reasonable sums for overhead and profit on the sum of items 9.1.1 and 9.1.2 above.

or

☒ Overhead and profit in the amount of TEN percent (10%) on the sum of items 9.1.1 and 9.1.2 above.

9.2 In addition to the amounts set forth in Section 9.1 above, Design-Builder shall be entitled to receive one of the following if the parties agree to an additional payment:

9.2.1 If Owner terminates this Agreement prior to commencement of construction, Design-Builder shall be paid ZERO percent (0%) of the remaining balance of the Contract Price or, if a GMP has not been established, the remaining balance of the most recent estimated Contract Price.

9.2.2 If Owner terminates this Agreement after commencement of construction, Design-Builder shall be paid TEN percent (10%) of the remaining balance of the Contract Price or, if a GMP has not been established, the remaining balance of the most recent estimated Contract Price.

9.3 If Owner terminates this Agreement pursuant to Section 9.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Article 5 hereof. Such rights may not be transferred or assigned to others without Design-Builder's express written consent and such third parties' agreement to the terms of Article 5.

Article 10

Representatives of the Parties

10.1 Owner's Representatives.

10.1.1 Owner designates the individual listed below as its Senior Representative ("Owner's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.2 of the General Conditions of Contract: (Identify individual's name, title, address, and telephone numbers.)

Randall W. Morrison, PE
Capital Projects Director
747 R Street, 2nd Floor
Fresno, CA 93721

559-621-8703

10.1.2 Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract: (Identify individual's name, title, address, and telephone numbers.)

Armando Cervantes
Project Manager
747 R Street, 2nd Floor
Fresno, CA 93721
559-621-8687

10.2 Design-Builder's Representatives.

10.2.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.2 of the General Conditions of Contract: (Identify individual's name, title, address, and telephone numbers.)

Jeffrey Good
Vice President
15 Business Park Way, Suite 101
Sacramento, California 95828
720-402-2818

10.2.2 Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract: (Identify individual's name, title, address, and telephone numbers.)

Allison Mullin
Project Manager
15 Business Park Way, Suite 101
Sacramento, California 95828
916-383-4825

Article 11

Bonds and Insurance

11.1 Insurance. Design-Builder and Owner shall procure the insurance coverages set forth in the Insurance Exhibit attached hereto and in accordance with Article 5 of the General Conditions of Contract.

11.2 Bonds and Other Performance Security. Design-Builder shall provide the following performance bond and labor and material payment bond or other performance security:

Performance Bond.

(Check one box only. If no box is checked, then no bond is required.)

☒ Required ☐ Not Required

Payment Bond.

[Check one box only. If no box is checked, then no bond is required.]

☒ Required ☐ Not Required

Other Performance Security.

[Check one box only. If no box is checked, then no other performance security is required. If the "Required" box is checked, identify below the specific performance security that is being required and all salient commercial terms associated with that security.]

☐ Required ☒ Not Required

Article 12

Other Provisions

12.1 Other provisions, if any, are as follows: (Insert any additional provisions.)

12.2 Listing of Exhibits and documents incorporated herein:

Exhibit A – Owner's Project Criteria

Exhibit B – Scope of Services

Exhibit C – Disclosure of Conflict of Interest

Exhibit D – DBIA Document No. 535, Standard Form of General Conditions of Contract Between Owner and Design-Builder (2022 Edition) ("General Conditions of Contract")
Contract Price Amendment, if any.

In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

OWNER:

City of Fresno

Randall W. Morrison, PE

(Name of Owner)



(Signature)

(Printed Name)

Capital Projects Director

(Title)

Date: 6/14/2024

DESIGN-BUILDER:

Swinerton Builders

(Name of Design-Builder)

Jeff Good

Digitally signed by Jeff Good
DN: C=US, E=jgood@swinerton.com, O=Swinerton
Builders, CN=Jeff Good
Date: 2024.05.02 13:32:03 -07'00'

(Signature)

Jeffrey F. Good

(Printed Name)

VP, Division Manager

(Title)

Date: May 2, 2024

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Design-Build Institute of America
1001 Pennsylvania Ave. NW, Suite 410
Washington, DC 20004

(202) 682-0110
dbia@dbia.org

EXHIBIT A
OWNER'S PROJECT CRITERIA
Progressive Design-Build Agreement Between
City of Fresno (City) and Swinerton Builders (Design-Build Entity)
PARKING AUTOMATION AND VIDEO SURVEILLANCE PROJECT

1. PROJECT DELIVERY AND OBJECTIVES

- 1.1. The Parking Automation and Video Surveillance Project (Project) will be designed and constructed in two phases using the progressive design-build delivery method as follows:
 - 1.1.1. Preconstruction Phase (Phase One): Prepare design to approximately 80 percent complete and establish a Guaranteed Maximum Price (GMP) proposal
 - 1.1.2. Construction Phase (Phase Two): Upon award of a contract for the GMP or lump-sum price by the Owner, complete design, construction, and post-construction tasks including site facilities testing, as-built recording, warranty, and support
 - 1.1.3. Due to funding availability and the number of parking garages included in the Project, the Construction Phase Two may be split into multiple construction phases, each with negotiated GMP and contract or amendment.
- 1.2. Construction will consist of installation of new parking automation equipment (islands, kiosks, entry gates, etc.) and video surveillance cameras at six (6) Downtown Fresno parking facilities.
- 1.3. The sites shall be developed to accommodate monthly and visitor access, as currently established. Changes to parking programming are not included in the scope of the project.
- 1.4. All proposed exclusions to the requirements of the Owner's Project Criteria must be listed in detail.
- 1.5. The City's objectives for delivery of the Project are as follows:
 - 1.5.1. Deliver quality and sustainable automation in City of Fresno Parking Garages in accordance with industry design and construction standards within the prescribed schedule and budget
 - 1.5.2. Provide real-time data, communication, and reporting functionality from six (6) Downtown Fresno parking facilities for ingestion by the City of Fresno.
 - 1.5.3. Standardize parking automation and video surveillance across six (6) Downtown Fresno parking facilities.
 - 1.5.4. Ensure a high degree of cost and schedule certainty
 - 1.5.5. Minimize impacts to ongoing operations
 - 1.5.6. Ease of future expandability
 - 1.5.7. Enhance the customer experience through use of aesthetically pleasing elements, intuitiveness, and technology
 - 1.5.8. Enhance opportunities to advance sustainability
 - 1.5.9. Achieve an optimal balance of risk allocation between the Owner and the Design-Builder

2. PHASE 1 PRECONSTRUCTION SERVICES

Phase One scope of services performed by the Design-Builder will include (at a minimum) the following detailed tasks and deliverables:

- 2.1. Project site and existing conditions review and verification:

- 2.1.1. Review of existing technical documentation
- 2.1.2. Subsurface utility location survey
- 2.2. Basis of Design Report preparation:
 - 2.2.1. Design criteria
 - 2.2.2. Preliminary design including preliminary Drawings and Technical Specification outlines
 - 2.2.3. Preliminary construction organization, work plan, and schedule
 - 2.2.4. Regulatory requirements and permit acquisition planning
 - 2.2.5. Project budget estimate update
- 2.3. 30, 60, and 80 percent design preparation
 - 2.3.1. Bi-weekly team meetings
 - 2.3.2. Further Drawing development
 - 2.3.3. Technical Specification development
 - 2.3.4. Construction work plan and schedule update
 - 2.3.5. Subcontract and equipment procurement plan development
 - 2.3.6. Cost estimate updates
- 2.4. Guaranteed Maximum Price (GMP) development
 - 2.4.1. Phase Two contract finalization and negotiation meetings and team meetings
 - 2.4.2. GMP proposal development
 - 2.4.3. Final construction work plan and schedule development
 - 2.4.4. Final regulatory and permitting plan
- 2.5. Project Management
 - 2.5.1. Bi-weekly team meetings
 - 2.5.2. Project Management Plan development and implementation
 - 2.5.3. Quality Plan development and implementation
 - 2.5.4. Administering biweekly team meetings and updates
 - 2.5.5. Progress meetings and progress reports
 - 2.5.6. Progress payment and invoicing
- 3. PHASE 2 CONSTRUCTION SERVICES
 - 3.1. Phase Two scope of services performed by the Design-Builder will be further defined and negotiated during execution of Phase One services and will generally include the following:
 - 3.1.1. Assistance in obtaining regulatory approval and permit acquisition
 - 3.1.2. Preparation of "issued for construction" design documents
 - 3.1.3. Procurement of materials, equipment, subcontractors, construction, and construction management services
 - 3.1.4. Engineering services during construction, start-up, testing, commissioning and training
 - 3.1.5. Preparation of record documents and O&M manuals, and warranty services
- 4. COMMUNICATIONS AND SUBMITTALS
 - 4.1. Regular meetings will be held throughout the life of the project. The Owner and Design-Builder will work together to determine the appropriate frequency, duration, and format (virtual or in-person).

- 4.2. All document submittals must be addressed to the Project Manager for the City of Fresno. Document delivery may be via email, mail, Microsoft Teams, or file transfer protocol.

5. SITE OVERVIEW

- 5.1. The six (6) project sites are located in Downtown Fresno, as shown in **Figure 1: Site Location**.



Figure 1: Site Location

- 5.2. The Convention Center Garage (**Figure 2**):

- 5.2.1. Address: 707 O Street
- 5.2.2. Features five (5) levels
- 5.2.3. 1,565 Parking spaces, including eight motorcycle spaces and 26 accessible spaces
- 5.2.4. Two (2) gated access points

- 5.3. The Congo Alley Garage (**Figure 3**):

- 5.3.1. Previously identified as Garage 4
- 5.3.2. Address: 1919 Tulare Street
- 5.3.3. Features four (4) levels
- 5.3.4. 313 Parking spaces, including 7 accessible spaces
- 5.3.5. One (1) gated access point
- 5.3.6. During special events at Chukchansi Park, the garage is used for event parking

- 5.4. The Underground Garage (**Figure 4**):

- 5.4.1. Previously identified as Garage 8
- 5.4.2. Address: 1077 Van Ness Avenue (underground)
- 5.4.3. Features three (3) levels of underground parking

- 5.4.4. 968 Parking spaces, including 18 accessible spaces
- 5.4.5. Two (2) separate gated entrances into the garage, one at the Radisson Hotel, and the other on Tulare Street/Van Ness Avenue. All garage levels exit out the same ramp (two gated lanes, each with an attended booth).
- 5.4.6. Permit parking is available at Underground Garage, and certain levels are restricted to permit parking only
- 5.4.7. This garage is equipped with a key card system (Secom) for permit access
- 5.4.8. This garage is also used as an event parking location during events

5.5. The Spiral Garage (**Figure 5**):

- 5.5.1. Previously identified as Garage 7
- 5.5.2. Address: 801 Van Ness Avenue
- 5.5.3. Features four (4) levels
- 5.5.4. 587 Parking spaces with 15 accessible spaces
- 5.5.5. The gated facility is unique in design, featuring separate spiral entrances and exits to avoid cross traffic. Spiral Garage has one parking attendant booth during all operating hours.
- 5.5.6. The garage accommodates both permit and daily parking. Daily users are required to pull a parking ticket from a dispensing machine to activate an entry gate. Upon departure, the Contractor parking attendant accepts cash payment. The Contractor is in the process of deploying ZipPark for credit card payments.
- 5.5.7. Provides an event parking location during special events at the Chukchansi Park
- 5.5.8. This garage is equipped with a key card system (Versa) for permit access

5.6. The Merced Garage (**Figure 6**):

- 5.6.1. Previously identified as Garage 9
- 5.6.2. Address: 2020 Merced Street
- 5.6.3. Features three (3) levels
- 5.6.4. 213 Parking spaces
- 5.6.5. One (1) gateless entry and one (1) gateless exit. There is no booth attendant or gated access at this location.
- 5.6.6. This garage has primarily permit parking, but 25 designated spaces are supported by the ParkMobile app (managed by the City of Fresno). Bulk rate permits are sold to local businesses and County of Fresno employees.
- 5.6.7. The City of Fresno owns the retail space connected to the garage, and an agreement is in place between the City and the businesses which designates ground floor parking access.
- 5.6.8. Additionally, the Fresno County Housing Authority has access to a secured caged portion of the garage on the roof level for vehicle use and storage.

5.7. The Convention Center Surface Lot (**Figure 7**)

- 5.7.1. Address: 707 O Street
- 5.7.2. Features one (1) level
- 5.7.3. One (1) gated entry/exit access point



Figure 2: Convention Center Garage



Figure 3: Spiral Garage



Figure 4: Underground Garage



Figure 5: Congo Alley Garage



Figure 6: Merced Garage



Figure 7: Convention Center Surface Lot

6. GENERAL SYSTEM REQUIREMENTS

- 6.1. The parking garage automation system shall be a functional access and vehicle count system, including but not limited to, control system hardware/software, concrete islands, entry gates, electrical conduit, loops and wire pulls, power and communication, bollards, etc.
- 6.2. Existing island and conduit placements may be modified as necessary
- 6.3. The proposed parking automation and video surveillance systems shall be able to perform in and withstand the climate conditions of Fresno, CA in which temperatures can reach more than 110 degrees Fahrenheit and much higher within the non-climate-controlled enclosures within the parking facilities
- 6.4. The proposed parking automation and video surveillance systems shall have the ability to add hardware devices to the system in the future without a major upgrade to the core hardware or software systems within five years after the system is brought online
- 6.5. Software updates including PCI compliance should be provided at no additional charge for life of equipment
- 6.6. All garages must be capable of functioning in an 'enterprise' manner where access and validations may be set to function at all garages or at only one garage as determined by operator
- 6.7. All equipment installed on this project shall be ADA compliant and UL approved
- 6.8. The technology shall be an online real-time system with access to system settings and control for all garages (parking automation and video surveillance)
- 6.9. High and low voltage surge suppression must be included in the installation, and the addition of power supply battery backup or equal
- 6.10. All devices within the facility shall be able to communicate, in real time, to the facility management office which may be located onsite or offsite
- 6.11. The remote software **shall not** be a *PC Anywhere* or a *Log Me In* type product. All tasks carried out on the remote PC should be seamless and not visible at the facility PC. If an on-premises solution is proposed the City of Fresno provided remote access software shall be utilized
- 6.12. Vendor will be responsible for running all power lines from identified junction boxes to the equipment
- 6.13. All additional conduit installed at the islands shall be concealed within the concrete islands
- 6.14. No climate controlled facilities are available in the parking facilities, any technology specified must be capable of operation in extreme heat, high temperatures and/or ruggedized

7. PARKING AUTOMATION SCOPE OF WORK

- 7.1. The proposed equipment must minimally provide the functions and capabilities identified below:
 - 7.1.1. Vehicle detector loops or similar means of vehicle recognition
 - 7.1.2. Ingress/egress access control, including entry and exit gates
 - 7.1.3. Access control in all lanes for monthly keycard users
 - 7.1.4. Intercom system directing users via a VOIP interface capable of dialing a cellular number directly and dialing an off-site call center, potentially including City staff
 - 7.1.5. All necessary software (onsite and offsite)
 - 7.1.6. Anti-Vandalism and Anti-Theft features
 - 7.1.7. Remote client workstation where applicable
 - 7.1.8. Comprehensive vehicle counting and reporting

- 7.1.9. Customizable reporting, including monthly and daily statistics, and export capability (Excel, PDF, etc.)
- 7.1.10. The parking automation solution shall include FACTA, PA-DSS, and PCI compliant credit card software and hardware at a minimum.
- 7.1.11. Server/PC based systems may be utilized if absolutely necessary, however cloud-based systems are preferred for these facilities.
 - Server/PC and foundational software (Windows XXX, AV, etc.) shall comply with ISD computing requirements.
 - Cloud-based systems shall comply with City of Fresno Cloud policy; AO 8-21 (Attachment G)
 - Real-time access on-line to parking equipment must be available without use of systems such as LogMeIn or TeamViewerCloud-based systems must support SSO user authentication via Microsoft Azure AD
- 7.2. Entry stations must include the following features and capabilities:
 - 7.2.1. Each machine must contain an intercom/phone dialer capable of communicating to a cellular phone or a remote call center during and after business hours with a call forwarding feature and a vend output. Intercom 'roll-over' should be capable of being scheduled, for example, day times call may go to on-site security while after-hour calls are forwarded to an off-site call center
 - 7.2.2. Capability to communicate to the City network or to a cloud platform
 - 7.2.3. Ability to buffer transaction in the event of a communication failure. Minimum of 2,000 transactions
 - 7.2.4. Ability to arm loop before a transaction can begin in the lane, as well as the ability to be disabled/locked out if another device is utilizing the same lane
- 7.3. Exit terminals must include the following features and capabilities:
 - 7.3.1. Alert facility office in the event of malfunction
 - 7.3.2. Each machine must contain an intercom/phone dialer communicate to the parking office during and after business hours with a call forwarding feature and a vend output
 - 7.3.3. Capability to communicate with facility management computer located in the facility office
 - 7.3.4. Ability to buffer transaction in the event of a communication failure. Minimum of 2,000 transactions
 - 7.3.5. Ability to be armed before a transaction can begin in the lane, as well as the ability to be disabled/locked out if another device is utilizing the same lane.
- 7.4. Gates must include the following features and capabilities:
 - 7.4.1. Ability to accommodate a straight or folding (articulated) arms
 - 7.4.2. Straight arm gates should be used whenever possible. Vendor shall make recommendations on straight or articulated gate arms as well as length of gate arms at each lane and price based on said recommendations.
 - 7.4.3. Low voltage operation
 - 7.4.4. Auto rebound/safety edge
 - 7.4.5. Ability to operate as a free gate
 - 7.4.6. Ability to support multiple devices in one lane example: (card reader, AVI, LPR, etc.)

