

## DESIGN CONTRACT

THIS CONTRACT (Contract) is made and entered into by and between the CITY OF FRESNO, a California municipal corporation (City), and BOMEL CONSTRUCTION COMPANY INC., a California Corporation (Design-Build Entity), as follows:

### RECITALS

WHEREAS, the City desires to obtain professional design services for the design of plans and general construction contract documents for the North Fulton Parking Structure at the proposed parcels 46620650T and 46620651T (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 BOMEL CONSTRUCTION COMPANY INC. and its sub-consultants, including architects and engineers from CHOATE PARKING CONSULTANTS (CPC), CULP & TANNER, and PROVOST & PRITCHARD, 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 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 the North Fulton Parking Structure at the proposed parcels 46620650T and 46620651T, 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 \$1,612,769.00, 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: [Signature]  
FRANCISCO V. MASOS II, PE,  
MBA, QSD  
Assistant Director  
Capital Projects Department

Dated: 6/12/2025

APPROVED AS TO FORM:  
ANDREW JANZ  
City Attorney

for By: [Signature]  
Brandon M. Collet  
Assistant City Attorney

Dated: 5/29/25

ATTEST:  
TODD STERMER, MMC  
City Clerk

By: [Signature]

Deputy

Dated: 6-16-25

Addresses:

CITY:  
City of Fresno  
Attention: Daniel Carrion  
Licensed Professional Engineer  
747 R Street, 2<sup>nd</sup> Floor  
Fresno, CA 93721  
Phone: (559) 621-8871  
E-mail:  
[Daniel.Carrion@fresno.gov](mailto:Daniel.Carrion@fresno.gov)

BOMEL CONSTRUCTION  
COMPANY INC.,

a California Corporation

By: [Signature]  
Name: KENT MATRANGA, PRESIDENT

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

By: [Signature]  
Name: Brad Burgner

Title: Executive Vice President  
(If corporation or LLC., CFO, Treasurer,  
Secretary or Assistant Secretary)

REVIEWED BY:  
Sarah Lambeth  
Senior Management Analyst  
Capital Projects Department

[Signature]

DESIGN-BUILDER:  
BOMEL CONSTRUCTION  
COMPANY INC. Inc.  
Attention: Kent Matranga, President  
96 Corporate Park,  
Irvine, CA 92606  
Phone: (714) 921-1660  
E-mail:  
[KMatranga@bomelconstruction.com](mailto:KMatranga@bomelconstruction.com)

**Attachments:**

**Exhibit 1 – Contract Documents including**

**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.*

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This AGREEMENT is made as of the 27th day of May in the year of 2025, 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:**

*Bomet Construction Company Inc.  
96 Corporate Park  
Irvine, CA 92606*

**PROJECT:**

*North Fulton Parking Structure*

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-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 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-Builder (2022 Edition) ("General Conditions of Contract").
- 1.3 **Design Services.** Design-Builder 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-Builder, or (ii) procured by Design-Builder 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-Builder's Services and Responsibilities**

#### **2.1 General Services.**

2.1.1 Owner shall provide Design-Builder 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. 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-Builder 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-Builder. If Owner has developed Owner's Project Criteria prior to executing this Agreement, Design-Builder 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-Builder'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-Builder 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-Builder shall perform such services to the level of completion required for Design-Builder 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-Builder'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-Builder'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:
  - 3.1.7.1 Exhibit A – Owner’s Project Criteria
  - 3.1.7.2 Exhibit C – Disclosure of Conflict of Interest
  - 3.1.7.3 Exhibit D – Owner and Design-Builder Contract
  - 3.1.7.4 Exhibit D.1 – Design Contract and Signature Page

## **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 2.3.2.2 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 80% Plan Check Submittal of the entire Work shall be achieved no later than one hundred and fifty (150) 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 ONE MILLION SIX HUNDRED TWELVE THOUSAND SEVEN HUNDRED SIXTY-NINE Dollars (\$1,612,769.00) 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 \_\_\_\_\_, 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 TWENTY-FIFTH (25TH) 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 For Phase 2 progress payments, 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-Build 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-Build 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-Build'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-Build 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-Build, 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-Build acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work with the exception of self-performed work, general condition and general requirement costs which will be established as lump sum values and shall not be subject to an "open-book" arrangement. Design-Build 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-Build's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data relating to the Work, all of which Design-Build shall preserve for a period of three (3) years after Final Payment. Such inspection shall take place at Design-Build'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-Build 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-Build 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-Build, 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-Build, 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-Build based on these acceptances. The Design-Build, 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.)

Nicholas Mascia  
Capital Projects Interim Director  
2600 Fresno Street  
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.)

Daniel Carrion  
Licensed Professional Engineer  
747 R Street  
Fresno, CA 93721  
559-621-8871

#### **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.)

Matt Prince  
Vice President/Director of Construction  
96 Corporate Park  
Irvine, CA 92606  
714-921-1660

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.)

Adam Perrington  
Project Executive  
96 Corporate Park  
Irvine, CA 92606  
714-921-1660

## 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:**

Nicholas Mascia

(Name of Owner)

  
(Signature)

NICHOLAS D. MASCIA  
(Printed Name)

Capital Projects Director

(Title)

Date:

6/12/25

**DESIGN-BUILDER:**

Bornel Construction Company, Inc.