- 7.4.7. In lanes where two devices reside, the device not processing the transaction shall be disabled immediately so that the system cannot be manipulated. This shall take place within 0.05 seconds.
- 7.5. The parking automation system must provide access control as specified below:
 - 7.5.1. Keycard access is the recommended credentialling method for this facility. Property intends to provide users with the same keycard for garage access as building access.
 - 7.5.2. Monthly parkers are expected to utilize keycard access, however, other credentialling methods such as Bluetooth may be proposed
 - 7.5.3. Visitors to the garage facilities are expected to be allowed entry and exit by means of tickets dispensed at the entries, however, other means of visitor access such as "entry by credit card" or app-based access may be proposed.
 - 7.5.4. Time zones
 - 7.5.5. Reader groups
 - 7.5.6. Ability to accommodate other access technologies
 - 7.5.7. Tenants of the facility shall be able to validate visitor parking by means of online validations and printed validations. Validation usage shall be provided to tenants via a 'bill-back' method, so equipment must be able to provide detailed reports for validation usage by tenant account.
- 7.6. The parking automation system shall have the ability to provide the following counts:
 - 7.6.1. Monthly Entries and Exits by facility
 - 7.6.2. Total Lane Travels
 - 7.6.3. Entries by facility
 - 7.6.4. Exits by facility
 - 7.6.5. Differential Counts by facility
 - 7.6.6. All gates shall have a visible mechanical counter to record total lane travels
 - 7.6.7. All counts shall be reported to the facility office in real time
- 7.7. The parking automation system shall minimally provide the following reports related to revenue, access, and counts:
 - 7.7.1. Daily lane report
 - 7.7.2. Last usage report, showing all active keycards and their last use date and time
 - 7.7.3. Active access card holder report
 - 7.7.4. Card transaction report by date
 - 7.7.5. Count statistics/occupancy report
 - 7.7.6. Duration of stay report with ability to breakdown by 30-minute increments
 - 7.7.7. Entry/exit report by facility and parker type
 - 7.7.8. General Totals Report
 - 7.7.9. Transaction Report
 - 7.7.10. Detailed activity reports on sales inventory, and statistical data by parker type
 - 7.7.11. The (FMS) shall have the ability to retrieve buffered transaction once communication is restored
- 7.8. The preferred parking automation system Vendors for these facilities are the following:
 - 7.8.1. ParkEngage, Inc.
4100 Moorpark Avenue, Suite 203

San Jose, CA 95117

7.8.2. Skidata, Inc.
5090 North 40th Street, Suite 450
Phoenix, AZ 85018

7.8.3. TIBA Parking Systems, LLC.
2228 Citygate Drive
Columbus, Ohio 43219

7.8.4. Flash Parking, Inc.
2500 Bee Caves Rd, Bldg III STE 400
Austin, TX 78746

8. VIDEO SURVEILLANCE SYSTEM REQUIREMENTS

- 8.1. The security video camera management system recommended by the Vendor for these facilities must have the following features:
- 8.1.1. Centralized management system and standardized access
 - 8.1.2. Able to be viewed from a computer via a web browser and from a cellular telephone
 - 8.1.3. Show historical video while recording, hold historical data for a minimum of 30 days and download video
 - 8.1.4. Record on motion, adjust to daylight and nighttime vision
 - 8.1.5. Monitor the entire identified area at each facility
 - 8.1.6. Allow future growth of the system to accommodate additional cameras and locations
 - 8.1.7. High-Definition cameras capable of viewing fine details
 - 8.1.8. Anti-Vandalism and Anti-Theft features, including, but not limited to, reinforced mounted hardware, security screws, scratch-resistant domes, and ruggedized
 - 8.1.9. Must be compatible with City of Fresno Police Department video surveillance technology Pelco cameras and VideoXpert management system
 - 8.1.10. The City will consider any additional features suggested by the Vendors

9. SUSTAINABILITY

- 9.1. All development must meet or exceed the requirements as stated in the following:
- 9.1.1. Fresno Municipal Code Section 4-116
 - 9.1.2. California Building Energy Efficiency Standards – Title 24

10. STANDARD DRAWINGS AND SPECIFICATIONS

- 10.1. The development of the Parking Garage Automation and Video Surveillance Project must be in compliance with City of Fresno Standard Drawings and Standard Specifications
- 10.2. For information on City of Fresno Standard Drawings and Standard Specifications, please reference the link below:

<https://www.fresno.gov/publicworks/developer-doorway/#tab-8>

EXHIBIT B

SCOPE OF SERVICES

Progressive Design-Build Agreement Between City of Fresno (City) and Swinerton Builders (Design-Build Entity)

Parking Automation and Video Surveillance

Scope of Work

The City seeks to design and construct parking automation and video surveillance improvements at the following parking facilities: The Convention Center Garage, Convention Center Surface Lot, Congo Alley Garage, Underground Garage, Spiral Garage and Merced Garage, all located within Downtown Fresno. The parking automation and video surveillance improvements shall provide quality and sustainable automation, real-time data, communication, and reporting functionality for the City. In addition, shall enhance customer experiences using aesthetically pleasing elements, intuitiveness, technology and promote safety across the six (6) parking facilities within Downtown Fresno.

Scope of Services – Preconstruction Services Phase 1

1. Task 1 – Project Site and Initial Conditions Review
 - 1.1. Perform additional site visits to the City parking facilities for further information collection and detailed site inspections of existing conditions.
 - 1.2. Prepare a Discovery Questionnaire document for requesting of additional information and responses from necessary City personnel related to drawings, existing conditions, PARCS technology, parking operations, expense assumptions, PARCS cost data, and electrical design.
 - 1.3. Review record drawings, existing conditions and evaluate design needs. Existing .PDF versions of record drawings shall be utilized as possible, and new AutoCAD (.DWG) version drawings shall be prepared as necessary, if existing .PDF record drawings are illegible.
 - 1.4. Coordinate one web-based meeting with City to discuss responses to the Discovery Questionnaire document and finalize other required site information to support preparation of PARCS and video surveillance Basis of Design.
2. Task 2 – Basis of Design
 - 2.1. Based on data collected in Task 1, perform a queuing analysis for the six (6) parking facility activities, comparing lane throughput capacity against various parking controls and payment methods.
 - 2.2. Prepare Conceptual Design memorandum providing findings of operational review of existing vehicle circulation, queueing analysis, parking operations, and parking payment alternatives. This memorandum shall also evaluate the various operational models, current operation model vs. City desired future state comparison, recommendations for future operation model, and impact study of a new operation model on the detailed PARCS design. The Conceptual Design memorandum shall include:

- a) Assessment of current duties and staffing of City parking facility management (e.g., Ace's Parking Management), and provide recommendations assisting City's determination of limiting City parking facility management operator duties or pursuing a complete self-operatable approach.
 - b) Assessment of City parking facility management staff as it pertains to knowledge sets, quantity of staff, ability to adapt to new roles, and ability to self-operate.
 - c) Request information from the City as it pertains to current parking facility enforcement approach and provide an assessment of implications per operator role changes, and implementation of gated vs. gateless approach.
 - d) Provide and identify implications to the parking facilities per implementation of gated vs. gateless access points.
 - e) Discuss the City's PARCS functionality/feature requirements and compare to "best practices," for PARCS design.
 - f) Provide a limited-scope financial impact study including the impacts of the studies completed in subsections 2.2.a-2.2. e above as they pertain to the parking revenues, citation revenues, operation costs, and equipment costs.
- 2.3. Administration of one meeting with City staff to review the draft Conceptual Design memorandum and obtain consolidated City review comments for publishing a final Conceptual Design memorandum.
- 2.4. Per the final Conceptual Design memorandum, development of a Basis of Design for a new PARCS and video surveillance system project through a written report and annotated drawings. The Basis of Design shall provide a high-level description of the following in each six parking facilities:
- a) Typical PARCS equipment set.
 - b) Functions and features of a potential new PARCS.
 - c) Typical lane layouts, including any recommendations for function or structural lane changes.
 - d) Pictures of typical types of PARCS equipment.
 - e) Summary level identification of required low voltage and line voltage electrical work that shall be needed to support the new PARCS.
 - f) Discuss alternatives to License Plate Recognition (LPR) and permit management systems.
 - g) Additional supporting information.
- The Basis of Design shall consider multiple options for system design and equipment choices. In addition, shall identify a specific recommended Basis of Design that is recommended to be "best fit" for the City, a list of potential qualified PARCS proposers, and an initial Opinion of Probable Cost.
- 2.5. Administration of one meeting with City staff to review the Basis of Design and prepare one final version per feedback provided during the meeting.
- 2.6. Determine desired video surveillance coverage requirements, vantage points, storage requirements, and integration with existing City Police Department and other City surveillance wide area networks. Determine and document any proprietary software and equipment requirements.
3. Task 3 – Design Development
- 3.1. Per approved Basis of Design, PARCS Performance Specifications and PARCS Drawings and video surveillance drawings and specifications at a 30% Schematic Design (SD) level shall be prepared. The 30% DD level is defined as similar to a "Schematic Design," providing basic drawings and specification outlines. The specifications shall be prepared in Construction Standards Institute (CSI) format, and the drawings shall be in AutoCAD (.DWG) format. The SD specifications and drawings shall cover all relevant areas of the

- design, including a summary of work, site plan, PARCS equipment, PARCS software, PARCS functionality, and PARCS low voltage and line voltage electrical. In addition, shall include PARCS lane functional and structural issues only if such work is determined to be necessary.
- 3.2. Administration of one meeting with City staff to review the 30% SD and provide on revised 30% SD.
 - 3.3. Prepare a 60% Design Development level full set of drawings, partial details, and draft specifications, to include updated PARCS Performance Specifications, PARCS and video surveillance drawings. The 60% level is defined as a full drawing set with partial details and a first draft specification with some incomplete sections.
 - 3.4. Administration of one meeting with City staff to review the 60% DD and provide on revised 60% DD.
 - 3.5. Prepare a 80% Design Development level complete set of drawings, details, and specifications, to include updated PARCS Performance Specifications, PARCS and video surveillance drawings.
 - 3.6. Administration of one meeting with City staff to review the 80% DD and provide on revised 80% DD.
4. Task 4 – Guaranteed Maximum Price (GMP) Development
 - 4.1. Provide project cost on GMP elements related to PARCS and video surveillance scope for each parking facility. Cost estimates provided through direct engagement with potential PARCS and video surveillance vendors shall be utilized.
 - 4.2. Provide responses to trade partner inquiries regarding any electrical or functional/structural designs from 80% DD that shall require construction work.
 - 4.3. Prepare a construction work plan and schedule, including, but is not limited to, advise on issued including phasing of PARCS and video surveillance work per parking facility, or per specific parking facility entry and exit portals, options for minimizing parker disruption, and recommend device and system testing, and acceptance plans.
 - 4.4. Prepare a complete Guaranteed Maximum Price (GMP) proposal, including summary and detailed estimates, copies of all subcontractor proposals, and leveling documents detailing elements and final price of each bid package.
 - 4.5. Prepare a construction schedule for each facility, included within Project master schedule.
 5. Task 5 – Project Management
 - 5.1. Administer bi-weekly team meetings and updates with City staff.
 - 5.2. Provide necessary inputs to the Project Quality Plan and apply quality measures as appropriate to Project.
 - 5.3. Submit monthly progress reports and invoicing documentation to City.

Compensation

Compensation for all services described above. Fees will be billed monthly in accordance with the work completed.

PRECONSTRUCTION SERVICES PHASE 1

\$ 601,521

Additional Service Fees

There will be no additional services fees without prior written authorization by the City.

Schedule

Time allotted for each task is described in detail in Agreement Section 1 Scope of Services and is summarized below.

Task 1: Project Site and Initial Conditions Review	35 Calendar Days
Task 2: Basis of Design	49 Calendar Days
Task 3: Design Development	119 Calendar Days (Total)
Task 3.1 – 3.2	35 Calendar Days
Task 3.3 – 3.4	49 Calendar Days
Task 3.5 – 3.6	35 Calendar Days
Task 4: GMP Development	28 Calendar Days

EXHIBIT C
DISCLOSURE OF CONFLICT OF INTEREST
PARKING AUTOMATION AND VIDEO SURVEILLANCE
AT DOWNTOWN FRESNO PARKING FACILITIES

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2	Do you represent any firm, organization, or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4	Are you or any of your principals, managers, or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5	Are you or any of your principals, managers, or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: _____

Jeff Good

Digitally signed by Jeff Good
 DN: C=US, E=jgood@swinerton.com, O=Swinerton
 Builders, CN=Jeff Good
 Date: 2024.05.02 13:32:25 -0700

Signature

May 2, 2024

Date

Jeffrey F. Good

Name

Swinerton Builders

Company

1382 E Alluvial Ave, Suite 101

Address

Fresno, CA 93720

City, State, Zip

☐ Additional page(s) attached.

Standard Form of General Conditions of Contract Between Owner and Design-Builder

Document No. 535

Third Edition, 2022

© Design-Build Institute of America
Washington, D.C.





Design-Build Institute of America - Contract Documents

LICENSE AGREEMENT

By using the DBIA Contract Documents, you agree to and are bound by the terms of this License Agreement.

- 1. License.** The Design-Build Institute of America ("DBIA") provides DBIA Contract Documents and licenses their use worldwide. You acknowledge that DBIA Contract Documents are protected by the copyright laws of the United States. You have a limited nonexclusive license to: (a) Use DBIA Contract Documents on any number of machines owned, leased or rented by your company or organization; (b) Use DBIA Contract Documents in printed form for bona fide contract purposes; and (c) Copy DBIA Contract Documents into any machine-readable or printed form for backup or modification purposes in support of your permitted use.
- 2. User Responsibility.** You assume sole responsibility for the selection of specific documents or portions thereof to achieve your intended results, and for the installation, use, and results obtained from the DBIA Contract Documents. You acknowledge that you understand that the text of the DBIA Contract Documents has important legal consequences and that consultation with an attorney is recommended with respect to use or modification of the text. You will not represent that any of the contract documents you generate from DBIA Contract Documents are DBIA documents unless (a) the document text is used without alteration or (b) all additions and changes to, and deletions from, the text are clearly shown.
- 3. Copies.** You may not use, copy, modify, or transfer DBIA Contract Documents, or any copy, modification or merged portion, in whole or in part, except as expressly provided for in this license. Reproduction of DBIA Contract Documents in printed or machine-readable format for resale or educational purposes is expressly prohibited. You will reproduce and include DBIA's copyright notice on any printed or machine-readable copy, modification, or portion merged into another document or program.
- 4. Transfers.** You may not transfer possession of any copy, modification or merged portion of DBIA Contract Documents to another party, except that a party with whom you are contracting may receive and use such transferred material solely for purposes of its contract with you. You may not sublicense, assign, or transfer this license except as expressly provided in this Agreement, and any attempt to do so is void.
- 5. Term.** The license is effective for one year from the date of purchase. DBIA may elect to terminate it earlier, by written notice to you, if you fail to comply with any term or condition of this Agreement.
- 6. Limited Warranty.** DBIA warrants the electronic files or other media by which DBIA Contract Documents are furnished to be free from defects in materials and workmanship under normal use during the Term. There is no other warranty of any kind, expressed or implied, including, but not limited to the implied warranties of merchantability and fitness for a particular purpose. Some states do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. This warranty gives you specific legal rights and you may also have other rights which vary from state to state. DBIA does not warrant that the DBIA Contract Documents will meet your requirements or that the operation of DBIA Contract Documents will be uninterrupted or error free.
- 7. Limitations of Remedies.** DBIA's entire liability and your exclusive remedy shall be: the replacement of any document not meeting DBIA's "Limited Warranty" which is returned to DBIA with a copy of your receipt, or at DBIA's election, your money will be refunded. In no event will DBIA be liable to you for any damages, including any lost profits, lost savings or other incidental or consequential damages arising out of the use or inability to use DBIA Contract Documents even if DBIA has been advised of the possibility of such damages, or for any claim by any other party. Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.
- 8. Acknowledgment.** You acknowledge that you have read this agreement, understand it and agree to be bound by its terms and conditions and that it will be governed by the laws of the District of Columbia. You further agree that it is the complete and exclusive statement of your agreement with DBIA which supersedes any proposal or prior agreement, oral or written, and any other communications between the parties relating to the subject matter of this agreement.

INSTRUCTIONS

For DBIA Document No. 535 Standard Form of General Conditions of Contract Between Owner and Design-Builder (2022 Edition)

General Instructions

No.	Subject	Instruction
1.	Standard Forms	Standard form contracts have long served an important function in the United States and international construction markets. The common purpose of these forms is to provide an economical and convenient way for parties to contract for design and construction services. As standard forms gain acceptance and are used with increased frequency, parties are able to enter into contracts with greater certainty as to their rights and responsibilities.
2.	DBIA Standard Form Contract Documents	Since its formation in 1993, the Design-Build Institute of America (DBIA) has regularly evaluated the needs of Owners, Design-Builders, and other parties to the design-build process in preparation for developing its own contract forms. Consistent with DBIA's mission of promulgating best design-build practices, DBIA believes that the design-build contract should reflect a balanced approach to risk that considers the legitimate interests of all parties to the design-build process. DBIA's Standard Form Contract Documents reflect a modern risk allocation approach, allocating each risk to the party best equipped to manage and minimize that risk, with the goal of promoting best design-build practices.
3.	Use of Non-DBIA Documents	To avoid inconsistencies among documents used for the same project, DBIA's Standard Form Contract Documents should not be used in conjunction with non-DBIA documents unless the non-DBIA documents are appropriately modified on the advice of legal counsel. Moreover, care should also be taken when using different editions of the DBIA Standard Form Document on the same project to ensure consistency.
4.	Legal Consequences	DBIA Standard Form Contract Documents are legally binding contracts with important legal consequences. Contracting parties are advised and encouraged to seek legal counsel in completing or modifying these Documents.
5.	Reproduction	DBIA hereby grants to purchasers a limited license to reproduce its Documents consistent with the License Agreement accompanying these Documents. At least two original versions of the Agreement should be signed by the parties. Any other reproduction of DBIA Documents is strictly prohibited.
6.	Modifications	<p>Effective contracting is accomplished when the parties give specific thought to their contracting goals and then tailor the contract to meet the unique needs of the project and the design-build team. For that reason, these Documents may require modification for various purposes including, for example, to comply with local codes and laws, or to add special terms. DBIA's latest revisions to its Documents provide the parties an opportunity to customize their contractual relationship by selecting various optional contract clauses that may better reflect the unique needs and risks associated with the project.</p> <p>Any modifications to these Documents should be initialed by the parties. At no time should a document be re-typed in its entirety. Re-creating the document violates copyright laws and destroys one of the advantages of standard forms – familiarity with the terms.</p>
7.	Execution	It is good practice to execute two original copies of the Agreement. Only persons authorized to sign for the contracting parties may execute the Agreement.

Specific Instructions

Section	Title	Instruction
General	Purpose of This Document	<p>The General Conditions of Contract provide the terms and conditions under which the Work of the Project will be performed.</p> <p>This document accompanies DBIA Document No. 525 and DBIA Document No. 530 (each referred to herein generally as "Agreement"). It may also be incorporated by reference into other related agreements, as between Design-Builder and Design Consultant, and Design-Builder and Subcontractor.</p>
General	Checklist	<p>The following Sections reference documents that are to be attached to the Agreement:</p> <p>Section 3.5.1 Owner's Permit List Article 5 Insurance and Bonds Section 9.4.2 Unit Prices</p>
2.1.3	Schedule	The parties are encouraged, if possible, to agree to a schedule for the execution of the Work upon execution of the Agreement or upon establishing the GMP.
2.2.1	Design Professional Services	The parties should be aware that in addition to requiring compliance with state licensing laws for design professionals, some states also require that the design professional have a corporate professional license.
2.3.1	Standard of Care for Design Professional's Services	Design-Builder's obligation is to deliver a design that meets prevailing industry standards. However, DBIA has provided the parties at Article 11 of the Agreement an optional provision whereby if Owner can identify specific performance standards that can be objectively measured, Design-Builder is obligated to design the Project to satisfy these standards if this optional provision is selected. To avoid any confusion and to ensure that the parties fully understand what their obligations are, the specific performance standards should be clearly identified and should be able to be objectively measured. Design-Builder should recognize that this is a heightened standard of care that has insurance ramifications that should be discussed with Design-Builder's insurance advisor.
3.5.1	Government Approvals and Permits	Design-Builder is responsible for obtaining all necessary permits, approvals, and licenses, except to the extent specific permits, approvals, and licenses are set forth in an Owner's Permit List, which must be attached as an exhibit to the Agreement. The parties, prior to execution of the Agreement, should discuss which permits, approvals and licenses need to be obtained for the Project and which party is in the best position to do so.
5.1.1	Design-Builder's Insurance Requirements	Design-Builder is obligated to provide insurance coverage from insurance carriers that meet the criteria set forth in the Insurance Exhibit attached to Section 10.1 of the Agreement.
5.1.2	Exclusions to Design-Build	Parties are advised that their standard insurance policies may contain exclusions for the design-build delivery method. This Section 5.1.2 requires that any such exclusions be deleted from the policy.
5.2	Owner's Insurance Requirements	Owner, in addition to providing the insurance set forth in this Section and Section 5.3, is also obligated to procure the insurance coverages for the amounts and consistent with the terms set forth in the Insurance Exhibit made part of the Agreement.
5.4	Bonds and Other Performance Security	Design-Builder is only obligated to provide bonds or other forms of performance security to the extent called for in Section 10.2 of the Agreement.

Section	Title	Instruction
8.2.2	Compensability for Force Majeure Events	The parties are provided the option in the Agreement of negotiating whether Design-Builder is entitled to compensation for Force Majeure Events.
9.4.1	Contract Price Adjustments	Unit prices, if established, shall be attached pursuant to Article 2 of the Agreement.
9.4.3	Payment/ Performance of Disputed Services	When Owner disputes Design-Builder's entitlement to a change order or disagrees with Design-Builder regarding the scope of Work, and nevertheless expects Design-Builder to perform the services, Design-Builder's cash flow and ability to complete the Work will be hampered if Owner fails to pay Design-Builder for the disputed services. This Section provides a balanced approach whereby Design-Builder is required to perform the services, but Owner is required to pay fifty percent (50%) of Design-Builder's reasonable estimated direct costs of performing such services until the dispute is settled. By so doing, Owner does not forfeit its right to deny total responsibility for payment, and Design-Builder does not give up its right to demand full payment. The dispute shall be resolved according to Article 10.
Article 10	Contract Adjustments and Disputes	DBIA endorses the use of partnering, negotiation, mediation and arbitration for the prevention and resolution of disputes. The General Conditions of Contract provides for the parties' Representatives and Senior Representatives to attempt to negotiate the dispute or disagreement. If this attempt fails, the dispute shall be submitted to mandatory, non-binding mediation. Any dispute that cannot be resolved by mediation shall then be submitted to binding arbitration, unless the parties elect in the Agreement to submit their dispute to a court of competent jurisdiction.
10.3.4	Arbitration	The prevailing party in any arbitration shall receive reasonable attorneys' fees from the other party. DBIA supports this "loser pays" provision to encourage parties to negotiate or mediate their differences and to minimize the number of frivolous disputes.
10.4	Duty to Continue Performance	Pending the resolution of any dispute or disagreement, both Owner and Design-Builder shall continue to perform their respective duties under the Contract Documents, unless the parties provide otherwise in the Contract Documents.
10.5	Consequential Damages	DBIA believes that it is inappropriate for either Owner or Design-Builder to be responsible to the other for consequential damages arising from the Project. This limitation on consequential damages in no way restricts, however, the payment of liquidated damages, if any, under Article 5 of the Agreement.
11.4	Design-Builder's Right to Terminate for Cause	If Design-Builder properly terminates the Agreement for cause, it shall recover from Owner in the same way as if Owner had terminated the Agreement for convenience under Section 11.6 of the General Conditions. Owner shall pay to Design-Builder its costs, reasonable overhead and profit on the costs, and an additional payment based on a percentage of the remaining balance of the Contract Price, all as set forth in Article 8 of the Agreement.
11.6.2	Termination for Convenience: Owner's Use of Work Product	Owner should not use the Termination for Convenience clause to obtain Design-Builder's valuable design concepts and then seek lower bids from another design-builder. If Owner terminates this Agreement for its own convenience, and chooses to proceed with the Project using Design-Builder's Work Product, Owner should pay an additional sum for the use of Design-Builder's Work Product pursuant to Section 4.3 of the Agreement.
Article 12	Electronic Data	Design-Builder and Owner shall agree on the software and format for the transmission of Electronic Data. Ownership of Work Product in electronic form is governed by Article 4 of the Agreement. The transmitting party disclaims all warranties with respect to the media transmitting the Electronic Data, but nothing in this Article is intended to negate duties with respect to the standard of care in creating the Electronic Data.

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Article 1

General

1.1 Mutual Obligations.

1.1.1 *Owner and Design-Builder* commit at all times to cooperate fully with each other and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

1.2 Basic Definitions.

1.2.1 *Agreement* refers to the executed contract between Owner and Design-Builder under either DBIA Document No. 525, *Standard Form of Agreement Between Owner and Design-Builder – Lump Sum* (2022 Edition); DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder – Cost Plus Fee With an Option for a Guaranteed Maximum Price* (2022 Edition); DBIA Document No. 544, *Standard Form of Progressive Design-Build Agreement* (2022 Edition); or DBIA Document No. 545, *Standard Form of Progressive Design-Build Agreement for Water and Wastewater Projects* (2022 Edition).

1.2.2 *Basis of Design Documents* are as follows: For DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder – Cost Plus Fee With an Option for a Guaranteed Maximum Price*, the Basis of Design Documents are those documents specifically listed in, as applicable, the GMP Exhibit or GMP Proposal as being the “Basis of Design Documents.” For DBIA Document No. 525, *Standard Form of Agreement Between Owner and Design-Builder – Lump Sum*, for DBIA Document No. 544, *Standard Form of Progressive Design-Build Agreement*, the Basis of Design Documents are Owner’s Project Criteria, Design-Builder’s Proposal, and the Deviation List, if any. For DBIA Document No. 545, *Standard Form of Progressive Design-Build Agreement for Water and Wastewater Projects*, the Basis of Design Documents are Owner’s Project Criteria, Design-Builder’s Proposal and the Deviation List, if any.

1.2.3 California Building Code (CBC), Latest Edition; California Plumbing Code (CPC), Latest Edition; California Mechanical Code (CMC), Latest Edition; National Electrical Code (NEC), Latest Edition; California Fire Code (CFC), Latest Edition; California Health and Safety Code (as applicable). For purposes of this definition, “Latest Edition” shall mean the edition, and to the extent, adopted by the City through the City of Fresno Municipal Code.

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

1.2.5 *City Standard Specifications* - City of Fresno, Standard Specifications, Department of Public Works, dated September 2010 and as amended from time-to-time.

1.2.6 *Construction Documents* are the documents, consisting of Drawings and Specifications, to be prepared or assembled by Design-Builder consistent with the Basis of Design Documents unless a deviation from the Basis of Design Documents is specifically set forth in a Change Order executed by both Owner and Design-Builder, as part of the design review process contemplated by Section 2.4 of these General Conditions of Contract.

1.2.7 *Construction Manager* shall mean and refer to the Owner’s authorized representative at the Job Site, in responsible charge of administering the Contract. The Construction Manager shall be the single point of contact for all correspondence, submittals, progress payment requests, and contacts to and from the Contractor.

1.2.8 *Council, City Council* shall each mean and refer to the Council of the Buyer.

1.2.9 *Day or Days* shall mean calendar days unless otherwise specifically noted in the Contract

Documents.

1.2.10 *Design-Build Team* is comprised of Design-Builder, Design Consultant, and key Subcontractors identified by Design-Builder.

1.2.11 *Design Consultant* is a qualified, licensed design professional who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder, to furnish design services required under the Contract Documents. A Design Sub-Consultant is a qualified, licensed design professional who is not an employee of Design Consultant but is retained by Design Consultant or employed or retained by anyone under contract to Design Consultant, to furnish design services required under the Contract Documents.

1.2.12 *Design Submission* means any and all documents, shop drawings, electronic information, including computer programs and computer generated materials, data, plans, drawings, sketches, illustrations, specifications, descriptions, models, and other information developed, prepared, furnished, delivered or required to be delivered by, or for, Design-Builder.

1.2.13 *Engineer, City Engineer* shall mean and refer to the City Engineer and any duly authorized representative.

1.2.14 *Final Completion* is the date on which all Work is complete in accordance with the Contract Documents, including but not limited to, any items identified in the punch list prepared under Section 6.6.1 and the submission of all documents set forth in Section 6.7.2.

1.2.15 *Force Majeure Events* are those events that are beyond the control of both Design-Builder and Owner, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

1.2.16 *General Conditions of Contract* refer to this DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2022 Edition).

1.2.17 *GMP Exhibit* means that exhibit attached to DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder – Cost Plus Fee With an Option for a Guaranteed Maximum Price*, which exhibit will have been agreed upon by Owner and Design-Builder prior to the execution of the Agreement.

1.2.18 *GMP Proposal or Proposal* means that proposal developed by Design-Builder in accordance with Section 6.6 of DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder, Cost Plus Fee With an Option for a Guaranteed Maximum Price* or with Section 2.3 of DBIA Document No. 544, *Progressive Design-Build Agreement*, or DBIA Document No. 545, *Progressive Design-Build Agreement for Water and Wastewater Projects*.

1.2.19 *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

1.2.20 *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

1.2.21 *Owner's Project Criteria* are developed by or for Owner to describe Owner's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Project Criteria may include conceptual documents, design criteria, design performance specifications, design specifications, and LEED® or other sustainable design criteria and other Project-specific technical materials and requirements.

1.2.22 *Purchasing Manager* shall mean and refer to the Purchasing Manager of the Buyer.

1.2.23 *Site* is the land or premises on which the Project is located.

1.2.24 *State Standard Specifications* - State of California, Department of Transportation, Standard Specifications, Latest Edition.

1.2.25 *Subcontractor* is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include materialmen and suppliers.

1.2.26 *Sub-Subcontractor* is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include materialmen and suppliers.

1.2.27 *Substantial Completion* or *Substantially Complete* means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes.

1.2.28 *Work* is comprised of all Design-Builder's design, construction and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.

Article 2

Design-Builder's Services and Responsibilities

2.1 General Services.

2.1.1 Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.

2.1.2 Unless the parties agree on a different time period for submission of a status report, Design-Builder shall provide Owner with a monthly status report detailing the progress of the Work, including (i) whether the Work is proceeding according to schedule; (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution; (iii) whether health and safety issues exist in connection with the Work; (iv) status of the contingency account to the extent provided for in the *Standard Form of Agreement Between Owner and Design-Builder – Cost Plus Fee With an Option for a Guaranteed Maximum Price*; and (v) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s). Status reports shall be submitted with Design-Builder's draft Payment Applications as a pre-requisite to payment.

2.1.3 Unless a schedule for the execution of the Work has been attached to the Agreement as an exhibit at the time the Agreement is executed, Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, a schedule for the execution of the Work for Owner's review and response. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not

relieve 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. Owner's review of, and response to, the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

2.1.4 The parties will meet within seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

2.2 Design Professional Services.

2.2.1 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. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

2.2.2 Design-Builder shall employ only Design Consultants and/or Design Subconsultants who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Prior to the date that Design Consultants and/or Design Subconsultants perform Work on the Project, Design-Builder shall identify in writing to Owner all Design Consultants and Design Subconsultants. To the extent that Design-Builder has not selected a Design Consultant or Design Subconsultant prior to performing the Work, Design-Builder shall provide Owner in writing a list of any subsequently added Design Consultants and/or Design Subconsultants and their scope of Work prior to their performing Work on the Project. Owner may reasonably object to Design-Builder's selection of any Design Consultant or Design Subconsultant, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance. Design-Builder shall not substitute a listed Design Consultant or Subconsultant without obtaining Owner's prior written consent; such consent shall not be unreasonably withheld. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant or Design Subconsultant, including but not limited to any third-party beneficiary rights.

2.3 Standard of Care for Design Professional Services.

2.3.1 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 applicable profession practicing under similar conditions at the same time and locality of the Project.

2.4 Design Development Services.

2.4.1 Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim Design Submissions that Owner may wish to review, which interim Design Submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements.

2.4.1.1 Design Submissions shall be consistent with the Owner's Project Criteria as well as the Basis of Design Documents, as the Basis of Design Documents may have been changed or supplemented through the design process set forth in this Section 2.4.1. By submitting Design Submissions, Design-Builder represents to the Owner that the Work depicted and otherwise shown, contained, or reflected in Design Submissions may be constructed in compliance with the then current Contract Price and Contract Time. Notwithstanding the above, Design-Builder may propose Design Submissions that may alter the Basis of Design Documents, the Contract Price and/or Contract Time; however,

Design-Builder must provide notice thereof in accordance with Article 10 of the General Conditions and obtain a Change Order before such proposed Design Submissions are incorporated into the Construction Documents.

2.4.1.2 On or about the time of the Design Submissions, Design-Builder and Owner shall meet and confer about the Design Submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Basis of Design Documents, or, if applicable, previously submitted Design Submissions. Changes to the Basis of Design Documents, including those that are deemed minor changes under Section 9.3.1, shall be processed in accordance with Article 9. Minutes of the meetings, including a full listing of all changes, will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim Design Submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

2.4.1.3 Owner shall review and respond to Design Submissions, providing any comments and/or concerns about the Design Submissions. Owner shall provide all comments on the Design Submissions within the time provided by the Contract Documents. Design-Builder shall revise the Design Submissions (and any other deliverables) in response to Owner's comments and incorporate said responses into the next submission of Design Submissions.

2.4.1.4 If incorporation of Owner's comments results in a design that is inconsistent with or otherwise gives rise to a change in Owner's Project Criteria, the Basis of Design Documents, the Contract Price and/or the Contract Time, Design-Builder shall provide notice thereof in accordance with Articles 9 and 10 of the General Conditions. Changes to the Basis of Design Documents, the Contract Price and/or the Contract Time, including those that are deemed minor changes, shall be processed in accordance with Article 9 of the General Conditions.

2.4.2 Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim Design Submissions, as such submissions may have been modified in a design review meeting and recorded in the meeting minutes. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Construction Documents in accordance with the procedures set forth in Section 2.4.1 above. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

2.4.3 Owner's review and approval of interim Design Submissions, meeting minutes, and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim Design Submissions, meeting minutes, and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner. Design-Builder shall provide Owner with sufficient time in the Project Schedule to review and approve the Design Submissions.

2.4.4 To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare interim Design Submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

2.5 Legal Requirements.

2.5.1 Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

2.5.2 The Contract Price and/or Contract Time(s) shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Work, or if a Guaranteed Maximum Price is established after the date of the Agreement, the date the parties agree upon the Guaranteed Maximum Price. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

2.6 Government Approvals and Permits.

2.6.1 Except as identified in an Owner's Permit List attached as an exhibit to the Agreement, Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

2.6.2 Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

2.7 Design-Builder's Construction Phase Services.

2.7.1 Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

2.7.2 Design-Builder is advised that this contract is subject to the City's Community Workforce Agreement, a project labor agreement executed by the City and the Fresno, Madera, Tulare, Kings Building Trades Council. Which includes a local hiring program, wherein the contractor must use best faith efforts to meet the hiring percentage requirements for Journey-level and apprentice level project work hours. A copy of the Community Workforce Agreement and Compliance forms are provided in Article 14.

2.7.3 Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

2.7.4 Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Prior to the date that Subcontractors perform Work on the Project, Design-Builder shall identify in writing to Owner all Subcontractors. To the extent that Design-Builder has not selected a Subcontractor prior to performing the Work, Design-Builder shall provide Owner in writing a list of any subsequently added Subcontractors prior to their performing Work on the Project. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance. Design-Builder may not substitute listed Subcontractors without Owner's prior written consent; such consent shall not be unreasonably withheld.

2.7.5 Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

2.7.6 Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors

so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.7.7 Design-Builder shall keep the Site reasonably free from debris, trash, graffiti and vandalism, and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, graffiti, U.S.A. markings, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

2.8 Design-Builder's Responsibility for Project Safety.

2.8.1 Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting; (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site; and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.

2.8.2 Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

2.8.3 Design-Builder's responsibility for safety under this Section 2.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters; and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages or accidents resulting from their performance of the Work.

2.9 Design-Builder's Warranty.

2.9.1 Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

2.10 Correction of Defective Work.

2.10.1 Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.9 hereof, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, or

within such longer period to the extent required by any specific warranty included in the Contract Documents.

2.10.2 Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable.

2.10.3 The one-year period referenced in Section 2.10.1 above applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

Article 3

Owner's Services and Responsibilities

3.1 Duty to Cooperate.

3.1.1 Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.

3.1.2 Owner shall provide timely reviews and approvals of interim Design Submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule.

3.1.3 Owner shall give Design-Builder timely notice of any Work that Owner notices to be defective or not in compliance with the Contract Documents.

3.2 Furnishing of Services and Information.

3.2.1 Unless expressly stated to the contrary in the Contract Documents, Owner shall provide, at its own cost and expense, for Design-Builder's information and use the following, all of which Design-Builder is entitled to rely upon in performing the Work:

3.2.1.1 Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;

3.2.1.2 Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;

3.2.1.3 Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Design-Builder to perform the Work;

3.2.1.4 A legal description of the Site;

3.2.1.5 To the extent available, record drawings of any existing structures at the Site; and

3.2.1.6 To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.

3.2.2 Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. Owner is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

3.3 Financial Information.

3.3.1 At Design-Builder's written request, Owner shall promptly furnish reasonable evidence satisfactory to Design-Builder that Owner has adequate funds available and committed to fulfill all of Owner's contractual obligations under the Contract Documents. If Owner fails to furnish such financial information in a timely manner, Design-Builder may stop Work under Section 11.3 hereof or exercise any other right permitted under the Contract Documents.