(Name of Design-Builder)

  
(Signature)

KENT MATRANGA, PRESIDENT

(Printed Name)

(Title)

Date:

5/28/25

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• **EXHIBIT A**

**OWNER'S PROJECT CRITERIA**

**Progressive Design-Build Agreement Between**

**City of Fresno (City) and Bomel Construction Company Inc. (Design-Build Entity)**

**NORTH FULTON PARKING STRUCTURE**

**1. PROJECT DELIVERY AND OBJECTIVES**

- 1.1 The North Fulton Parking Structure 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 the project may not include all recommended technology or advanced technologies as detailed in the design. An amendment may be negotiated to mitigate any discrepancies within the scope of work.
- 1.2 Construction will consist of a new multi-level parking structure containing 234 stalls with a footprint of approximately 30,000 square feet. The City intends to own, manage, and operate the this structure in Downtown Fresno. The structure will feature natural ventilation, an optimum number of spaces, ingress and egress access points, multiple stairways, ADA compliant elevators, automation equipment (islands, kiosks, entry gates, etc.) and video surveillance cameras.
- 1.3 The site shall be designed to accommodate the North Fulton Parking structure along with future development of housing units, retail spaces, and green space area, optimizing use of shared spaces as much as possible.
- 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 Design a high-quality structure while engaging the stakeholders to include needed features and amenities
  - 1.5.2 Deliver a high-quality and sustainable parking structure in accordance with industry design and construction standards within the prescribed schedule and budget
  - 1.5.3 Develop the two parcels in a coordinated, efficient, and complimentary manner to best serve the targeted community
  - 1.5.4 Provide a structure on a site layout to enhance and encourage an active healthy lifestyle



- 1.5.5 Provide real-time data, communication, and reporting functionality from the parking facility general location for ingestion by the City of Fresno.
- 1.5.6 Standardize parking automation and video surveillance within the parking facility.
- 1.5.7 Ensure a high degree of cost and schedule certainty
- 1.5.8 Minimize impacts to ongoing retail, traffic, and area events
- 1.5.9 Ease of future development and expandability
- 1.5.10 Enhance the community experience through use of aesthetically pleasing elements, intuitiveness, and technology
- 1.5.11 Enhance opportunities to advance sustainability
- 1.5.12 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 utilities
  - 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. A transmittal cover sheet must be utilized for all document submittals.
- 5. SITE OVERVIEW
  - 5.1 The site consists of two contiguous parcels: 46620651T and 46620650T. The site is generally bounded by Tuolumne Street, Broadway Street, Congo Alley, and Merced Street as shown below (Figure 1).

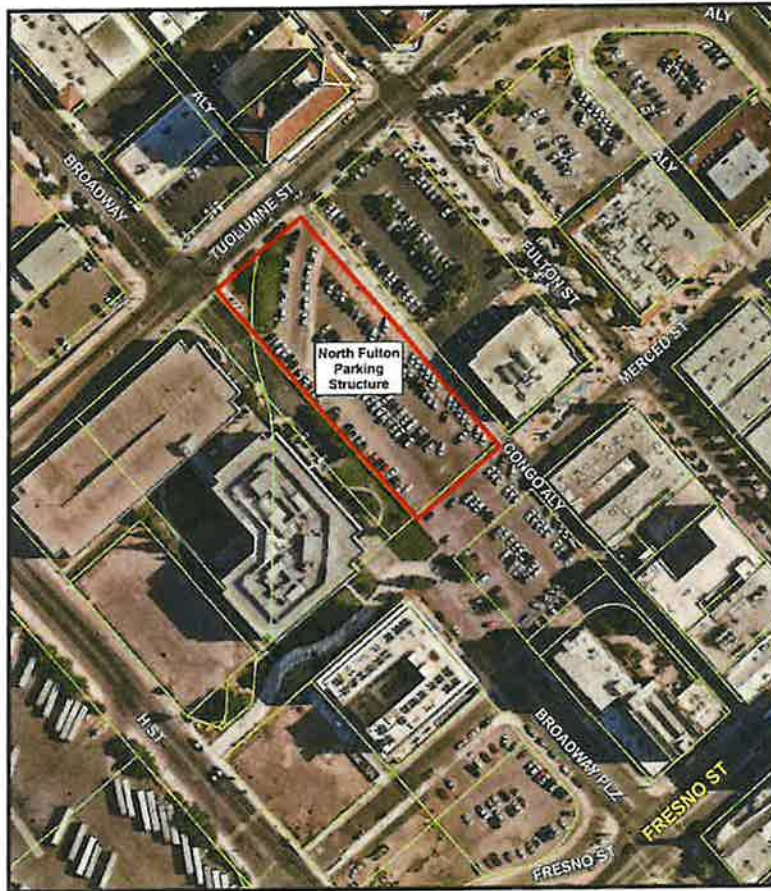


Figure 1: Site Location

## 5.2 North Fulton Parking Structure

### 5.2.1 Zoning Highlights

- Size: 1.66 Acres
- Addresses: APN 46620651T and 46620650T.
- Zoning: DTC - Downtown Core
- The DTC District will foster the enhancement of Fresno's business, shopping, and cultural heart by guiding the development of the densest, most active, and most interesting mixed-use urban center in the region.
- Features multi-levels as required
- 234 parking stalls
- Two (2) gated access points
- This garage will be used for residential, new and existing retail, and event parking.