3.3.2 Design-Builder shall cooperate with the reasonable requirements of Owner's lenders or other financial sources. Notwithstanding the preceding sentence, after execution of the Agreement Design-Builder shall have no obligation to execute for Owner or Owner's lenders or other financial sources any documents or agreements that require Design-Builder to assume obligations or responsibilities greater than those existing obligations Design-Builder has under the Contract Documents.

3.4 Owner's Representative.

3.4.1 Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work. Owner's Representative shall communicate regularly with Design-Builder and shall be vested with the authority to act on behalf of Owner.

3.5 Government Approvals and Permits.

3.5.1 Owner shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees set forth in Owner's Permit List attached as an exhibit to the Agreement.

3.5.2 Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility.

3.6 Owner's Separate Contractors.

3.6.1 Owner is responsible for all work performed on the Project or at the Site by separate contractors under Owner's control. Owner shall contractually require its separate contractors to cooperate with and coordinate their activities so as not to interfere with Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

Article 4

Hazardous Conditions and Differing Site Conditions

4.1 Hazardous Conditions.

4.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site. Upon encountering any Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

4.1.2 Upon receiving notice of the presence of suspected Hazardous Conditions, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless.

4.1.3 Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless; and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

4.1.4 Design-Builder will be entitled, in accordance with these General Conditions of Contract, to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of Hazardous Conditions.

4.1.5 Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. To the fullest extent permitted by law, Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees expenses, and costs to enforce this agreement, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

4.2 Differing Site Conditions.

4.2.1 Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work, are collectively referred to herein as "Differing Site Conditions." If Design-Builder encounters a Differing Site Condition, Design-Builder will be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance are adversely impacted by the Differing Site Condition.

4.2.2 Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to Owner of such condition, which notice shall not be later than fourteen (14) days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

Article 5

Insurance and Bonds

5.1 Design-Builder's Insurance Requirements.

5.1.1 MINIMUM LIMITS DETAILED BELOW APPLY DURING DESIGN PHASE (PHASE 1) ONLY. THE HIGHER LIMITS DETAILED IN 5.1.2 MUST BE IN FORCE PRIOR TO ANY CONSTRUCTION (PHASE 2).

(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 OWNER'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 OWNER, 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 OWNER 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 OWNER. Any failure to maintain the required insurance shall be sufficient cause for OWNER to terminate this Agreement. No action taken by OWNER 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 OWNER 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 OWNER 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.

4. Professional Liability (Errors and Omissions) insurance appropriate to DESIGN-BUILDER's profession.

MINIMUM LIMITS OF INSURANCE DESIGN/BUILD DESIGN-BUILDER

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 OWNER, 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) \$1,000,000 per occurrence for bodily injury and property damage;
- (ii) \$1,000,000 per occurrence for personal and advertising injury;
- (iii) \$2,000,000 aggregate for products and completed operations; and,
- (iv) \$2,000,000 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. PROFESSIONAL LIABILITY (Errors and Omissions):

- (i) \$1,000,000 per claim/occurrence; and,
- (ii) \$2,000,000 policy aggregate.

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 OWNER, 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 deductibles or self-insured retentions must be declared on the Certificate of Insurance, and approved by, the OWNER'S Risk Manager or his/her designee. At the option of the OWNER'S Risk Manager or his/her designee, either:

- (i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects OWNER, its officers, officials, employees, agents and volunteers; or
- (ii) DESIGN-BUILDER shall provide a financial guarantee, satisfactory to OWNER'S Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall OWNER 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 OWNER, except ten (10) days for nonpayment of premium. DESIGN-BUILDER is also responsible for providing written notice to the OWNER 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 OWNER 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 OWNER, 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 and Automobile, Liability insurance policies shall be written on an occurrence form.
- (iii) The Commercial General and Automobile Liability insurance policies shall be endorsed to name City of Fresno, its officers, officials, agents, employees and volunteers as an additional insured. DESIGN-BUILDER shall establish additional insured status for the OWNER for all ongoing and completed operations under Commercial General 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) All such policies of insurance shall be endorsed so the DESIGN-BUILDERS' insurance shall be primary and no contribution shall be required of OWNER. The coverage shall contain no special limitations on the scope of protection afforded to Owner, its officers, officials, employees, agents and volunteers. If DESIGN-BUILDER maintains higher limits of liability than the minimums shown above, OWNER 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 of Fresno, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the OWNER, 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 of Fresno, its officers, officials, agents, employees and volunteers.

If the Professional (Errors and Omissions) policy is written on a claims-made form:

1. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by DESIGN-BUILDER.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement work or termination of the Agreement, whichever occurs first, or, in the alternative, the policy shall be endorsed to provide not less than a five (5) year discovery period.
3. 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 the commencement of work by DESIGN-BUILDER, DESIGN-BUILDER must purchase "extended reporting" coverage for a minimum of five (5) years completion of the Agreement work or termination of the Agreement, whichever occurs first.
4. A copy of the claims reporting requirements must be submitted to OWNER for review.
5. These requirements shall survive expiration or termination of the Agreement.

PROVIDING OF DOCUMENTS - DESIGN-BUILDER shall furnish OWNER with all certificate(s) and applicable endorsements effecting coverage required herein. All certificates and applicable endorsements are to be received and approved by the OWNER'S Risk Manager or his/her designee prior to OWNER'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 OWNER, DESIGN-BUILDER shall immediately furnish OWNER 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.

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 OWNER Risk Manager or designee, subcontractor (s) to enter into a separate Side Agreement with the Owner to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractors must be reviewed and preapproved by OWNER Risk Manager or designee. If no Side Agreement is required, DESIGN-BUILDER shall require and verify that subcontractors maintain insurance meeting all the requirements stated herein and DESIGN-BUILDER shall ensure that OWNER, its officers, officials, employees, agents and volunteers are additional insureds. The subcontractors' certificates and endorsements shall be on file with DESIGN-BUILDER, and OWNER, prior to commencement of any work by the subcontractors.

5.1.2 PHASE 2 BUILD Design-Builder's insurance shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

(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 OWNER'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 OWNER, 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 OWNER 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 OWNER. Any failure to maintain the required insurance shall be sufficient cause for OWNER to terminate this Agreement. No action taken by OWNER 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 OWNER 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 OWNER 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.

4. Professional Liability (Errors and Omissions) insurance appropriate to DESIGN-BUILDER's profession.

MINIMUM LIMITS OF INSURANCE DESIGN/BUILD DESIGN-BUILDER

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 OWNER, 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. PROFESSIONAL LIABILITY (Errors and Omissions):

- (i) \$1,000,000 per claim/occurrence; and,
- (ii) \$2,000,000 policy aggregate.

5. 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

6. CONTRACTOR'S POLLUTION 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 OWNER, 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 deductibles or self-insured retentions must be declared on the

Certificate of Insurance, and approved by, the OWNER'S Risk Manager or his/her designee. At the option of the OWNER'S Risk Manager or his/her designee, either:

- (i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects OWNER, its officers, officials, employees, agents and volunteers; or
- (ii) DESIGN-BUILDER shall provide a financial guarantee, satisfactory to OWNER'S Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall OWNER 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 OWNER, except ten (10) days for nonpayment of premium. DESIGN-BUILDER is also responsible for providing written notice to the OWNER 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 OWNER 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 OWNER, 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, Automobile, and Pollution Liability insurance policies shall be written on an occurrence form.

(iii) The Commercial General, Automobile and Contractors Pollution Liability insurance policies shall be endorsed to name City of Fresno, its officers, officials, agents, employees and volunteers as an additional insured. DESIGN-BUILDER shall establish additional insured status for the OWNER for all ongoing and completed operations under both Commercial General and Commercial 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) All such policies of insurance shall be endorsed so the DESIGN-BUILDERS' insurance shall be primary and no contribution shall be required of OWNER. The coverage shall contain no special limitations on the scope of protection afforded to Owner, its officers, officials, employees, agents and volunteers. If DESIGN-BUILDER maintains higher limits of liability than the minimums shown above, OWNER 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 of Fresno, its officers, officials, agents, employees

and volunteers. Any insurance or self-insurance maintained by the OWNER, 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 of Fresno, 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.

If the Professional (Errors and Omissions) policy is written on a claims-made form:

1. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by DESIGN-BUILDER.

2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement work or termination of the Agreement, whichever occurs first, or, in the alternative, the policy shall be endorsed to provide not less than a five (5) year discovery period.

3. 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 the commencement of work by DESIGN-BUILDER, DESIGN-BUILDER must purchase "extended reporting" coverage for a minimum of five (5) years completion of the Agreement work or termination of the Agreement, whichever occurs first.

4. A copy of the claims reporting requirements must be submitted to OWNER for review.

5. These requirements shall survive expiration or termination of the Agreement.

PROVIDING OF DOCUMENTS - DESIGN-BUILDER shall furnish OWNER with all certificate(s) and applicable endorsements effecting coverage required herein. All certificates and applicable endorsements are to be received and approved by the OWNER'S Risk Manager or his/her designee prior to OWNER'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 OWNER, DESIGN-BUILDER shall immediately furnish OWNER 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.

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 OWNER Risk Manager or designee, subcontractor (s) to enter into a separate Side Agreement with the Owner to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractors must be reviewed and preapproved by OWNER Risk Manager or designee. If no Side Agreement is required, DESIGN-BUILDER shall require and verify that subcontractors maintain insurance meeting all the requirements stated herein and DESIGN-BUILDER shall ensure that OWNER, its officers, officials, employees, agents and volunteers are additional insureds. The subcontractors' certificates and endorsements shall be on file with DESIGN-BUILDER, and OWNER, prior to commencement of any work by the subcontractors.

5.4 Bonds and Other Performance Security.

5.4.1 If Owner requires Design-Builder to obtain performance and labor and material payment bonds, or other forms of performance security, the amount, form and other conditions of such security shall be as set forth in the Agreement.

5.4.2 All bonds furnished by Design-Builder shall be in a form satisfactory to Owner. The surety shall be a company

Article 6

Payment

6.1 Schedule of Values.

6.1.1 Unless required by Owner upon execution of this Agreement, within ten (10) days of execution of the Agreement, Design-Builder shall submit for Owner's review and approval a schedule of values for all of the Work. The Schedule of Values will (i) subdivide the Work into its respective parts; (ii) include values for all items comprising the Work; and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work.

6.1.2 Owner will timely review and approve the schedule of values so as not to delay the submission of Design-Builder's first application for payment. Owner and Design-Builder shall timely resolve any differences so as not to delay Design-Builder's submission of its first application for payment.

6.2 Monthly Progress Payments.

6.2.1 On or before the date established in the Agreement, Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.4 hereof.

6.2.2 The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) Owner is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location; (ii) the equipment and materials are protected by suitable insurance; and (iii) upon payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances.

6.2.3 All discounts offered by Subcontractors, Sub-Subcontractors, and suppliers to Design-Builder for early payment shall accrue one hundred percent to Design-Builder to the extent Design-

Builder advances payment. Unless Owner advances payment to Design-Builder specifically to receive the discount, Design-Builder may include in its Application for Payment the full undiscounted cost of the item for which payment is sought.

6.2.4 The Application for Payment shall constitute Design-Builder's representation that the Work described therein has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder's receipt of payment, whichever occurs earlier.

6.3 Withholding of Payments.

6.3.1 On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment as a result of Design-Builder's failure to meet its obligations hereunder, it will notify Design-Builder in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 10 hereof.

6.3.2 Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement.

6.4 Design-Builder's Payment Obligations.

6.4.1 Design-Builder will pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Section 7.3 hereof.

6.5 Substantial Completion.

6.5.1 Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is Substantially Complete. Within five (5) days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify that it is Substantially Complete in accordance with the requirements of the Contract Documents. If such Work is Substantially Complete, Owner shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof; (ii) the remaining items of Work that have to be completed before final payment; (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending final payment; and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

6.5.2 Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

6.5.3 Owner, at its option, may use a portion of the Work which has been determined to be Substantially Complete, provided, however, that (i) a Certificate of Substantial Completion has been

issued for the portion of Work addressing the items set forth in Section 6.6.1 above; (ii) Design-Builder and Owner have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project; and (iii) Owner and Design-Builder agree that Owner's use or occupancy will not interfere with Design-Builder's completion of the remaining Work.

6.5.4 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.

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.

6.6 Completion.

The 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 work shall have been completed to the satisfaction of the Owner.

However, the Owner, at its sole option, may accept completion of the Contract 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.

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 Contract Documents is a reasonable time within which to perform the work on the Project.

6.7 Final Payment.

6.7.1 After receipt of a Final Application for Payment from Design-Builder, Owner shall make final payment by the time required in the Agreement, provided that Design-Builder has achieved Final Completion.

6.7.2 At the time of submission of its Final Application for Payment, Design-Builder shall provide the following information:

6.7.2.1 An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;

6.7.2.2 A general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;

6.7.2.3 Consent of Design-Builder's surety, if any, to final payment;

6.7.2.4 All operating manuals, warranties, As-Built drawings, marked up Record documents, and other deliverables required by the Contract Documents; and

6.7.2.5 Certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

6.7.3 Upon making final payment, Owner waives all claims against Design-Builder except claims relating to (i) Design-Builder's failure to satisfy its payment obligations, if such failure affects Owner's interests; (ii) Design-Builder's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion; and (iii) the terms of any special warranties required by the Contract Documents.

6.7.4 Deficiencies in the Work discovered after Substantial Completion, whether or not such deficiencies would have been included on the punch list if discovered earlier, shall be deemed warranty Work. Such deficiencies shall be corrected by Design-Builder under Sections 2.9 and 2.10 herein and shall not be a reason to withhold final payment from Design-Builder, provided, however, that Owner shall be entitled to withhold from the Final Payment the reasonable value of completion of such deficient work until such work is completed.

Article 7

Indemnification

7.1 Patent and Copyright Infringement.

7.1.1 Design-Builder shall defend any action or proceeding brought against Owner based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder shall indemnify and hold harmless Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions.

7.1.2 If Owner is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, at Design-Builder's option and at Design-Builder's expense, (i) modify the Work so as to avoid infringement of any such patent or copyright; or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

7.1.3 Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner; or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Design-Builder to the same extent Design-Builder is obligated to defend, indemnify and hold harmless Owner in Section 7.1.1 above.

7.1.4 The obligations set forth in this Section 7.1 shall constitute the sole agreement between the parties relating to liability for infringement or violation of any patent or copyright.

7.2 Payment Claim Indemnification.

7.2.1 Provided that Owner is not in breach of its contractual obligation to make payments to Design-Builder for the Work, Design-Builder shall indemnify, defend and hold harmless Owner from any claims or mechanic's liens brought against Owner or against the Project as a result of the failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, materials,

labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Design-Builder fails to do so, Owner will have the right to discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

7.3 Design-Builder's General Indemnification.

7.3.1 To the furthest extent allowed by law, including California Civil Code section 2782, DESIGN-BUILDER shall indemnify, defend and hold harmless OWNER and each of its officers, officials, employees, agents, and volunteers from any and all claims, demands, actions in law or equity, loss, liability, fines, penalties, forfeitures, interest, costs including legal fees, and damages (whether in contract, tort, or strict liability, including but not limited to personal injury, death at any time, property damage, or loss of any type) arising or alleged to have arisen directly or indirectly out of (1) any voluntary or involuntary act or omission, (2) error, omission or negligence, or (3) the performance or non-performance of this Contract. DESIGN-BUILDER'S obligations as set forth in this section shall apply regardless of whether OWNER or any of its officers, officials, employees, agents, or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct, of OWNER or any of its officers, officials, employees, agents or volunteers.

To the fullest extent allowed by law, and in addition to the express duty to indemnify, DESIGN-BUILDER, whenever there is any causal connection between the DESIGN-BUILDER's performance or non-performance of the work or services required under this Contract and any claim or loss, injury or damage of any type, DESIGN-BUILDER expressly agrees to undertake a duty to defend OWNER and any of its officers, officials, employees, agents, or volunteers, as a separate duty, independent of and broader than the duty to indemnify. The duty to defend as herein agreed to by DESIGN-BUILDER expressly includes all costs of litigation, attorneys fees, settlement costs and expenses in connection with claims or litigation, whether or not the claims are valid, false or groundless, as long as the claims could be in any manner be causally connected to DESIGN-BUILDER as reasonably determined by OWNER.

Upon the tender by OWNER to DESIGN-BUILDER, DESIGN-BUILDER shall be bound and obligated to assume the defense of OWNER and any of its officers, officials, employees, agents, or volunteers, including the a duty to settle and otherwise pursue settlement negotiations, and shall pay, liquidate, discharge and satisfy any and all settlements, judgments, awards, or expenses resulting from or arising out of the claims without reimbursement from OWNER or any of its officers, officials, employees, agents, or volunteers.

It is further understood and agreed by DESIGN-BUILDER that if OWNER tenders a defense of a claim on behalf of OWNER or any of its officers, officials, employees, agents, or volunteers and DESIGN-BUILDER fails, refuses or neglects to assume the defense thereof, OWNER and its officers, officials, employees, agents, or volunteers may agree to compromise and settle or defend any such claim or action and DESIGN-BUILDER shall be bound and obligated to reimburse OWNER and its officers, officials, employees, agents, or volunteers for the amounts expended by each in defending or settling such claim, or in the amount required to pay any judgment rendered therein.

The defense and indemnity obligations set forth above shall be direct obligations and shall be separate from and shall not be limited in any manner by any insurance procured in accordance with the insurance requirements set forth in this Contract. In addition, such obligations remain in force regardless of whether OWNER provided approval for, or did not review or object to, any insurance DESIGN-BUILDER may have procured in a accordance with the insurance requirements set forth in this Contract. The defense and indemnity obligations shall arise at such time that any claim is made, or loss, injury or damage of any type has been incurred by OWNER, and the entry of judgment, arbitration, or litigation of any claim shall not be a condition precedent to these obligations.

The defense and indemnity obligations set forth in this section shall survive termination or expiration of this Contract.

If DESIGN-BUILDER should subcontract all or any portion of the work to be performed under this Contract, DESIGN-BUILDER shall require each subcontractor to Indemnify, hold harmless and defend OWNER and each of its officers, officials, employees, agents and volunteers in accordance with the terms as set forth above.

Article 8

Time

8.1 Obligation to Achieve the Contract Times.

8.1.1 Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 5 of the Agreement.

8.2 Delays to the Work.

8.2.1 If Design-Builder is delayed on the critical path in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order. By way of example, events that will entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, and Force Majeure Events.