## 5.3 Utilities

### 5.3.1 The site has access to:

- Water (City of Fresno)
- Trash (City of Fresno)
- Sewer (City of Fresno)
- Storm Water (Fresno Metropolitan Flood Control)
- Gas (PG&E)
- Electric (PG&E)

## 6. PARKING STRUCTURE SCOPE OF WORK

- 6.1 The size of the facility and specific site features/amenities will be determined through the stakeholders and City's preference and shall reflect a functional structure through a design which may include sustainable features.
- 6.2 All aspects of the design should prioritize accessibility.
- 6.3 The exact size of the North Fulton Parking Structure will be determined from the feature selection made by the stakeholders, but a multi-level structure with an approximate footprint of 30,000 square feet and 234 stalls is anticipated. The project is currently being funded to support construction of a 234-stall structure, however, additional funding being pursued to increase capacity to 647 stalls.
- 6.4 The Design-Builder shall include the following systems in the facility and shall work with the City to define the requirements during the design phase. These systems include, but are not limited to:
  - 6.4.1 Building Management System Metasys (or similar system) for the purpose of integrating and controlling energy efficient lighting
  - 6.4.2 Access control
  - 6.4.3 Optimized number of spaces
  - 6.4.4 Multiple stairways and ADA compliant elevator access points
  - 6.4.5 Consideration of innovative technology
  - 6.4.6 Parking automation and video surveillance systems
  - 6.4.7 Provides natural ventilation. No mechanical ventilation required for this occupancy classification building of an S-2 open parking garage, as determined by the California Building Code (CBC).
  - 6.4.8 Install conduits for future EV Charging Infrastructure
  - 6.4.9 Fiber connectivity between buildings/future buildings
  - 6.4.10 Two-bay, two-way traffic vehicle vertical circulation system with interior speed ramp and one flat bay centered, and two, two-way traffic on the exterior and 90-degree stalls.
  - 6.4.11 Two-lane vehicle ingress from off Merced Street with two-lane egress onto Broadway Street at the opposite corner of the structure.

- 6.4.12 Regularly shaped building approximately 140' wide (e/w) by 220' long (n/s).
- 6.4.13 Roughly 234 parking stalls with design efficiency of 295 square feet per stall.
- 6.4.14 Pedestrian circulation consists of one elevator with an adjacent convenience/egress stair with an additional stair on the opposite corner or as required to maximize efficiency.
- 6.4.15 Fully sprinklered as required by local ordinance.

## 7. ELECTRICAL SYSTEM BUILDING REQUIREMENTS

- 7.1 Mechanical power distribution shall be served at the voltage required by the mechanical system equipment. Most equipment shall be served at 480V, 3 phase, 3 wire or 208V, single phase.
- 7.2 Exceptions may occur for motor loads smaller than ¾ horsepower for some rooms where small HVAC units may be served at 208V, single phase.
- 7.3 All HVAC equipment if required shall have motor starting devices provided with the equipment, individual motor starters, or variable speed drives as appropriate for the equipment's function.
- 7.4 Building requirements shall be as follows:
  - 7.4.1 Convenience outlets 180VA in corridors and in finished spaces shall be circuited at a maximum of eight (8) per circuit.
  - 7.4.2 Lighting branch circuits loaded to maximum of 16 amps.
  - 7.4.3 Voltage Drop calculations required per Title 24.
  - 7.4.4 Each outlet in toilets, maintenance, mechanical, elevator and within six feet of a sink, faucet or other wet areas shall be individually GFCI type.
  - 7.4.5 Lighting loads shall be calculated as described in CEC
  - 7.4.6 All new Switchboards, Distribution Panels, Panel boards and Motor Control Centers shall be provided with aluminum or copper bus.
  - 7.4.7 All new transformers shall be provided with aluminum or copper winding
  - 7.4.8 All lighting loads shall be disaggregated from other loads per Title 24
  - 7.4.9 All HVAC shall be fed in aggregate and each HVAC load rated at least 50kVA per Title 24
  - 7.4.10 All domestic water and service pumps shall be fed in aggregate per Title 24.
  - 7.4.11 All elevators, escalators and moving walkways shall be fed in aggregate per Title 24.
  - 7.4.12 New feeders shall be provided with aluminum or copper conductors based on project, budget, and electrical raceway sizes.
  - 7.4.13 Low voltage branch circuit wiring shall be MC cable where accepted by CEC/NEC.
  - 7.4.14 Electrical Energy Metering shall be provided as shown on plans and specifications. Overall energy metering shall be controlled and collated by the Building Management System provided by the mechanical systems

- 7.5 The fire alarm system shall be a fully addressable, microprocessor control system. The fire alarm system is to be free air where permitted by code requirements.
- 7.6 The system shall utilize individual addressable smoke detectors, heat detectors, manual pull stations, signal modules and control modules.
- 7.7 Annunciation devices such as horns and strobes shall be installed in all common areas.
- 7.8 Water flow detection devices shall also be installed to report when the sprinkler system has been activated.
- 7.9 Emergency Voice Alarm Communications system is required based upon on current occupancy load understanding for this project.
- 7.10 The system will report date, time, device type, device ID, location & type of alarm that is received.
- 7.11 The addressable fire alarm system shall consist of the following:
  - 7.11.1 Main fire alarm control panel located at the ground floor.
  - 7.11.2 Code required shut down of mechanical HVAC systems.
  - 7.11.3 Annunciation panel located in the main lobby with easy access for the Fire Department.
  - 7.11.4 Ceiling mounted smoke and heat detectors in all required electrical and mechanical rooms, elevators machine rooms and lobbies.
  - 7.11.5 Audiovisual alarm stations along all egress routes, in toilet areas and in lobbies. Visual alarm devices will be installed in all common areas required to comply with ADA requirements.
  - 7.11.6 Manual Pull stations along required egress routes.
  - 7.11.7 Minimum of one (1) visual alarm device in each public space. Visual devices shall be not more than 100 ft. apart in corridors.
- 7.12 Fire alarm system shall be linked with elevators for return of the elevator cab to a predetermined floor and with mechanical air supply system for shut down in the event of a fire alarm signal.
- 7.13 The fire alarm system shall also be linked to the sprinkler flow switches and valve monitors. The complete installation is to conform to the applicable sections of NFPA-101, NFPA-70 and CEC/NEC article 760.

## 8. PARKING AUTOMATION SCOPE OF WORK

- 8.1 The proposed equipment must minimally provide the functions and capabilities identified below:
  - 8.1.1 Vehicle detector loops or similar means of vehicle recognition
  - 8.1.2 Ingress/egress access control, including entry and exit gates
  - 8.1.3 Access control in all lanes for monthly keycard users

- 8.1.4 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
- 8.1.5 All necessary software (onsite and offsite)
- 8.1.6 Anti-Vandalism and Anti-Theft features
- 8.1.7 Remote client workstation where applicable
- 8.1.8 Comprehensive vehicle counting and reporting
- 8.1.9 Customizable reporting, including monthly and daily statistics, and export capability (Excel, PDF, etc.)
- 8.1.10 Any Automated License Plate Recognition (LPR) shall conform to City of Fresno Planning and Development Parking Services Divisions Policy 453 – Automated License Plate Readers (ALRPs)
- 8.1.11 The parking automation solution shall include FACTA, PA-DSS, and PCI compliant credit card software and hardware at a minimum.
- 8.1.12 Server/PC based systems may be utilized if absolutely necessary, however cloud-based systems are preferred for these facilities.
  - 8.1.12.1 Server/PC and foundational software (Windows XXX, AV, etc.) shall comply with ISD computing requirements.
  - 8.1.12.2 Cloud-based systems shall comply with City of Fresno Cloud policy; AO 8-21 (Attachment F)
  - 8.1.12.3 Real-time access on-line to parking equipment must be available without use of systems such as LogMeIn or TeamViewer
  - 8.1.12.4 Cloud-based systems must support SSO user authentication via Microsoft Azure AD
- 8.2 Entry stations must include the following features and capabilities:
  - 8.2.1 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
  - 8.2.2 Capability to communicate to the City network or to a cloud platform
  - 8.2.3 Ability to buffer transaction in the event of a communication failure. Minimum of 2,000 transactions
  - 8.2.4 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
- 8.3 Exit terminals must include the following features and capabilities:
  - 8.3.1 Alert facility office in the event of malfunction

- 8.3.2 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
- 8.3.3 Capability to communicate with facility management computer located in the facility office
- 8.3.4 Ability to buffer transaction in the event of a communication failure. Minimum of 2,000 transactions
- 8.3.5 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.
- 8.4 Gates must include the following features and capabilities:
  - 8.4.1 Ability to accommodate a straight or folding (articulated) arms
  - 8.4.2 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.
  - 8.4.3 Low voltage operation
  - 8.4.4 Auto rebound/safety edge
  - 8.4.5 Ability to operate as a free gate
  - 8.4.6 Ability to support multiple devices in one lane example: (card reader, AVI, LPR, etc.)
  - 8.4.7 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.
- 8.5 The parking automation system must provide access control as specified below:
  - 8.5.1 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.
  - 8.5.2 Monthly parkers are expected to utilize keycard access, however, other credentialling methods such as Bluetooth may be proposed
  - 8.5.3 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.
  - 8.5.4 Time zones
  - 8.5.5 Reader groups
  - 8.5.6 Ability to accommodate other access technologies
  - 8.5.7 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.
- 8.6 The parking automation system shall have the ability to provide the following counts:
  - 8.6.1 Monthly Entries and Exits by facility



- 8.6.2 Total Lane Travels
- 8.6.3 Entries by facility
- 8.6.4 Exits by facility
- 8.6.5 Differential Counts by facility
- 8.6.6 All gates shall have a visible mechanical counter to record total lane travels
- 8.6.7 All counts shall be reported to the facility office in real time
- 8.7 The parking automation system shall minimally provide the following reports related to revenue, access, and counts:
  - 8.7.1 Daily lane report
  - 8.7.2 Last usage report, showing all active keycards and their last use date and time
  - 8.7.3 Active access card holder report
  - 8.7.4 Card transaction report by date
  - 8.7.5 Count statistics/occupancy report
  - 8.7.6 Duration of stay report with ability to breakdown by 30-minute increments
  - 8.7.7 Entry/exit report by facility and parker type
  - 8.7.8 General Totals Report
  - 8.7.9 Transaction Report
  - 8.7.10 Detailed activity reports on sales inventory, and statistical data by parker type
  - 8.7.11 The (FMS) shall have the ability to retrieve buffered transaction once communication is restored
- 8.8 The preferred parking automation system Vendors for these facilities are the following:
  - Skidata, Inc.  
5090 North 40th Street, Suite 450  
Phoenix, AZ 85018
  - TIBA Parking Systems, LLC.  
2228 Citygate Drive  
Columbus, Ohio 43219
  - Flash Parking, Inc.  
2500 Bee Caves Rd, Bldg III STE 400  
Austin, TX 78746

## 9. GENERAL SYSTEM REQUIREMENTS

- 9.1 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.