8.2.2 In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for Force Majeure Events unless otherwise provided in the Agreement.

Article 9

Changes to the Contract Price and Time

9.1 Change Orders.

9.1.1 A Change Order is a written instrument issued after execution of the Agreement signed by Owner and Design-Builder, stating their agreement upon all of the following:

9.1.1.1 The scope of the change in the Work;

9.1.1.2 The amount of the adjustment to the Contract Price; and

9.1.1.3 The extent of the adjustment to the Contract Time(s).

9.1.2 All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

9.1.3 If Owner requests a proposal for a change in the Work from Design-Builder and

subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse Design-Builder for reasonable costs incurred for estimating services, design services and services involved in the preparation of proposed revisions to the Contract Documents.

9.1.4 Approval of any change order by the Owner is subject to Resolution No. 2017-158 as adopted by the City Council. The approval authority defined in Resolution No. 2017-158 shall be based on the current awarded contract price for each Phase as approved by City Council.

9.2 Work Change Directives.

9.2.1 A Work Change Directive is a written order prepared and signed by Owner directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s).

9.2.2 Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

9.3 Minor Changes in the Work.

9.3.1 Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however, that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

9.4 Contract Price Adjustments.

9.4.1 The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

9.4.1.1 Unit prices set forth in the Agreement or as subsequently agreed to between the parties;

9.4.1.2 A mutually accepted lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner;

9.4.1.3 Costs, fees and any other markups set forth in the Agreement; or

9.4.1.4 If an increase or decrease cannot be agreed to as set forth in items 9.4.1.1 through 9.4.1.3 above and Owner issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Agreement.

9.4.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Owner or Design-Builder because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

9.4.3 If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement

pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed; and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for such services; and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

9.5 Emergencies.

9.5.1 In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

Article 10

Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief.

10.1.1 If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. The claimant shall provide more complete information with respect to the claim within fourteen (14) days of the initial notice. The more complete information shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

10.2 Dispute Avoidance and Resolution.

10.2.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

10.2.2 Claims for Additional Time.

Extension of time, when granted, will be based upon the effect of delays to the Project as a whole and will not be granted for noncontrolling delays to minor included portions of the Work unless it can be shown that such delays did, in fact, delay the progress of the Project as a whole. The Design-Builder shall not be entitled to damages or additional payment due to these delays except to the extent the delay exceeds the original Contract duration for Substantial Completion, and any extension hereunder other than any extension granted due to Owner caused delay, when Owner is responsible for the delay, the delay is unreasonable under the circumstances involved, not within the contemplation of the parties, and such delay causes actual damage to the Design-Builder. The Owner shall not be entitled to liquidated damages for Design-Builder delays unless the delay by Design-Builder exceeds the original Contract duration for Substantial Completion and any extension of time to which the Design-Builder is entitled to under the Specifications.

If delays are caused by unforeseen events beyond the control of the Design-Builder, such delays will entitle the Design-Builder to an extension of time as provided herein. War, governmental regulations, priorities, labor disputes, strikes, fires, floods, adverse weather necessitating cessation of Work, other similar action of the elements, inability to obtain materials, equipment or labor because of Federal Government restrictions arising out of the National Defense or War Program, required Extra Work, action or inaction by the Owner, or other specific reasons as may be further described in the Specifications may constitute such a delay.

If the Design-Builder is delayed by the failure of the Owner to furnish necessary rights of way or materials agreed to be furnished by it, or by failure to supply necessary plans or instructions concerning the Work, after written request therefore, the Design-Builder shall be entitled to an extension of time as provided herein.

10.2.3 Claims and Disputes.

10.2.3.1 General.

The Design-Builder and Owner shall make good faith efforts to resolve any and all Claims and disputes in a timely manner that may from time to time arise during Design-Builder's performance of the Work. Claims, including those alleging an error or omission shall be directed to the Owner's Construction Manager for action as provided in the "Resolution of Claims and Disputes," below.

It shall be a condition precedent to Claims review by the Public Works Director or his or her designated representative and to mediation or litigation between the Design-Builder and Owner as to all such matters arising prior to the date final payment is due, that a formal decision on all Design-Builder Claims be made by the Construction Manager. It shall be a condition precedent that the Design-Builder appeal any disputed Claim to the Public Works Director prior to initiating mediation or litigation. It shall be a condition precedent that the Design-Builder mediate any disputed Claim through non-binding mediation as provided herein, prior to initiating litigation. Unless mutually waived in writing by both parties, these provisions apply regardless of 1) whether such matters relate to execution and progress of the Work, or 2) the extent to which the Work has been completed.

Notice of Intent to Claim by Design-Builder must be made within 72 hours after occurrence of the event giving rise to such Claim, or within 72 hours after the claimant first discovers or should have reasonably discovered the condition giving rise to the Claim, whichever is later. Notice of Intent to Claim and Claims must be made by written notice.

At all times during the course of the dispute resolution process pursuant to the "Resolution of Claims and Disputes," the Design-Builder shall continue with the Work as directed, in a diligent manner and without delay, or shall conform to the Owner's decision or order, and shall be governed by all applicable provisions of the Contract. Records of the Work shall be kept in sufficient detail to enable payment in accordance with applicable provisions in the Contract if this should become necessary.

The making of final payment shall not constitute a waiver of Claims by the Owner including, but not limited to, the following:

- (i) liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- (ii) failure of the Work to comply with the requirements of the Contract Documents; or
- (iii) terms of special warranties required by the Contract Documents.

Design-Builder shall promptly provide an unconditional waiver and release upon final payment in accordance with California Civil Code section 3262 and these Contract Documents. Except to the extent of any Claim arising from City's sole or active negligence, and except to the extent Design-Builder expressly describes any other disputed Claims for which prior written notice has been given the City and lists the respective dollar amounts in an unconditional waiver and release, the making of final payment shall constitute a waiver of Claims by the Design-Builder pertaining to any and all costs, expenses, changes or other Claims related to Contract Price or Contract Time, including any synergistic effects attributed to multiple Change Orders. In the event of any disputed Claims between the City and Design-Builder, the City may withhold from the final payment an amount not to exceed 150% of the disputed amount.

10.2.3.2 Resolution of Claims and Disputes.

(1) Decision of Construction Manager:

a. If the Design-Builder believes any Work or demand to be outside the requirements of the Contract or believes that omissions, conflicts, errors, or discrepancies will cause or have caused the Design-Builder additional costs or delays in the performance of the Work, he/she shall file a written Notice of Intent to Claim with the Construction Manager within 72 hours after occurrence of the event giving rise to the Claim, or within 72 hours after the Design-Builder or its subcontractor first discovers or should have reasonably discovered the condition giving rise to the Claim, whichever is later. If a written Notice of Intent to Claim is not submitted within this time period, the Design-Builder shall waive his or her right to further Claims on the issue and any synergistic effects related to such Claim.

1. Within 10 working days following the Notice of Intent to Claim, the Design-Builder shall provide a Notice of Claim with complete supporting data for the Claim of the cost and delay related to such omissions, conflicts, errors, discrepancies, or Work alleged to be outside the requirements of the Contract. Notwithstanding the foregoing, if all supporting data cannot reasonably be made available within said 10 working days, then Design-Builder shall provide all then available supporting data along with a request for additional time, stating a time certain, to obtain the remainder of supporting data along with both an explanation of the nature of such supporting data and the reason why additional time is necessary to provide same to the Construction Manager.

2. If a written Notice of Claim, along with complete supporting data or all then available supporting data and reasonable request for additional time with explanation as required above, is not submitted within 10 working days following the Notice of Intent to Claim, the Design-Builder shall waive his or her right to make further Claims on the issue and any synergistic effects related to such Claim.

3. The Design-Builder's request for additional time to provide the remainder of its supporting data shall be deemed acceptable to Owner unless the Construction Manager rejects in writing Design-Builder's request within 5 working days from receipt of Design-Builder's request. If the Construction Manager rejects Design-Builder's request for additional time, then Design-Builder shall either provide complete supporting data immediately upon receipt of such rejection or within any time acceptable to the Construction Manager as stated in his or her written rejection, whichever is later (unless otherwise mutually agreed upon in writing by Design-Builder and Construction Manager).

b. The Construction Manager will review any and all Claims and take one or more of the following preliminary actions in writing within 10 working days of receipt of written Notice of Claim and complete supporting data: 1) request additional supporting data from the Design-Builder; 2) reject the Claim in whole, or in part, stating reasons for rejection; or, 3) recommend approval of the Claim. In the event the Construction Manager has not taken any preliminary action within 10 working days, then the Claim is deemed rejected unless the Design-Builder and the Construction Manager mutually agree in writing to extend the time period for taking preliminary action. The Construction Manager will make his or her decision on the basis of the pertinent Contract provisions, together with the facts and circumstances involved in the dispute. The Construction Manager may also, but is not obligated to, notify the surety on Design-Builder's performance bond of the nature and amount of the Claim.

c. If the Construction Manager requests additional supporting data from the Design-Builder, the Design-Builder shall supply the additional information to the Construction Manager within 10 working days unless the Design-Builder and the Construction Manager mutually agree in writing to extend the time period for supplying such information. The Construction Manager will have 10 working days from the receipt of additional supporting data to provide a written decision unless the Design-Builder and the Construction Manager mutually agree in writing to extend the time period for providing such decision. In the event the Construction Manager has not provided a written decision within 10 working days, or any extended time period agreed to in writing by Construction Manager and Design-Builder, then the Claim is deemed rejected and this shall constitute Design-Builder's automatic request for an appeal meeting with the Public Works Director unless the Design-Builder submits a written withdrawal of its Claim.

d. If the Claim is rejected in whole or in part by a written decision of the Construction Manager, the Design-Builder shall notify the Construction Manager in writing within 10 working days after receiving the written decision that either: 1) the decision is accepted, and the Claim is amended; accordingly, or 2) the Design-Builder requests an appeal meeting with the Public Works Director. Failure to timely request an appeal meeting with the Public Works Director following receipt of the written decision constitutes acceptance by the Design-Builder of the Construction Manager's decision. If the Owner and Design-Builder are able to resolve their dispute, the Owner will promptly process any required Contract changes.

(2) Decision of Public Works Director

a. The Public Works Director, or his or her designee, shall meet with the Design-Builder and the Construction Manager within 15 working days (unless necessary to accommodate the Public Works Director's schedule, or that of his or her designee, but in no event longer than 20 working days; or unless otherwise mutually agreed upon in writing by Design-Builder and Construction Manager) from the Design-Builder's timely submittal of his or her request, or any automatic request hereunder, for a meeting. The Design-Builder may make a presentation in support of his or her Claim. No attorney may take part in the presentation or defense of the Claim in the meeting with the Public Works Director, or his or her designee. Nothing herein shall prevent an attorney from providing advice to a party either before or after the meeting. In the event the meeting with the Public Works Director, or his or her designee, has not been conducted within the time provided herein or as agreed upon in writing by Design-Builder and Construction Manager, then the Claim is deemed rejected and, unless the Design-Builder submits a written withdrawal of its Claim, the parties shall proceed to mediation as provided herein.

b. Within 10 working days (unless otherwise mutually agreed upon in writing by Design-Builder and Construction Manager) from the meeting with the Design-Builder and the Construction Manager, the Public Works Director, or his or her designee, shall render a written decision and a copy thereof shall be personally delivered, or mailed return receipt requested, to the Design-Builder. In the event the Public Works Director, or his or her designee, has not provided a written decision within 10 working days, or any extended time period agreed to in writing by Construction Manager and Design-Builder, then the Claim is deemed rejected and, unless the Design-Builder submits a written withdrawal of its Claim, the parties shall proceed to mediation as provided herein.

c. If the Claim is rejected in whole or in part by a written decision of the Public Works Director, or his or her designee, the Design-Builder shall notify the Construction Manager in writing within 10 working days after receiving the written decision that either: 1) the decision is accepted and the Claim is amended accordingly; or 2) the Design-Builder rejects the decision of the Public Works Director, or his or her designee. Failure to timely notify the Construction Manager of either following receipt of the Public Works Director's written decision, or that of his or her designee, shall constitute acceptance by the Design-Builder of the Public Works Director's decision, or that of his or her designee. If the Owner and Design-Builder are able to resolve their dispute, the Owner will promptly process any required Contract changes. If the Design-Builder rejects the written decision of the Public Works Director or his or her designee, the parties shall proceed to mediation as provided herein.

(3) Mediation

a. In the event that the Claim is not resolved after exhausting all aforementioned administrative measures, then the Design-Builder must participate in non-binding mediation with City before the Design-Builder may initiate litigation.

b. The parties shall mutually select, in writing, a mediator with at least 5 years' experience in the construction industry. In the event that the parties are unable to agree on a mediator within 15 working days of Design-Builder's rejection of the decision of the Public Works Director or his or her designee, the City may select the mediator. Mediation, including at least one session requiring physical attendance by all parties, shall begin within 15 working days of selection of the mediator, unless necessary to accommodate the mediator's schedule. The parties shall share the mediator's fees and any administrative costs of mediation equally. The mediation shall be held in Fresno, California, unless another location is mutually agreed upon by the parties in writing. In the event the parties are unable to reach a mutually acceptable resolution of the Claim within 20 working days of the start of mediation, unless extended or otherwise terminated by written mutual agreement of the parties, mediation shall terminate.

c. If the Owner and Design-Builder are able to resolve their dispute the Owner will promptly process any required Contract changes. Any settlement reached in principle must be in writing and is subject to approval by the City Manager or City Council consistent with City laws and policies. Should the dispute remain unresolved, the parties may resort to other dispute resolution procedures.

d. All statements made during the mediation shall be confidential and subject to sections 703.5, 1119 and 1152 of the California Evidence Code.

(4) Government Claims Act. Nothing herein is intended by the parties to waive any requirements of the Design-Builder to comply with the Government Claims Act including, without limitation, California Government Code section 905; and Design-Builder agrees that it shall remain responsible for complying with said section regarding any Claim. The parties agree, however, that the timeline for the Design-Builder to file a claim under the Government Claims Act is tolled until exhaustion of the Design-Builder of its administrative remedies hereunder (i.e., either upon termination of mediation, or upon written mutual waiver of mediation by the parties, whichever first occurs).

(5) Litigation

a. If the Design-Builder continues to dispute the Work demanded of him/her after exhausting all aforementioned administrative measures, the Design-Builder may institute legal proceedings, but only after final acceptance of the Project by the Owner.

Unless specifically waived by the Owner, in writing, the submission of a dispute for mediation in accordance with the above provisions shall be a condition precedent to the Design-Builder's right to initiate a suit, action or other proceeding against the Owner for damages.

b. In the event Owner initiates suit, action, or other proceeding against the Design-Builder for damages, the prevailing party in such suit or action shall be entitled to recover reasonable attorney's fees and costs of suit.

c. In the event Design-Builder initiates suit, action, or other proceeding against the Owner, the Owner shall be entitled to recover reasonable attorneys' fees and engineering defense costs if the Design-Builder is not awarded, by the arbitrator or court, a dollar amount greater than 50 percent of the Design-Builder's original Claim for damages.

d. The Design-Builder shall include, or cause to be included, a requirement in all subcontracts of all tiers of Subcontractors for this Project that whenever the Subcontractor disputes the Work demanded of him/her, he/she shall cooperate and comply with the Claims and Dispute procedures contained herein including, without limitation, exhausting all administrative measures prior to instituting legal proceedings, and instituting legal proceedings only after final acceptance of the Project by the Owner.

10.3 Mediator

The Owner shall be responsible for fifty percent (50%) of the Mediator costs. If needed, the owner's share of the cost shall be added through a contract change order. The dollar amount listed in the bid item is an estimate only and will be included in each Bidder's Proposal. Invoices of the Mediator shall be paid by the Design-Builder only upon direct written authorization from the Owner.

Final payment to Design-Builder will be based on fifty percent (50%) of the total amount of Owner approved invoices of the Mediator actually billed to Owner by Design-Builder. The Design-Builder shall include the specified lump sum bid item on the Bid Proposal for payment of Owner's share of costs for the Mediator. Payment will be made under this bid item by issuance of a Change Order approved by the Owner and charged against this lump sum allocation.

This bid item may be increased, decreased, or deleted in its entirety and is not to be construed as additional money owed to the Design-Builder. If no Change Order is issued against this bid item, the Contract Price shall be reduced by the full amount of the bid item included in the Bid Proposal for the Mediator.

The Design-Builder shall have no claim for anticipated overhead or profit should the Owner fail to issue any Change Orders against this bid item.

10.4 Duty to Continue Performance.

10.1 Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations for undisputed amounts to Design-Builder as well as any further amounts pursuant to Section 9.4.3, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

10.5 CONSEQUENTIAL DAMAGES.

10.5.1 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET

FORTH IN SECTION 10.5.2 BELOW), NEITHER DESIGN-BUILDER NOR OWNER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

10.7.2 The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the payment of liquidated damages or lost early completion bonus, if any, set forth in Article 5 of the Agreement, which both parties recognize has been established, in part, to reimburse Owner or reward Design-Builder for some damages that might otherwise be deemed to be consequential.

Article 11

Stop Work and Termination

11.1 Owner's Right to Stop Work.

11.1.1 Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work.

11.1.2 Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension or stoppage of the Work by Owner.

11.2 Owner's Right to Perform and Terminate for Cause.

11.2.1 If Design-Builder persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Design Consultants or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below.

11.2.2 Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then Owner may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Owner may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.

11.2.3 Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. Notwithstanding the preceding sentence, if the Agreement establishes a

Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.5 hereof.

11.3 Termination for Convenience.

11.3.1 Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Design-Builder for the following:

11.3.1.1 All Work executed and for proven loss, cost or expense in connection with the Work;

11.3.1.2 The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and

11.3.1.3 The amount set forth in Article 8 of the Agreement.

11.3.2 If Owner terminates this Agreement pursuant to Section 11.6.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Section 4.3 of the Agreement. Such rights may not be transferred or assigned to others without Design-Builder's express written consent and such third parties' agreement to the terms of Article 4 of the Agreement.

Article 12

Electronic Data

12.1 Electronic Data.

12.1.1 The parties recognize that Contract Documents, including drawings, specifications and three-dimensional modeling (such as Building Information Models) and other Work Product may be transmitted among Owner, Design-Builder and others in electronic media as an alternative to paper hard copies (collectively "Electronic Data").

12.2 Transmission of Electronic Data.

12.2.1 Owner and Design-Builder shall agree upon the software and the format for the transmission of Electronic Data. Each party shall be responsible for securing the legal rights to access the agreed-upon format, including, if necessary, obtaining appropriately licensed copies of the applicable software or electronic program to display, interpret and/or generate the Electronic Data.