- 9.2 Existing island and conduit placements may be modified as necessary
- 9.3 Design of new fiber infrastructure and backbone connections from City's existing fiber network to Project site for proposed parking automation and video surveillance systems.
- 9.4 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
- 9.5 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
- 9.6 Software updates including PCI compliance should be provided at no additional charge for life of equipment
- 9.7 The garage 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
- 9.8 All network equipment used to connect systems at each site will need to be housed in a lockable standing four post rack.
- 9.9 All equipment installed on this project shall be ADA compliant and UL approved
- 9.10 The technology shall be an online real-time system with access to system settings and control for the garage (parking automation and video surveillance)
- 9.11 High and low voltage surge suppression must be included in the installation, and the addition of power supply battery backup or equal
- 9.12 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
- 9.13 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
- 9.14 Vendor will be responsible for running all power lines from identified junction boxes to the equipment
- 9.15 All additional conduit installed at the islands shall be concealed within the concrete islands

## 10. VIDEO SURVEILLANCE SYSTEM REQUIREMENTS

- 10.1 The security video camera management system recommended by the Vendor for this facility must have the following features:
  - 10.1.1 Centralized management system and standardized access
  - 10.1.2 If an on-premise solution is selected, then a new physical host(s) shall be provided in each new communications rack to accommodate new services required to support new Video Surveillance System.
  - 10.1.3 All network equipment deployed shall be Cisco.

10.1.4 Cisco C9300 series shall be utilized for new access layer switches and Cisco Industrial Ethernet (IE) switches shall be utilized if no MEP. All switches shall be compatible and licensed with Cisco Software Defined Access (SDA).

10.1.4.1 All Cisco switches shall need to be provided with the follow:

- Cisco DNA Advantage Licensing – 60 months
- Cisco SmartNet Total Care – 60 months
- Requisite optics and modules to support fiber connectivity to a City Hall

10.1.5 Able to be viewed from a computer via a web browser and from a cellular telephone

10.1.6 Show historical video while recording, hold historical data for a minimum of 30 days and download video

10.1.7 Video Management Systems shall utilize City Single Sign On services. City of Fresno Cybersecurity Standards shall be met in the deployment of the system. Guidelines and procedures must follow City of Fresno AO 8-21 Cloud Policy.

10.1.8 Record on motion, adjust to daylight and nighttime vision

10.1.9 Monitor the entire identified area at each facility

10.1.10 Allow future growth of the system to accommodate additional cameras and locations

10.1.11 High-Definition cameras capable of viewing fine details

10.1.11.1 At minimum, the following Pixels Per Foot (PPF) shall be provided by video surveillance coverage,

- Perimeter – Observation 20 PPF
- Exit / Entry Vehicle Gate Points – Recognition 40 PPF
- Garage Circulation Areas – Recognition 40 PPF
- Elevator Lobby Area – Observation 20 PPF
- EV Charing & Parking Payment Stations – Identification 80 PPF

10.1.12 Anti-Vandalism and Anti-Theft features, including, but not limited to, reinforced mounted hardware, security screws, scratch-resistant domes, and ruggedized.

10.1.13 Must be compatible with City of Fresno Police Department video surveillance technology; Pelco cameras, and Pelco VideoXpert and Avigilon Unity video management systems, Further, support the ONVIF protocol and addition of any other hardware needed to interact with the Fresno Police Department Real Time Crime Information Center.

10.1.14 The City will consider any additional features suggested by the Vendors

## 11. SUSTAINABILITY

11.1 All development must meet or exceed the requirements as stated in the following:

11.1.1 Fresno Municipal Code Section 4-116

**11.1.2 California Building Energy Efficiency Standards – Title 24**

**12. STANDARD DRAWINGS AND SPECIFICATIONS**

**12.1 The development of the Parking Garage Automation and Video Surveillance Project must comply with the City of Fresno Standard Drawings and Standard Specifications.**

**12.2 For information on City of Fresno Standard Drawings and Standard Specifications, please reference the link below:**

**<https://www.fresno.gov/publicworks/developer-doorway/>**

## **EXHIBIT B**

### **SCOPE OF SERVICES**

#### **Progressive Design-Build Agreement Between**

#### **City of Fresno (City) and Bomel Construction Company Inc (Design-Build Entity)**

#### **North Fulton Parking Structure**

##### **Scope of Work**

The City seeks to develop a new North Fulton Parking Structure on two contiguous properties in downtown Fresno, located within the general area bounded by Tuolumne Street, Broadway Street, Congo Alley, and Merced Street (APN 466-206-50T and APN 466-206-51T). The new development will expand services to the community by connecting pedestrians, bicyclists, drivers, and highspeed rail riders as a central location to commute through an area with housing, retail, green spaces, and ongoing activities and events.

The size, specific site features, and amenities of the North Fulton Parking Structure will be determined through stakeholder and City preference and may include features such as automated parking, surveillance systems, natural ventilation, and stairways along with elevator access. All aspects of the design should prioritize accessibility. The exact size of the North Fulton Parking Structure will be determined based on the feature selection following initial meetings, but a footprint of approximately 30,000 square feet of indoor space is anticipated. The building shall be multi-story with an optimum design of 234 spaces. The overall site shall be designed to accommodate the North Fulton Parking Structure and future housing units and retail locations, while optimizing use of shared spaces (e.g., parking, and other amenities) as much as possible.

##### **Scope of Services – Preconstruction Services Phase 1**

- Task 01 – Site Assessment
  - Review and verify project site and existing conditions
  - Review zoning regulations
  - Review regulatory requirements and planning and development standards
  - Review existing technical documentation, surveys, and engineering reports
  - Survey land and subsurface utility locations
    - Provide complete topographic survey for the limit of work out to the Broadway St and Congo Alley intersections along Tuolumne St and Merced St.
    - Preparation and distribution in AutoCAD an existing conditions base map inclusive of the resolved property boundary, topographic features of the site and adjacent portions of the parking lot site and off-site improvements.
    - Research and review record plans and survey maps and coordination with the title company as required to appropriately document any constraining encumbrances.
    - Review proposed legal descriptions for property that may be purchased, used for cross-access, etc. and provide any required feedback.
  - Perform additional engineering studies as required to support design and cost estimating
  - Site Ground Penetrating Radar Survey (GPRS)
    - Provide comprehensive GPRS study within the limit of work to identify any subsurface utilities or other obstructions that are unknown.

- Provide geotechnical investigations/testing and reports
  - Site underground service alert and utility clearing/private and public
  - Test Borings
  - Cone Penetration tests (CPT's)
  - Seismic analysis
  - Laboratory testing of soil materials
  - Geotechnical Analysis and Report Preparation
  - Design support and coordination
- Traffic Studies
  - Project scoping alignment with City of Fresno traffic engineering
  - Data collection and traffic modeling
  - Traffic Study value in this proposal: \$30,000.00
- PG&E Coordination (temporary power)
  - Assessment of existing PG&E infrastructure and encumbrances to the site development.
  - Engage PG&E and begin temporary power application process for construction activities.
- Task 02 – Preliminary Master Site Plan
  - Develop a Master Site Plan concept to be utilized as the initial starting point for design considerations
  - Land Use Entitlements
    - Development Permit Application and Planning Department entitlement coordination.
    - Research and confirm existing site conditions, zoning regulations, local regulatory, planning and development standards for the site and project.
    - Coordinate with the City Capital Projects Department staff in scheduling a project preapplication meeting with the City of Fresno Building and planning departments to formally introduce the project.
    - Prepare the land use entitlement application, assumed to be a development permit application along with all supporting documentation as required by the design team for the complete entitlement application.
    - Submit and Marshall the development permit application with the City's planning department, conducting follow-up with planning staff to assist with timely processing of such applications.
- Task 03 – Plan Development
  - Develop the architectural/engineering design (including preparing and submitting intermediate design review packages) based on active engagement with the stakeholders and City
  - Provide an Opinion of Probable Construction Cost with each plan revision
  - Confirm adequacy of existing CEQA documentation as design progresses

Three phases of this project are Schematic Concept Design, Design Development Services, and Construction Documents Development. The following services are included within the three phases:

  - Establish with the owner/client all parking program requirements for the number of stalls required.
  - Research State, County, City, zoning, planning and all other jurisdictional parking standards to be used on this project.
  - Establish vehicular egress and ingress requirements based on Client requirements.
  - Identify parking control system desired by the owner.
  - Determine building height restrictions and required setbacks from appropriate property lines, right of ways, easements and all other adjacent buildings.
  - Identify with input of the civil engineer and owner all utilities that need relocated/coordinated under the footprint of the parking structure.

- Provide preliminary options to show possible parking layout solutions, traffic flow, turning radius for user comfort, structural framing solutions and parking analysis for efficiency. These layouts will establish the overall dimensions for the parking structure.
- Determine location and quantity of all support rooms and utility areas within the parking structure for efficiency and constructability.
- Determine approximate number of stalls per level and square foot per stall for all options.
- Lead design development and coordination meetings weekly or biweekly as required.
- Create colored renderings of the parking structure and various façade alternates.
- Collaboration with Design Team to coordinate a comprehensive entitlement package.
- Construction documents/drawings to be provided to the City for acquisition of permits.
- Development of design improvements with opportunities for refinement.
  - Fire department fire lanes and aerial access at perimeter of the parking building.
  - Façade options with regard to cost, material availability, lead times, and constructability.
  - Elevator lobby configuration and location
  - Parking Structure security cameras, Emergency phones, access controls, and parking controls inclusive of all communication connectivity for such systems to ensure fully functioning turn-key systems. This will include the direct design and coordination with the City of Fresno stakeholders to ensure the necessary infrastructure is in place for all systems to properly function.
  - Elevator location and vertical circulation patterns
  - North and South vehicle control lanes and equipment selection
  - Static advertisement signage
  - Digital signage manufacturer and constructability
  - Decorative lighting, decorative signage, and graphics
  - Coordinate the complete design with all governing bodies and authorities having jurisdiction over the project and ensure the design meets or exceeds all code requirements.