12.2.2 Neither party makes any representations or warranties to the other with respect to the functionality of the software or computer program associated with the electronic transmission of Work Product. Unless specifically set forth in the Agreement, ownership of the Electronic Data does not include ownership of the software or computer program with which it is associated, transmitted, generated or interpreted.

12.2.3 By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 4 of the Agreement. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

12.3 Electronic Data Protocol.

12.3.1 The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 12.3.

12.3.2 Electronic Data will be transmitted in the format agreed upon in Section 12.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

12.3.3 The Electronic Data represents the information at a particular point in time and is subject to change. Therefore, the parties shall agree upon protocols for notification by the author to the recipient of any changes which may thereafter be made to the Electronic Data, which protocol shall also address the duty, if any, to update such information, data or other information contained in the electronic media if such information changes prior to Final Completion of the Project.

12.3.4 The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.

Article 13

Miscellaneous

13.1 Confidential Information.

13.1.1 Confidential Information is defined as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (i) the transmitting party identifies as either confidential or proprietary; (ii) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (iii) the document is not otherwise available in or considered to be in the public domain. The receiving party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the Project.

13.2 Assignment.

13.2.1 Neither Design-Builder nor Owner shall, without the written consent of the other assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

13.3 Successorship.

13.3.1 Design-Builder and Owner intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

13.4 Governing Law.

13.4.1 The Agreement and all Contract Documents shall be governed by the laws of the location of the Project, without giving effect to its conflict of law principles.

13.5 Severability.

13.5.1 If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

13.6 No Waiver.

13.6.1 The failure of either Design-Builder or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

13.7 Headings.

13.7.1 The headings used in these General Conditions of Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

13.8 Notice.

13.8.1 Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice; (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement; (iii) if transmitted by facsimile, by the time stated in a machine-generated confirmation that notice was received at the facsimile number of the intended recipient; or (iv) by electronic mail, by the time frame stated in the email-generated confirmation that notice was received by the email of the intended recipient.

13.9 Amendments.

13.9.1 The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

13.10 Attorney's Fees.

13.10.1 If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant of the Contract Documents, the prevailing party in such proceeding shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

13.11 Interpretation.

13.11.1 The parties acknowledge that this Contract in its final form is the result of the combined efforts of the parties and that, should any provision of this Contract be found to be

ambiguous in any way, such ambiguity shall not be resolved by construing this Contract in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

Article 14

Project Labor Agreement

CITY OF FRESNO COMMUNITY WORKFORCE AGREEMENT

This section refers to the City of Fresno's Community Workforce Agreement, dated September 29, 2021.

DEFINITIONS:

1.12 "Project" means a City awarded public works project as defined in California Labor Code Section 1720, where the engineer's estimate of the total cost of the project exceeds one million dollars (\$1,000,000). All Construction Contracts required to complete an integrated Project shall be considered in determining whether this threshold is met. For the purpose of application of this threshold to Job Order Contracts, the threshold shall be applied to each job order, rather than to the job order contract aggregate maximum; any individual job order above the threshold shall require application of this Agreement to such individual job order. The City and the Trades Council may mutually agree in writing to add additional projects or components to be covered by this Agreement.

ARTICLE V, PRE-JOB CONFERENCES:

5.1 Timing: The Project Manager shall; convene and conduct, at a location and time mutually agreeable to the Trades Council, a pre-job conference with the Unions and the representatives of all involved Contractors/Employers, who shall be prepared to announce craft assignments and discuss in detail the scope of work and the other issues set forth below, at least fourteen (14) calendar days prior to:

- (a) The commencement of any Project work, and
- (b) The commencement of Project work on any subsequently awarded Construction Contract.

ARTICLE VII, UNION SECURITY:

7.2 The Contractors/Employers shall make and transmit all deductions for Union dues, fees, and assessments that have been authorized by employees in writing in accordance with the applicable Master Agreement. This Agreement does not require any employee of a non-Union Contractor/Employer to join a Union or to pay dues or fees to a Union as a condition of working on a Project; however, nothing in this Article is intended to supersede the independent requirements of the applicable Master Agreements as to Contractors/Employers signatory to such Master Agreements and as to employees of those Contractors/Employers who are performing Covered Work.

ARTICLE IX, LOCAL HIRING PROGRAM:

9.4 Percentage Requirements: For each Project, each Contractor shall make best faith efforts to satisfy the following percentage requirements (the "Percentage Requirements"):

- 9.4.1 at least 50 percent of all journey-level Project work hours performed by City Residents;
- 9.4.2 at least 55 percent of all apprentice-level Project work hours performed by City Residents;
- 9.4.3 at least 30 percent of all apprentice-level Project work hours performed by New Local Apprentices.



RESOLUTION NO. 2021-242

A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO,
CALIFORNIA, APPROVING A PROJECT LABOR AGREEMENT
FOR CITYWIDE PUBLIC WORK OF IMPROVEMENT
PROJECTS (THE "RANDY L. GHAN ACT")

WHEREAS, the City of Fresno is experiencing poor economic conditions created by the COVID-19 pandemic and faces significant infrastructure needs; and

WHEREAS, the Project Labor Agreement (Agreement) provides uniform wages, benefits, overtime pay, hours, working conditions, and work rules for work on major construction projects, as well as providing reliable and uninterrupted qualified workers at predictable costs; and

WHEREAS, an Agreement will help to develop qualified workers in the construction trades and include people who are historically underrepresented in the trades; and

WHEREAS, the Agreement for citywide public work of improvement projects, requires employment of local, economically disadvantaged, apprentices, as well as veterans, women and minorities, to the extent permitted by legal and funding restrictions

WHEREAS, City staff, the Building Trades Council and the ad hoc City Council committee negotiated the Project Labor Agreement as presented to the City Council

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno as follows:

1. Approves the Agreement in substantially the form attached hereto as

1 of 3

Date Adopted: 09/16/2021
Date Approved: 09/16/2021
Effective Date: 09/16/2021

Resolution No. 2021-242



Exhibit A.

2. Authorizes the City Manager, or designee, to execute the Agreement.
3. Directs administrative staff to implement and carry out the provisions of the

Agreement

4. This resolution shall be effective upon final approval.

* * * * *



STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, BRIANNA PARRA, Interim City Clerk of the City of Fresno, Certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the 2nd day of September, 2021.

AYES : Arias, Esparza, Karbassi, Maxwell, Soria, Chavez
NOES : Bredefeld
ABSENT : None
ABSTAIN : None

Mayor Approval: N/A, 2021
Mayor Approval/No Return: N/A, 2021
Mayor Veto: September 13th, 2021
Mayor Approval: September 16th, 2021

BRIANA PARRA, CMC
Interim City Clerk

By: [Signature on File] 9/27/2021
Deputy Date

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: [Signature on File] 9/27/2021
Brandon M. Collet Date
Senior Deputy City Attorney

Attachment: Exhibit A – Community Workforce Agreement

**COMMUNITY WORKFORCE AGREEMENT
FOR THE CITY OF FRESNO
INTRODUCTION/FINDINGS**

This Community Workforce Agreement is entered into this 29th day of September 2021, by and between the City of Fresno (hereinafter the "City"), and the Fresno, Madera, Kings and Tulare Counties Building and Construction Trades Council (hereinafter the "Trades Council") and its affiliated Unions that have executed this Agreement (referred to collectively herein as the "Union(s)"). Contractors and subcontractors of all tiers who work on City construction projects covered by this Agreement (hereinafter the "Contractor(s)/Employer(s)"), shall become signatory to this Agreement by signing the "**Agreement to be Bound**" attached hereto as **Addendum A**.

A central purpose of this Agreement is to provide employment and training opportunities that build pathways into high-quality, sustainable construction careers for local workers, to create a pool of skilled construction labor for future City construction projects, to develop the regional workforce and economy, and to combat unemployment and underemployment in the region. Equally important, this Agreement is designed to promote the efficiency of construction operations through the use of skilled labor resulting in quality construction outcomes, and to provide for the peaceful settlement of labor disputes and grievances without strikes or lockouts, thereby promoting the public interest in assuring the timely and economical completion of City Projects covered by this Agreement.

WHEREAS, this Agreement encourages construction employment and training opportunities in ways calculated to mitigate the harms caused by geographically concentrated poverty, unemployment and underemployment in economically disadvantaged areas and among City residents; and

WHEREAS, this Agreement reflects a commitment by all parties to diversity, workforce equity, and open opportunity in employment and training on City-funded projects; and

WHEREAS, the City places high priority upon the development of comprehensive programs for the recruitment, training and employment of local area residents and military veterans, and recognizes the ability of local pre-apprenticeship and apprenticeship programs to provide meaningful and sustainable career pathways in the construction industry; and

WHEREAS, the timely and successful completion of City Projects is an important fiduciary responsibility of the City of Fresno; and

WHEREAS, large numbers of workers of various skills will be required in the performance of construction work on City Projects and the timely and successful completion of City Projects is of the utmost importance to meet the needs of the City and avoid increased costs from delays in construction; and

Community Workforce Agreement
for the City of Fresno

WHEREAS, the use of skilled labor on construction work increases the safety of construction projects as well as the quality of completed work; and

WHEREAS, it is recognized that on City Projects with multiple contractors and bargaining units on the job site at the same time over an extended period of time, the potential for work disruption may be substantial without an overriding commitment to maintain continuity of work; and

WHEREAS, the interests of the general public, the City, the Unions, and the Contractors/Employers are best served when construction work proceeds in an orderly manner without disruption because of strikes, sympathy strikes, work stoppages, picketing, lockouts, slowdowns or other interferences with work; and

WHEREAS, the Contractors/Employers and the Unions desire to mutually establish and stabilize wages, hours and working conditions for the workers employed on City Projects and to encourage close cooperation among the Contractors/Employers and the Unions so that a satisfactory, continuous and harmonious relationship will exist; and

WHEREAS, the parties seek to avoid the tensions that would arise on City Projects if Union and non-union workers of different employers were to work side by side on City Projects, potentially leading to labor disputes that could delay completion of City Projects; and

WHEREAS, this Agreement is not intended to replace, interfere with, abrogate, diminish or modify existing local or national collective bargaining agreements in effect during the duration of City Projects, insofar as a legally binding agreement exists between the Contractors/Employers and the Unions, except to the extent that the provisions of this Agreement are inconsistent with said collective bargaining agreements, in which event the provisions of this Agreement shall prevail; and

WHEREAS, the contract(s) for construction work on City Projects will be awarded in accordance with the applicable provisions of all state, local and federal laws; and

WHEREAS, the parties to this Agreement pledge their full good faith and trust to work toward the mutually satisfactory completion of the City Projects;

NOW, THEREFORE, IT IS AGREED BETWEEN AND AMONG THE PARTIES HERETO, AS FOLLOWS:

ARTICLE I DEFINITIONS

1.1 "Agreement" means this Community Workforce Agreement.

1.2 "Agreement to be Bound" means the agreement (attached hereto as Addendum A) that shall be executed by each and every Contractor/Employer as a condition of working on a Project.

Community Workforce Agreement
for the City of Fresno

1.3 "City" means the City of Fresno, California and its governing board, officers, agents and employees, including managerial personnel.

1.4 "City Resident" means an individual domiciled in the City. "Domiciled" has the meaning set forth in section 349(b) of the California Election Code, which cannot be a post office box.

1.5 "Completion" means that point at which there is Final Acceptance by the City of a Construction Contract and the City has filed a Notice of Completion. For purposes of this definition, "Final Acceptance" means that point in time at which the City has determined upon final inspection that the work has been completed in all respects and all required contract documents, contract drawings, warranties, certificates, manuals and data have been submitted and training completed in accordance with the contract documents and the City has executed a written acceptance of the work.

1.6 "Construction Contract" means the public works or improvement contract(s) (including design-bid, design-build, lease-leaseback or other contracts under which construction of City Projects is done) awarded by the City that are necessary to complete City Projects.

1.7 "Contractor(s)/Employer(s)" or "Contractor(s)" or "Employer(s)" means any individual, firm, partnership or corporation (including the prime contractor, general contractor, construction manager, project manager, design-build entity, lease-leaseback entity or equivalent entity), or combination thereof, including joint ventures, and their successors and assigns, that is an independent business enterprise and enters into a contract with the City with respect to the construction of any part of City Projects, and all contractors and subcontractors of any tier.

1.8 "Covered Work" means work on a Project that is described in Section 2.3, and not excluded pursuant to Section 2.4.

1.9 "Master Agreement" or "Schedule A" means the Master Collective Bargaining Agreement of each craft Union signatory hereto.

1.10 "New Local Apprentice" means a City Resident who both (i) is enrolled (or can be immediately enrolled) in a state-approved joint labor-management apprenticeship program and has progressed less than halfway toward the work hours needed to graduate from such program; and (ii) is a graduate of a Trades Council-recognized pre-apprenticeship program.

1.11 "Party" means the City, the Trades Council, and the Unions.

1.12 "Project" means a City awarded public works project as defined in California Labor Code Section 1720, where the engineer's estimate of the total cost of the project exceeds one million dollars (\$1,000,000). All Construction Contracts required to complete an integrated Project shall be considered in determining whether this threshold is met. For the purpose of application of this threshold to Job Order Contracts, the threshold shall be applied to each job order, rather than to the job order contract aggregate maximum;

any individual job order above the threshold shall require application of this Agreement to such individual job order. The City and the Trades Council may mutually agree in writing to add additional projects or components to be covered by this Agreement.

1.13 "Project Manager" means the person(s) or entity(ies) designated by the City to oversee all phases of construction on a Project and the implementation of this Agreement.

1.14 "Trades Council" means the Fresno, Madera, Kings and Tulare Counties Building and Construction Trades Council.

1.15 "Transitional Housing" means housing the purpose of which is to facilitate the movement of homeless individuals and families into permanent housing within 24 months.

1.16 "Union" or "Unions" means the Trades Council and its affiliated local unions signatory to this Agreement, acting on their own behalf and on behalf of their respective affiliates and member organizations whose names are subscribed hereto and who have through their officers executed this Agreement.

ARTICLE II

SCOPE OF AGREEMENT

2.1 Parties: This Agreement applies to and is limited to all Contractors/Employers performing work under a Construction Contract on a Project (including subcontractors at any tier), and their successors and assigns, the City, the Trades Council, and its affiliated Unions signatory to this Agreement.

2.2 Applicability: This Agreement governs all Construction Contracts awarded on City Projects. For purposes of this Agreement, Construction Contracts shall be considered Completed as set forth in Section 1.5, except when the City directs a Contractor to engage in repairs, warranty work, modifications, or punch list work under a Construction Contract or when a Contractor performs work under a change order for a Construction Contract.

2.2.1 The terms of this Agreement will cover, and will fully apply to, any Contractor performing Project work, without regard to whether that Contractor performs work at other sites on either a union or non-union basis. This Agreement shall not apply to any work of any Contractor other than the Project work specifically covered by this Agreement. No Contractor shall be required to become signatory to a Union Schedule A Agreement as a result of performing Project work.

2.3 Covered Work: This Agreement covers, without limitation, all site preparation, surveying, construction, alteration, demolition, installation, improvement, remediation, retrofit, painting or repair of buildings, structures and other works, and related activities for a Project that is within the craft jurisdiction of one of the Unions and that is directly or indirectly part of a Project, including, without limitation to the following examples, landscaping and temporary fencing, temporary HVAC, geotechnical and

exploratory drilling, soils and materials testing and inspection, pipelines (including those in linear corridors built to serve a Project), pumps, pump stations, start-up, modular furniture installation, and final clean-up. This Agreement covers work done for a Project in temporary yards, dedicated sites, or areas adjacent to a Project, and at any on-site or off-site batch plant constructed to supply materials to a Project.

2.3.1 This Agreement applies to any start-up, calibration, commissioning, performance testing, repair, maintenance, and operational revisions to systems and/or subsystems for a Project performed after Completion, unless performed by City employees.

2.3.2 This Agreement covers all on-site fabrication work over which the City, Contractor(s)/Employer(s) or subcontractor(s) possess the right of control (including work done for a Project in any temporary yard or area established for a Project). This Agreement also covers any off-site work, including fabrication, that is traditionally performed by the Unions and is directly or indirectly part of a Project, provided such work is covered by a current Master Agreement or current local addenda to a national agreement of the applicable Union(s).

2.3.3 Except for the delivery of supplies, equipment or materials that are stockpiled for later use, this Agreement covers all construction trucking work, including the hauling and delivery of ready-mix, asphalt, aggregate, sand, soil or other fill or similar material that is directly incorporated into the construction process as well as the off-hauling of soil, sand, gravel, rocks, concrete, asphalt, excavation materials, construction debris and excess fill, material and/or mud. Contractor(s)/Employer(s), including brokers, of persons providing construction trucking work shall provide certified payroll records to the City within ten (10) days of written request or as required by the bid specifications.

2.3.4 Work covered by this Agreement within the following craft jurisdictions shall be performed under the terms of their National Agreements as follows: the National Transient Lodge (NTL) Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, the National Agreement of Elevator Constructors, and any instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians, with the exception that Articles IV, XIV and XV of this Agreement shall apply to such work.

2.4 Exclusions: The following shall be excluded from the scope of this Agreement.

2.4.1 This Agreement shall not apply to work performed by the City's own employees as permitted by the Public Contract Code.

2.4.2 This Agreement shall not apply to a Contractor/Employer's non-construction craft employees, managerial employees, administrative personnel, and supervisors above the level of general foreman, unless covered by a Master Agreement.

2.4.3 This Agreement shall not apply to a contract entered into with a professional service provider for a Project, as defined in Section 1.12, unless the professional service provider performs or subcontracts Covered Work, in which event the entity self-performing the Covered Work shall execute an Agreement to be Bound. Where applicable, the City shall include this requirement in the professional services contract.

2.4.4 This Agreement shall not apply to any non-Project work performed on or near or leading to the site of work covered by this Agreement that is undertaken by state, county, city, or other governmental bodies or their contractors. Work performed by public or private utilities including all electrical utility, voice-data-video, and security installation work ahead of and up to the electrical service entry connection or the main point of entry into the building shall be excluded. All electrical utility, voice-data-video, and security installation work performed after the electrical utility service entrance or the main point of entry shall be Covered Work. Additionally, all contracted work performed ahead of the service entrance connection and main point of entry that is inside the property line and provides for access to the building via a conduit or series of conduits shall be Covered Work.

2.4.5 This Agreement shall not apply to the off-site maintenance of leased equipment and on-site supervision of such work.