Additional services under planned development shall include:

- PG&E Coordination (Permanent Power)
  - Coordination with the parking structure electrical engineer to develop building and site electrical loads and submit the necessary applications for permanent power.
  - Engage PG&E and process the permanent power applications and coordinate the preliminary engineering studies performed by PG&E.
  - Applicant Design services for the permanent power to the garage site.
- Task 04 – Proposed Design and Cost Assessment
  - Development of a comprehensive basis of design narrative which summarizes the various programming functions of the parking building and site improvements.
  - Development of preliminary floor plans and elevations that express the basis of design narrative.
  - Development of a preliminary regulatory permitting and construction schedule, permitting strategy to include all City of Fresno departments, Flood control district, AQMD, etc.
  - Development of a preliminary budget with the basis of design, preliminary concept plans and schedule considerations

- Task 05 - Project Management:

- Develop and implement Project Management Plan and strategy for design and preconstruction services as follows:
  - Coordinate the design team and stakeholders for bi-weekly meetings.
  - Capture key design issues and decisions by way of a design resolution log outlining specific issues, tasks, due dates and responsible individuals required to resolve each design issue.
  - Implementation of design quality plan by way of monitoring and tracking each plan issuance with design review by the design team's internal superintendents, estimating and detailing departments as well as select trade partners to ensure safety, quality, constructability and cost effectiveness.
  - Cross discipline peer review of each issuance to ensure plan coordination between all design disciplines.
  - Development of preliminary construction schedule and monitoring of any potential schedule impacts that may arise out of specific design decisions.
  - Coordination of the design with the constructability and logistics of the site.
  - Best Value Analysis and Value Engineering Alternatives, review plans to identify items where costs outweigh their value. Continuously perform value engineering throughout the preconstruction process and present potential alternatives to the City of Fresno and the consultant team for discussion/consideration.
  - Provide detailed cost estimates in Excel format to compare different building components as needed during the various stages of the preconstruction process.
- Monthly progress reports
- Submittal of progress payment applications and documentation
- Development of Cost modeling and design cost impact log
- Preparation, submittal and negotiation of an open-book stipulated lump sum or GMP for the completion of the construction phase of the project to include the following:
  - Open-book stipulated lump sum or GMP proposal development.
  - Final construction work plan and schedule
  - Final Regulatory permitting plan
  - Phase 2 construction services contract negotiation meetings.



**Compensation**

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

<b>PRECONSTRUCTION SERVICES PHASE 1</b>	<b>\$1,612,769.00</b>
<b>Contingency Amount:</b>	<b>\$160,000.00</b>

**Additional Service Fees**

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

**Schedule**

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

Part 1: Programming and Schematic Design	56 calendar days
Part 2: Design Development Phase	56 calendar days
Part 3: Construction Document Phase	117 calendar days
Phase 2 Construction Services	To Be Determined

**EXHIBIT C**  
**DISCLOSURE OF CONFLICT OF INTEREST**  
North Fulton Parking Structure

		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 checked="" type="checkbox"/>	<input 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.			

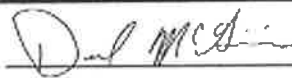
Explanation: \_\_\_\_\_

Bomel is currently working

with the City of Fresno on the

H Street Parking Structure

Additional page(s) attached.



Signature

April 8, 2025

Date

Derral McGinnis

Name

Bomel Construction Co., Inc.

Company

96 Corporate Park

Address

Irvine, CA 92606

City, State, Zip

# 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.

- 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.
- 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.
- 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.
- 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.
- 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.
- 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.
- 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.
- 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 State of California. 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 *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.

1.2.4 *Day or Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

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

1.2.6 *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.

1.2.7 *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.

1.2.8 *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.

**1.2.9** *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, unforeseen or unanticipated tariffs, and other acts of God.

**1.2.10** *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).

**1.2.11** *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.

**1.2.12** *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*.

**1.2.13** *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.

**1.2.14** *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.

**1.2.15** *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.

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

**1.2.17** *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.

**1.2.18** *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.

**1.2.19** *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.

**1.2.20** *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** Owner 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 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.

**2.7.3** 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.

**2.7.4** 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.

**2.7.5** 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.

**2.7.6** Design-Builder shall keep the Site reasonably free from debris, trash 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, 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. The warranty period shall be one year from the date of Substantial Completion of the work. If the parties have opted in Section \_\_\_\_ of the Agreement to establish a limited time frame for the warranty set forth in this Section, the warranty in this section shall be limited to the time frame set forth in Section \_\_\_\_ of the Agreement. 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.

**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. Such necessary measures shall include Owner retaining qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions 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** To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them, and their officers, directors, employees and agents, from and against any and all claims,

losses, damages, liabilities and expenses, including reasonable attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site.

**4.1.6** 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 and expenses, 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.**

Owner may modify the Insurance Requirements and indemnification provisions for the Design-Builder in its sole discretion if Owner determines modifications are necessary due to third party permits required for the Project. The Risk Manager shall have the authority to modify the Insurance Requirements and indemnification provision in this Agreement.

**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, State of California, and their 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, State of California, and their 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.

5. UMBRELLA OR EXCESS LIABILITY

Construction Contract Amount <sup>4</sup>	Umbrella or Excess Liability <sup>3</sup>
≤\$1,000,000	\$5,000,000
>\$1,000,000	
≤\$15,000,000	\$10,000,000
>\$15,000,000	
≤\$25,000,000	\$15,000,000
>\$25,000,000	\$25,000,000

3. The umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.

4. "Construction Contract Amount" is the total amount of the construction contract all or a portion of which is funded with IIG funds.