2.4.6 This Agreement does not apply to work by employees of, or contractors retained by, a manufacturer or vendor necessary to maintain such manufacturer's or vendor's warranty or guaranty, provided the manufacturer or vendor provides documentation showing that the warranty or guarantee specifically requires such employees or contractors to perform the work in order to preserve the warranty or guarantee, or provided the manufacturer or vendor demonstrates by an enumeration of specific tasks that the work cannot be performed by craft workers covered by this Agreement.

2.4.7 In circumstances requiring special knowledge, work may be performed by persons not covered by this Agreement provided that the Contractor/Employer or manufacturer responsible for such work demonstrates by an enumeration of specific tasks that the work cannot be performed by craft workers covered by this Agreement. A Contractor/Employer invoking this provision shall give notice to the Trades Council and the relevant Union(s), and such work shall be identified and discussed by the Contractor/Employer at its Pre-Job Conference, or, if not known at the time of the Pre-Job Conference, shall be identified and discussed with the Trades Council and the relevant Union(s) once the work becomes known, including by holding a Pre-Job Conference if requested by the Trades Council or the relevant Union(s).

2.4.8 This Agreement shall not apply to work substantially funded by any federal, state, other local or public agency that prohibits the use of project labor agreements on projects receiving its funding, or the funding of projects on which such agreements are used. With respect to such work, the City agrees that it will make a reasonable effort to defend the application of this Agreement, including by making a written request to the funding source. Notwithstanding the foregoing, however, should

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for the City of Fresno

only a specific provision of the Agreement be prohibited by the funding source, the parties shall modify the requirements of this Agreement accordingly, to advance the purposes of this Agreement to the maximum extent feasible without the loss of funding.

2.4.9 This Agreement shall not apply to work that is jointly performed with another public agency, unless the work is awarded by the City, or unless otherwise agreed to by the Parties on a case by case basis. With respect to such work jointly performed with another public agency, the City will make a request to the other public agency to apply the terms of this Agreement, or in the alternative, request that the other public agency communicate with City representatives and the Trades Council to discuss application of this Agreement.

2.4.10 This Agreement shall not apply to renovation of Transitional housing buildings or units, given the time sensitivity of such work. For the avoidance of doubt, this exclusion does not apply to new construction, nor to a total remodel where residents are not occupying the building or units.

2.5 Award of Contracts: It is understood and agreed that the City has the right to select any qualified bidder for the award of a Construction Contract under this Agreement. The bidder need only be willing, ready and able to execute and comply with this Agreement. It is further agreed that this Agreement shall be included in all invitations to bid or solicitations for proposals from contractors or subcontractors for work on a Project. The City shall provide a copy of all such invitations to bid to the Trades Council at the time of issuance.

ARTICLE III

EFFECT OF AGREEMENT

3.1 By executing this Agreement, the Trades Council, the Unions and the City agree to be bound by each and all of the provisions of the Agreement.

3.2 By accepting the award of work under a Construction Contract for a Project, whether as a Contractor or subcontractor thereunder, all Contractors/Employers agree to be bound by each and every provision of this Agreement and agree to evidence their acceptance prior to the commencement of work by executing the Agreement to be Bound in the form attached hereto as Addendum A.

3.3 At the time that any Contractor/Employer enters into a subcontract with any subcontractor providing for the performance of work under a Construction Contract, the Contractor/Employer shall provide a copy of this Agreement to said subcontractor and shall require the subcontractor, as a condition of accepting the award of a construction subcontract, to agree in writing, by executing the Agreement to be Bound, to be bound by each and every provision of this Agreement prior to the commencement of work. The obligations of a Contractor may not be evaded by subcontracting. If the subcontractor refuses to execute the Agreement to be Bound, then such subcontractor shall not be awarded a Construction Contract on a Project.

Community Workforce Agreement
for the City of Fresno

3.4 This Agreement shall only be binding on the signatory parties hereto, and their successors and assigns, and shall not apply to the parents, affiliates, subsidiaries, or other ventures of any such party. Each Contractor shall alone be liable and responsible for its own individual acts and conduct and for any breach or alleged breach of this Agreement, except as otherwise provided by law or the applicable Master Agreement. Any dispute between the Union(s) and the Contractor(s) with respect to compliance with this Agreement shall not affect the rights, liabilities, obligations and duties between the Union(s) and other Contractor(s) party to this Agreement.

3.5 It is mutually agreed by the parties that any liability by a Union signatory to this Agreement shall be several and not joint. Any alleged breach of this Agreement by a Union shall not affect the rights, liabilities, obligations and duties between the Contractor(s) and the other Union(s) party to this Agreement.

3.6 The provisions of this Agreement, including the Schedule As incorporated herein by reference, shall apply to the work covered by this Agreement, notwithstanding the provisions of any other local, area and/or national agreements which may conflict with or differ from the terms of this Agreement. To the extent a provision of this Agreement conflicts with a Schedule A, the provision of this Agreement shall prevail. Where a provision of a Schedule A does not conflict with this Agreement, the provision of the Schedule A shall apply.

ARTICLE IV

WORK STOPPAGES, STRIKES. SYMPATHY STRIKES AND LOCKOUTS

4.1. The Unions, the City, and the Contractor(s)/Employer(s) covered by this Agreement agree that for the duration of a Project:

4.1.1 There shall be no strikes, sympathy strikes, work stoppages, picketing, handbilling or otherwise advising the public that a labor dispute exists, or slowdowns of any kind, for any reason, by the Unions or employees employed on a Project, at the job site of a Project or any other City facility because of a dispute on a Project. Disputes arising between the Unions and Contractor(s)/ Employer(s) on other City projects are not governed by the terms of the Agreement or this Article.

4.1.2 There shall be no lockout of any kind by a Contractor/Employer of workers employed on a Project.

4.1.3 If a Master Agreement expires before the Contractor/Employer completes the performance of work under a Construction Contract and the Union or Contractor/Employer gives notice of a demand for a new or modified Master Agreement, the Union agrees that it will not strike on work covered by this Agreement and the Union and the Contractor/Employer agree that the expired Master Agreement will continue in full force and effect for work covered under this Agreement until a new or modified Master Agreement is reached. If the new or modified Master Agreement provides that any terms of the Master Agreement shall be retroactive, the Contractor/ Employer agrees to comply with any retroactive terms of the new or modified Master Agreement that are applicable

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to any employee(s) on a Project during the interim, with retroactive payment due within seven (7) calendar days of the effective date of the new or modified Master Agreement.

4.1.4 In the case of nonpayment of wages or trust fund contributions on a Project, the Union shall give the City and the Contractor/Employer three (3) business days' notice when nonpayment of trust fund contributions has occurred, and one (1) business days' notice when nonpayment of wages has occurred or when paychecks being tendered to a financial institution normally recognized to honor such paychecks will not honor such paycheck, of the intent to withhold labor from the Contractor/Employers' or their subcontractor's workforce, during which time the Contractor/Employer may correct the default. In this instance, a Union's withholding of labor (but not picketing) from a Contractor/Employer who has failed to pay its fringe benefit contributions or failed to meet its weekly payroll shall not be considered a violation of this Article.

4.1.5 Notification: If the City or any Contractor contends that any Union has violated this Article, it will so notify in writing the Senior Executive of the Trades Council and the Senior Executive of the Union, setting forth the facts alleged to violate the Article, prior to instituting the expedited arbitration procedure set forth below. The Trades Council will immediately use its best efforts to cause the cessation of any violation of this Article. The leadership of the Union will immediately inform the workers of their obligations under this Article. A Union complying with this obligation shall not be held responsible for the unauthorized acts of employees it represents.

4.2 Expedited Arbitration: Any party to this Agreement shall institute the following procedure, prior to initiating any other action at law or equity, when a breach of this Article is alleged to have occurred.

4.2.1 A party invoking this procedure shall notify Robert Hirsch, as the permanent arbitrator, or Barry Winograd, as the alternate arbitrator, under this procedure. In the event the permanent arbitrator is unavailable at any time, the alternate will be contacted. If neither is available, the parties shall select the arbitrator from the list in Section 14.4. Notice to the arbitrator shall be by the most expeditious means available, with notice by email and telephone to the City, the involved Contractor, and the party alleged to be in violation, and to the Trades Council and involved local Union if a Union is alleged to be in violation.

4.2.2 Upon receipt of said notice, the City will contact the permanent arbitrator named above, or the alternate if the permanent arbitrator is not available, who will attempt to convene a hearing within twenty-four (24) hours if it is contended that the violation still exists.

4.2.3 The arbitrator shall notify the parties by email and telephone of the place and time for the hearing. Said hearing shall be completed in one session, which, with appropriate recesses at the arbitrator's discretion, shall not exceed twenty-four (24) hours unless otherwise agreed upon by all parties. A failure of any party to attend said hearings shall not delay the hearing of evidence or the issuance of an award by the arbitrator.

4.2.4 The sole issue at the hearing shall be whether or not a violation of Section 4.1 of the Agreement has occurred. The arbitrator shall have no authority to consider any matter of justification, explanation or mitigation of such violation or to award damages, which issue is reserved for court proceedings, if any. The award shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without a written opinion. If any party desires a written opinion, one shall be issued within fifteen (15) calendar days, but the parties shall not delay compliance with or enforcement of the award due to the issuance of a written opinion. The arbitrator may order cessation of the violation of this Article, and the arbitrator's award shall be served on all parties by hand or registered mail upon issuance. Should a party found in violation of this Article fail to comply with the arbitrator's award ordering the party to cease the violation, the party in violation shall pay to the affected party as liquidated damages the sum of ten thousand dollars (\$10,000.00) per shift for which it failed to comply, or portion thereof, until such violation is ceased. The arbitrator shall retain jurisdiction to resolve any disputes regarding the liquidated damages claimed under this section.

4.2.5 The arbitrator's award may be enforced by any court of competent jurisdiction upon the filing of this Agreement and all other relevant documents referred to above in the following manner. The party filing such enforcement proceedings shall give written notice to the other party. In a proceeding to obtain a temporary order enforcing the arbitrator's award as issued under this Article, all parties waive the right to a hearing and agree that such proceeding may be ex parte. However, such agreement does not waive any party's right to seek or participate in a hearing for a final order of enforcement. Any court order enforcing the arbitrator's award shall be served on all parties by hand or delivered by certified mail.

4.2.6 Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure, or which interfere with compliance with the above procedure, are waived by the parties.

4.2.7 The fees and expenses of the arbitrator shall be divided equally between the party instituting the arbitration proceedings provided in this Article and the party alleged to be in breach of its obligation under this Article.

4.2.8 Should either the permanent or the alternate arbitrator identified above no longer work as a labor arbitrator, the City and the Trades Council shall mutually agree to a replacement.

ARTICLE V PRE-JOB CONFERENCES

5.1 Timing: The Project Manager shall convene and conduct, at a location and time mutually agreeable to the Trades Council, a pre-job conference with the Unions and the representatives of all involved Contractors/Employers, who shall be prepared to announce craft assignments and discuss in detail the scope of work and the other issues set forth below, at least fourteen (14) calendar days prior to:

- (a) The commencement of any Project work, and

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- (b) The commencement of Project work on any subsequently awarded Construction Contract.

5.2 The pre-job conference shall be attended by a representative of each participating Contractor and each affected Union, and the Trades Council and City may attend at their discretion.

5.3 The pre-job conference shall include but not be limited to the following subjects:

- (a) A listing of each Contractor and subcontractor and their scope of work;
- (b) The craft assignments;
- (c) The estimated number of craft workers required to perform the work;
- (d) Transportation arrangements;
- (e) The estimated start and completion dates of the work; and
- (f) Discussion of pre-fabricated materials.

5.4 Joint Administrative Committee: This Agreement is intended to provide close cooperation between management and labor. To that end, the City shall designate two representatives and the Trades Council shall designate two representatives to serve on a Joint Administrative Committee ("JAC"), each of whom may designate an alternate. JAC members may invite participation by a Contractor or Union as needed. The JAC shall meet quarterly and at the request of any member, to review progress of Projects and to discuss matters of general concern, such as safety and security. The JAC shall serve as a forum to foster communication between management and labor, and to assist the Unions and the Contractors to complete Projects in an economically efficient manner without interruption, delays or work stoppages.

5.4.1 The JAC shall participate in the drafting of reports to City Council regarding the status of targeted objectives under this Agreement, including the local hiring and apprenticeship provisions herein.

5.4.2 The JAC shall have no authority to review grievances or disputes involving this Agreement, which are subject to the applicable grievance procedure.

ARTICLE VI

NO DISCRIMINATION

6.1 The Contractors/Employers and the Unions agree to comply with all anti-discrimination provisions of federal, state, and local law, to protect employees and applicants for employment, on a Project.

ARTICLE VII

UNION SECURITY

7.1 The Contractors/Employers recognize the Unions as the sole bargaining representative of all craft employees working within the scope of this Agreement, and all such employees must be represented by a Union for the duration of their employment on a Project.

7.2 The Contractors/Employers shall make and transmit all deductions for Union dues, fees, and assessments that have been authorized by employees in writing in accordance with the applicable Master Agreement. This Agreement does not require any employee of a non-Union Contractor/Employer to join a Union or to pay dues or fees to a Union as a condition of working on a Project; however, nothing in this Article is intended to supersede the independent requirements of the applicable Master Agreements as to Contractors/Employers signatory to such Master Agreements and as to employees of those Contractors/Employers who are performing Covered Work.

7.3 Authorized representatives of the Unions shall have access to a Project whenever work covered by this Agreement is being, has been, or will be performed on a Project.

ARTICLE VIII

REFERRAL

8.1 Contractor(s)/Employer(s) performing construction work on a Project shall, in filling craft job requirements, utilize and be bound by the registration facilities and referral systems established or authorized by the Unions signatory hereto. The Contractor(s)/Employer(s) shall have the right to reject any applicant referred by the Union(s), in accordance with the applicable Master Agreement.

8.2 Contractor(s)/Employer(s) shall have the unqualified right to select and hire directly all supervisors above the level of general foreman it considers necessary and desirable, without such persons being referred by the Union(s), unless such craft construction employee is covered by a Master Agreement.

8.3 Core Workers: Contractor(s)/Employer(s) that are not signatory to a Master Agreement may request by name, and the Union will honor, referral of Core Workers as journeypersons for Project work who have been on the Contractor/Employer's active payroll for at least sixty (60) out of the one hundred (100) working days prior to the request, and who possess all licenses and certifications required to perform the work ("Core Workers").

8.3.1 The Union will refer to the Contractor one journeyperson employee from the hiring hall then one Core Worker for the affected trade or craft. This process shall be repeated, one and one, until the Contractor's workforce has a maximum of five(5) Core Workers. Thereafter, all of the Contractor's additional employees performing Covered Work shall be hired from the Union's hiring hall out-of-work list(s).

8.3.2 When the Contractor's workforce is reduced, employees shall be reduced so as to maintain the same ratio of Core Workers to hiring hall referrals as was applied in the initial hiring.

8.3.3 The Contractor shall provide the appropriate Union with the name and all necessary information for each Core Worker, and each Core Worker shall register with the Union's hiring hall and comply with Article VII before commencing work on a Project. If there is any question regarding an employee's eligibility as a Core Worker under this section, the Contractor shall provide the Union with written records demonstrating eligibility.

8.4 In the event that referral facilities maintained by the Union(s) are unable to fill the requisition of a Contractor/Employer for employees within a forty-eight (48) hour period (Saturdays, Sundays and Holidays excluded) after such requisition is made by the Contractor/Employer, the Contractor/Employer shall be free to obtain the worker(s) from any source. A Contractor/Employer who hires a worker(s) to perform Covered Work on a Project pursuant to this section shall immediately provide the appropriate Union with the name and address of such worker(s) and shall immediately refer such worker(s) to the appropriate Union to satisfy the requirements of this Agreement.

ARTICLE IX

LOCAL HIRING PROGRAM

9.1 It is in the interest of the parties to this Agreement to facilitate employment of City Residents to construct City Projects. To that end, the Unions agree to exert their utmost efforts to recruit a sufficient number of craft persons to fulfill the referral requests of Contractors/Employers for City Projects, consistent with this Article.

9.2 To the maximum extent allowed by law and consistent with the Unions' hiring hall referral provisions set forth in Master Agreements, City residents shall be requested by the Contractor(s)/Employer(s) and dispatched by the applicable Union(s).

9.3 Each Contractor shall either demonstrate satisfaction of the Percentage Requirements in Section 9.4 below, or demonstrate satisfaction of the good faith efforts set forth in Section 9.5 below.

9.4 Percentage Requirements: For each Project, each Contractor shall make best faith efforts to satisfy the following percentage requirements (the "Percentage Requirements"):

9.4.1 at least 50 percent of all journey-level Project work hours performed by City Residents;

9.4.2 at least 55 percent of all apprentice-level Project work hours performed by City Residents;

9.4.3 at least 30 percent of all apprentice-level Project work hours performed by New Local Apprentices.

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9.5 Each Contractor must take the following steps in an attempt to utilize City Residents to satisfy the Percentage Requirements:

9.5.1 City Residents/Journey level Hours. Contractor may assign current crew members who are City Residents to a Project. If staffing with Contractor's current crew members does not enable satisfaction of the Percentage Requirement of Section 9.4.1, the Contractor shall request referral of needed City Residents from the appropriate Union hiring hall, using "name call," "rehire," or other available procedures to satisfy the Percentage Requirement of Section 9.4.1. All requests for referrals under this subsection shall be in writing.

9.5.2 City Residents/Apprentice Hours. Contractor may assign current crew members who are City Residents and apprentices registered in a joint labor- management apprenticeship program to a Project. If staffing with Contractor's current crew members does not enable satisfaction of the Percentage Requirement of Section 9.4.2, the Contractor shall request referral of needed City Resident apprentices from the appropriate Union hiring hall or joint labor-management apprenticeship program, using "name call," "rehire," or other available procedures to satisfy the Percentage Requirement of Section 9.4.2. All requests for referrals under this subsection shall be in writing.

9.5.3 New Local Apprentices. Contractor may assign current crew members who are New Local Apprentices to a Project. If staffing with Contractor's current crew members does not enable satisfaction of the Percentage Requirement of Section 9.4.3, the Contractor shall request referral of New Local Apprentices from the appropriate Union hiring hall or joint labor-management apprenticeship program, using "name call," "rehire," or other available procedures to satisfy the Percentage Requirement of Section

9.4.3. All requests for referrals under this subsection shall be in writing.

9.6 Union hiring halls and, where applicable, joint apprenticeship programs, will refer apprentices to non-signatory Contractors/Employers upon request provided the Contractors/Employers submit the forms required by the Department of Industrial Relations.

9.7 Oversight and Enforcement. Contractor requirements of the Local Hiring Program shall be terms of the prime contracts awarded by the City and subcontracts awarded by Contractors. Enforcement actions shall be pursuant to contract compliance procedures set forth in such contracts. Hours worked by workers who reside in states other than California shall not be considered in compliance determinations regarding the Local Hiring Program. Upon request by the City, Contractors shall submit copies of all information necessary to determine Contractor compliance with the Local Hiring Program, including dispatch requests and responses, records regarding hiring decisions of City Residents and New Local Apprentices who were referred but not hired, and any other relevant information requested by the City.

9.8 Federally-Funded Projects: The requirements of this Article IX shall not apply to Projects for which a federal funding source prohibits such application. However,

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if a federal funding source requires alternative hiring goals or requirements (such as in federal Executive Order 11246), then such requirements shall apply, and all requirements and procedures set forth in this Article shall be utilized to implement the alternative hiring goals or requirements imposed by the federal funding source. The City shall notify the Trades Council in the event that federal hiring goals supplant this Article.

ARTICLE X

WAGES AND BENEFITS

10.1 The Contractors/Employers agree to pay contributions to the vacation, pension and/or other deferred compensation plan, apprenticeship, worker protection and assistance, and health benefit funds established by the applicable Master Agreement(s) for each hour worked on a Project, in the amounts designated in the applicable Master Agreement(s).

10.2 By signing this Agreement, the Contractors/Employers adopt and agree to be bound by the written terms of the legally established Trust Agreements described in Section 10.1, which may from time to time be amended, specifying the detailed basis upon which payments are to be made into, and benefits paid out of, such Trust Funds. The Contractors/Employers authorize the parties to such local Trust Agreements to appoint trustees and successor trustees to administer the Trust Funds and hereby ratify and accept the trustees so appointed as if they were appointed by the Contractors/Employers. The Contractors/Employers agree to execute a separate subscription agreement(s) when such Trust Fund(s) requires such document(s).

10.3 Wages, Hours, Terms and Conditions of Employment: The wages, hours and other terms and conditions of employment on City Projects shall be governed by the Master Agreement of the respective craft, to the extent such Master Agreement is not inconsistent with this Agreement. Where a subject is covered by the Master Agreement and not covered by this Agreement, the Master Agreement will prevail. When a subject is covered by both the Master Agreement and this Agreement, to the extent there is any inconsistency, this Agreement will prevail.

10.4 Holidays: Holidays shall be as set forth in the applicable Master Agreement.

ARTICLE XI

APPRENTICES

11.1 Recognizing the need to develop adequate numbers of competent workers in the construction industry, including on public works projects, the Contractors/Employers shall employ apprentices from a California state-approved Joint Apprenticeship Training Program in their respective crafts, to perform such work as is within their capabilities and that is customarily performed by the craft in which they are indentured.

11.2 Apprentice ratios will be in compliance with the provisions of the California Labor Code and the applicable state prevailing wage determination.

11.3 Consistent with the Master Agreements, there shall be no restriction on the utilization of apprentices in performing the work of their craft provided they are properly indentured and supervised.

ARTICLE XII **HELMETS TO HARDHATS**

12.1 The Contractors/Employers and Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The Contractors/Employers and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter "Center") and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

12.2 The Unions and Contractors/Employers agree to coordinate with the Center to participate in an integrated database of veterans interested in working on Projects and of apprenticeship and employment opportunities for Projects. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

ARTICLE XIII **COMPLIANCE**

13.1 It shall be the responsibility of the Contractors/Employers and Unions to investigate and monitor compliance with the provisions of Article IX of this Agreement. Nothing in this Agreement shall be construed to interfere with or supersede the usual and customary legal remedies available to the Unions and/or employee benefit Trust Funds to collect delinquent wages or Trust Fund contributions from Contractors/Employers on the Projects. Because the Projects are public works subject to the California Labor Code, the City shall monitor and enforce the Contractors/Employers' compliance with state prevailing wage requirements as well as this Agreement.

ARTICLE XIV **GRIEVANCE ARBITRATION PROCEDURE**

14.1 Project Labor Disputes: All disputes involving the application or interpretation of a Master Agreement to which a Contractor/Employer and a Union are parties shall be resolved pursuant to the resolution procedures of the Master Agreement. All disputes relating to the interpretation or application of this Agreement, other than disputes under Article IV and Article XV, shall be subject to resolution by the grievance arbitration procedures set forth in this Article.

14.2 Employee Discipline: All disputes involving the discipline and/or discharge of an employee working on a Project shall be resolved through the grievance and arbitration provisions contained in the Master Agreement for the craft of the affected

employee. No employee working on a Project shall be disciplined or discharged without just cause.

14.3 No grievance shall be recognized unless the grieving party (Union or District Council on its own behalf, or on behalf of an employee whom it represents, or a Contractor/Employer on its own behalf) provides notice in writing to the party with whom it has a dispute within five (5) business days after becoming aware of the dispute but in no event more than thirty (30) business days after it reasonably should have become aware of the event giving rise to the dispute. Time limits may be extended by mutual agreement of the parties.

14.4 Grievances shall be settled according to the following procedures:

Step 1: Within five (5) business days after the receipt of the written notice of the grievance, the representative of the involved Union or District Council, or his/her designee, and the representative of the involved Contractor/Employer, shall confer and attempt to resolve the grievance.

Step 2: If the grievance is not resolved at Step 1, within five (5) business days of the Step 1 meeting or the conclusion of efforts to resolve the grievance at Step 1, the alleged grievance may be referred in writing by either involved party to the Business Manager(s) of the affected Union(s) involved and the Labor Relations Manager of the Contractor/Employer, or the Contractor/Employer's designated representative, for discussion and resolution. This time limit may be extended by mutual consent of both parties. Regardless of which party has initiated the grievance, the Union shall notify its International Union representative prior to the Step 2 meeting, and the International Union representative shall advise if it intends to participate in the Step 2 meeting. The Project Manager and the Trades Council shall have the right to participate in any efforts to resolve the dispute at Step 2.

Step 3: If the grievance is not resolved at Step 2, either party may request the dispute be submitted to arbitration within five (5) business days of the Step 2 meeting or the conclusion of efforts to resolve the grievance at Step 2. This time limit may be extended by mutual consent of both parties. Within five (5) business days after referral of a dispute to arbitration, the representatives shall notify the permanent arbitrator designated in Article IV, or if not available, the alternate arbitrator designated in Article IV, for final and binding arbitration. If the permanent arbitrator or the alternate is not available, an arbitrator shall be selected by the alternate striking method from the list of three (3) below. The order of striking names from the list of arbitrators shall be determined by a coin toss, the winner of which shall decide whether they wish to strike first or second.

1. Carol Vendrillo
2. David Weinberg
3. Mark Keppler

Community Workforce Agreement
for the City of Fresno

14.5 The decision of the arbitrator shall be final and binding on all parties. The arbitrator shall have no authority to change, amend, add to or detract from any of the provisions of the Agreement. The expense of the arbitrator shall be borne equally by both parties. The arbitrator shall arrange for a hearing on the earliest available date from the date of his/her selection. A decision shall be given to the parties within five (5) calendar days after completion of the hearing unless such time is extended by mutual agreement. A written opinion may be requested by a party from the presiding arbitrator.

14.6 The time limits specified at any step of the grievance procedure may be extended by mutual agreement of the parties. However, failure to process a grievance, or failure to respond in writing within the time limits provided above, without an agreed upon extension of time, shall be deemed a waiver of such grievance without prejudice, or without precedent to the processing and/or resolution of like or similar grievances or disputes.

14.7 In order to encourage the resolution of disputes and grievances at Steps 1 and 2 of this grievance procedure, the parties agree that such settlements shall not be precedent setting.

14.8 Should any of the arbitrators listed in this Article or Article IV no longer work as a labor arbitrator, the City and the Trades Council shall mutually agree to a replacement.

ARTICLE XV

WORK ASSIGNMENTS AND JURISDICTIONAL DISPUTES

15.1 The assignment of Covered Work will be solely the responsibility of the Employer performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of the Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.

15.2 All jurisdictional disputes on this Project between or among the building and construction trades Unions and the Employers parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Employers and Unions parties to this Agreement.

15.3 If a dispute arising under this Article involves the Northern California Carpenters Regional Council or any of its subordinate bodies, an arbitrator shall be chosen by the procedures specified in Article V, Section 5 of the Plan from a list composed of John Kagel, Thomas Angelo, Robert Hirsch and Thomas Pagan, and the arbitrator's hearing on the dispute shall be held at the offices of the California State Building and Construction Trades Council in Sacramento, California within fourteen (14) calendar days of the selection of the arbitrator. All other procedures shall be as specified in the Plan.

15.4 All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, and the Employer's assignment shall

be adhered to until the dispute is resolved. Individual employees violating this section shall be subject to immediate discharge.

15.5 Each Employer will conduct a pre-job conference with the Trades Council prior to commencing work. The City and the Project Manager will be advised in advance of all such conferences and may participate if they wish. Pre-job conferences for different Employers may be held together.

ARTICLE XVI **MANAGEMENT RIGHTS**

16.1 Consistent with the Schedule A agreements, the Contractor(s)/Employer(s) shall retain full and exclusive authority for the management of their operations, including the right to direct their work force in their sole discretion. No rules, customs or practices shall be permitted or observed which limit or restrict production, or limit or restrict the working efforts of employees, except that all lawful manning provisions in the Master Agreement shall be recognized.

ARTICLE XVII **DRUG AND ALCOHOL TESTING**

17.1 The use, sale, transfer, purchase and/or possession of a controlled substance, alcohol and/or firearms at any time during the work day is prohibited.

17.2 Drug and alcohol testing shall be conducted in accordance with the substance abuse prevention policies set forth in the applicable Schedule A.

ARTICLE XVIII **SAVINGS CLAUSE**

18.1 If any article, provision, clause, sentence or word of this Agreement is determined to be illegal or void as being in contravention of any applicable law, by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect. The parties further agree that if any article, provision, clause, sentence or word of the Agreement is determined to be illegal or void, by a court of competent jurisdiction, the parties shall substitute, by mutual agreement, in its place and stead, an article, provision, clause, sentence or word that will meet the objections to its validity and will be in accordance with its original intent. If the parties are unable to agree on substitute language, then the entire Agreement shall be null and void.

18.2 If a court of competent jurisdiction determines that all or part of the Agreement is invalid and/or enjoins the City from complying with all or part of the Agreement's provisions, and the City accordingly determines that compliance with this Agreement will not be required in order to perform work under a Construction Contract, the Unions will no longer be bound by the provisions of Article IV.

ARTICLE XIX

TERM

19.1 This Agreement shall be included in all bid documents, requests for proposals, or other equivalent Project solicitations, which shall indicate that entering into this Agreement is a condition of the award of a Construction Contract(s) for each Project.

19.2 This Agreement shall apply until the Completion of each Project in accordance with Sections 1.5 and 2.2.

19.3 This Agreement shall become effective 120 days after it is executed by the City and the Trades Council and shall remain in effect until the five (5) year anniversary of the effective date. During this term, the City administration shall prepare annual reports to the City Council on Agreement implementation and results of the Local Hiring Program, which reports shall be provided to the JAC for review and comment prior to submission to the City Council. The Unions, Trades Council, and Contractors shall provide to the administration requested information relevant to such reports, including information regarding referrals from hiring halls for Covered Work on Projects. Upon the two-year anniversary of the effective date, if the Percentage Requirements set forth in the Local Hiring Program are not being met on all Projects in aggregate, the City shall provide the Trades Council with written notice. Upon receipt of such notice, the Trades Council and the City shall meet and confer regarding whether to modify the Local Hiring Program in order to improve outcomes and meet the Percentage Requirements, with any such modifications made upon mutual agreement by the Trades Council and the City. A similar process will take place on the third and fourth anniversaries of the effective date.

19.4 Approximately ninety (90) days prior to the five (5) year anniversary of the effective date of this Agreement, at the request of either party, the City and Trades Council shall meet to discuss whether to extend this Agreement, and, if so, the proposed terms of such extension including any proposed changes to the Agreement.

ARTICLE XX

MISCELLANEOUS PROVISIONS

20.1 The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement. All defined terms used in this Agreement shall be deemed to refer to the singular and/or plural, in each instance as the context and/or particular facts may require.

20.2 This Agreement may be executed in counterparts, such that original signatures may appear on separate pages and when bound together all necessary signatures shall constitute an original. Faxed or emailed signature pages transmitted to other parties to this Agreement shall be deemed the equivalent of original signatures.

20.3 Each of the persons signing this Agreement represents and warrants that such person has been duly authorized to sign this Agreement on behalf of the party

indicated, and each of the parties signing this Agreement warrants and represents that such party is legally authorized and entitled to enter into this Agreement.

20.4 The parties acknowledge that this is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

20.5 All defined terms used in this Agreement shall be deemed to refer to the singular and/or plural, in each instance as the context and/or particular facts may require.

[SIGNATURES TO FOLLOW]

CITY OF FRESNO

By: [Signature on File]
Name: Thomas Esqueda
Title: City Manager

Date: 9/21

FRESNO, MADERA, KINGS AND TULARE COUNTIES BUILDING AND
CONSTRUCTION TRADES COUNCIL

By: [Signature on File]

Date: 9/29/2021

Name/Title: Chuck Riojas

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE

By: [Signature on File]
City Attorney
Sr. Dep, Brandon Collet

ATTEST
BRIANA PARRA, CMC
INTERIM CITY CLERK
By: [Signature on File]
Deputy
Bernard Canez

Community Workforce Agreement
for the City of Fresno

FRESNO, MADERA, TULARE, KINGS BUILDING AND CONSTRUCTION TRADES
COUNCIL CRAFT UNIONS AND DISTRICT COUNCILS
COMMUNITY WORKFORCE AGREEMENT FOR THE CITY OF FRESNO

[Signature on File]
Insulators & Allied Workers Local 16

[Signature on File]
Boilermakers Local 549

[Signature on File]
Bricklayers, Tile Setters & Allied Crafts 3

[Signature on File]
Northern CA Carpenters Regional Council

Drywall/Lathers Local 9083

District Council 16 Local Union 294

[Signature on File]
Electricians Local 100

[Signature on File]
Elevator Constructors Local 8

[Signature on File]
Iron Workers Local 155

[Signature on File]
Laborers Local 294

[Signature on File]
IUPAT/DC 16

[Signature on File]
Plasterers & Cement Masons Local 300

[Signature on File]
Plumbers & Pipefitters Local 246

[Signature on File]
Road Sprinkler Fitters Local 669

[Signature on File]
Roofers and Waterproofers Local 27

[Signature on File]
SMART International Association 104

[Signature on File]
Teamsters Local 431

[Signature on File]
Underground Utility/Landscape 355

[Signature on File]
Operating Engineers Local 3

Addendum A
AGREEMENT TO BE BOUND

[Date]
[Addressee]
[Address]

Re: City of Fresno Community Workforce Agreement
Agreement to be Bound

Dear: :

The undersigned confirms that it agrees to be a party to and bound by the City of Fresno Community Workforce Agreement ("Agreement") as such Agreement may, from time to time, be amended by the parties or interpreted pursuant to its terms.

By executing this Agreement to be Bound, the undersigned subscribes to, adopts and agrees to be bound by the written terms of the legally established trust fund documents as set forth in Section 10.1 of the Agreement, as they may from time to time be amended, specifying the detailed basis upon which contributions are to be made into, and benefits made out of, such trust funds, and ratifies and accepts the trustees appointed by the parties to such trust funds. The undersigned agrees to execute a separate subscription agreement(s) for such trust funds when such trust fund(s) require(s) such document(s).

The obligation to be a party to and bound by the Agreement shall extend to all work covered by the Agreement undertaken by the undersigned. The undersigned shall require all of its subcontractors, of whatever tier, to become similarly bound for all their work within the scope of the Agreement by signing an identical Agreement to be Bound.

This letter shall constitute a subscription agreement, to the extent of the terms of the letter.
CONTRACTOR/SUBCONTRACTOR:

California Contractor State License No. or Motor Carrier (CA) Permit No.:

Name of Authorized Person (Print):

Signature of Authorized Person:

Title of Authorized Person:

Telephone Number of Authorized Person:

Address of Authorized Person

State Public Works Registration Number

Addendum B SIDE LETTER

The parties recognize that the capacity to perform slurry seal maintenance work may not exist locally. Their mutual intent is to facilitate the creation of such capacity locally over time. Accordingly, the parties agree that with respect to slurry seal maintenance work that may otherwise be covered by this agreement, in the event the City receives no responsive bids, the parties agree to meet and confer. The parties may mutually agree to exclude such projects from coverage under this Agreement, or agree to modify the terms of this Agreement for the purpose of such projects. If the parties cannot agree, the City Manager may recommend to the City Council the exclusion of such projects from PLA coverage.

The parties further recognize that significant, new federal resources may become available after the effective date of this Agreement, and that such resources may require changes to this Agreement in order to ensure that the City can take full advantage of such resources. The parties' mutual goal is to ensure that nothing in this Agreement will impair the City's ability to apply for and receive such new funding, and that they will endeavor to agree on any necessary changes to ensure compliance with any new federal regulations governing such funding.



CITY OF FRESNO
COMMUNITY WORKFORCE AGREEMENT
PRE-APPRENTICE/APPRENTICE COMPLIANCE

This form is to be completed monthly and
submitted (electronically/hard copy) to:

City of Fresno
Attn: Contract Compliance Officer
Capital Administration Division
747 R Street, 2nd Floor
Fresno, CA 93721

Project Title: _____
Project ID: _____
Bid File Number: _____
Contractor Name: _____
Contractor Address: _____

Pre-Apprentice	Apprentice	Employee Name	Employee Address	Employee City, State, Zip

Prepared by: _____

Date: _____

Approved by _____

Date: _____



CITY OF FRESNO
COMMUNITY WORKFORCE AGREEMENT
JOURNEY LEVEL COMPLIANCE
Submitted (electronically/hard copy) to:
City of Fresno
Attn: Contract Compliance Officer
Capital Administration Division
747 R Street, 2nd Floor
Fresno, CA 93721

Project Title: _____
Project ID: _____
Bid File Number: _____
Contractor Name: _____
Contractor Address: _____

Employee Name	Employee Address	Employee City, State, Zip

Prepared by: _____ Date: _____
Approved by: _____ Date: _____

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Design-Build Institute of America
1001 Pennsylvania Ave. NW, Suite 410
Washington, DC 20004

(202) 682-0110
dbia@dbia.org