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, State of California, and their 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 OWNER, State of California, and their officers, officials, agents, employees and volunteers as an additional insured. DESIGN-BUILDER shall establish additional insured status for the OWNER and State of California 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 OR State of California. The coverage shall contain no special limitations on the scope of protection afforded to Owner, State of California, and their 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 OWNER, State of California, and their officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the OWNER, State of California, and their 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 OWNER, State of California, and their 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, State of California, and their 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, State of California, and their 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, State of California, and their 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.

7. UMBRELLA OR EXCESS LIABILITY

Construction Contract Amount <sup>4</sup>	Umbrella or Excess Liability <sup>3</sup>
≤\$1,000,000	\$5,000,000
>\$1,000,000	
≤\$15,000,000	\$10,000,000
>\$15,000,000	
≤\$25,000,000	\$15,000,000
>\$25,000,000	\$25,000,000

3. The umbrella or excess policy shall contain a clause stating that it takes effect (drops dov in the event the primary limits are impaired or exhausted.

4. "Construction Contract Amount" is the total amount of the construction contract all or a portion of which is funded with IIG funds.

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.

#### 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 OWNER, State of California, and their officers, officials, agents, employees and volunteers as an additional insured. DESIGN-BUILDER shall establish additional insured status for the OWNER and State 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 or State. The coverage shall contain no special limitations on the scope of protection afforded to OWNER, State of California, and their officers, officials, employees, agents and volunteers. If DESIGN-BUILDER maintains higher limits of liability than the minimums shown above, OWNER and State require 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 OWNER, State of California, and their officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the OWNER, State of California, and their 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 OWNER, State of California, and their 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. Fire and Earthquake shall be included in the policy.

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, State of California, and their 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.

## **5.2 Bonds and Other Performance Security.**

**5.2.1** 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.

**5.2.2** All bonds furnished by Design-Builder shall be in a form satisfactory to Owner. The surety shall be a company qualified and registered to conduct business in the state in which the Project is located.

## **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-Build must take to rectify Owner's concerns. Design-Build and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Build 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-Build all undisputed amounts in an Application for Payment within the times required by the Agreement.

#### **6.4 Right to Stop Work and Interest.**

**6.4.1** If Owner fails to pay timely Design-Build any undisputed amount that becomes due, Design-Build, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to Section 11.3 hereof. All payments due and unpaid shall bear interest at the rate set forth in the Agreement.

#### **6.5 Design-Build's Payment Obligations.**

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

#### **6.6 Substantial Completion.**

**6.6.1** Design-Build 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-Build's notice, Owner and Design-Build 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-Build'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.

**6.6.2** Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Owner shall release to Design-Build 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.

**6.6.3** 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-Build 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-Build agree that Owner's use or occupancy will not interfere with Design-Build's completion of the remaining Work.

#### **6.7 Final Payment.**

**6.7.1** After receipt of a Final Application for Payment from Design-Build, Owner shall make final payment by the time required in the Agreement, provided that Design-Build 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 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 Tax Claim Indemnification.**

**7.2.1** [reserved]

## **7.3 Payment Claim Indemnification.**

**7.3.1** 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.

## **7.4 Design-Builder's General Indemnification.**

**\*\*\*Indemnification is subject to additional indemnitees depending on the permits required during the term of the agreement.\*\*\***

**7.4.1** 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, State of California and each of their 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, State of California or any of their 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, State of California or any of their 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, State of California and any of their 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, State of California and any of their 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, State of California or any of their 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, State of California or any of their officers, officials, employees, agents, or volunteers and DESIGN-BUILDER fails, refuses or neglects to assume the defense thereof, OWNER, State of California and their 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, State of California and their 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, State of California and each of their officers, officials, employees, agents and volunteers in accordance with the terms as set forth above.

## **7.5 Limited Recourse.**

**7.5.1** None of the obligations set forth in this Agreement (on behalf of any party) constitute personal obligations of any natural persons who are the officers, shareholders, members, partners, employees, or agents of any party unless the natural person is expressly identified as a contracting party. All Parties to this Agreement shall not seek recourse against any natural person described herein. This provision, however, shall not protect such natural persons from liability for willful misconduct, illegal acts or intentional violation of any duty of corporate loyalty.

# **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.

#### **9.2 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** Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative which shall conclude within fourteen (14) days of the written notice provided for in Section 10.1.1 unless Owner and Design-Builder mutually agree otherwise.

**10.2.3** If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Five (5) days prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

**10.2.4** If after meeting the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit within thirty (30) days of the conclusion of the meeting of Senior Representatives the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. Unless otherwise mutually agreed by Owner and Design-Builder and consistent with the mediator's schedule, the mediation shall commence within ninety (90) days of the submission of the dispute to mediation. Representatives of the parties with authority to resolve the dispute shall be present at any mediation.

## **10.3 Arbitration.**

**10.3.1** Any claims, disputes or controversies between the parties arising out of or relating to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 above, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the AAA then in effect, unless the parties mutually agree otherwise.

**10.3.2** The award of the arbitrator(s) shall be final and binding upon the parties without the right of appeal to the courts. Judgment may be entered upon it in accordance with applicable law by any court having jurisdiction thereof.

**10.3.3** Design-Builder and Owner expressly agree that any arbitration pursuant to this Section 10.3 may be joined or consolidated with any arbitration involving any other person or entity (i) necessary to resolve the claim, dispute or controversy; or (ii) substantially involved in or affected by such claim, dispute or controversy. Both Design-Builder and Owner will include appropriate provisions in all contracts they execute with other parties in connection with the Project to require such joinder or consolidation.

**10.3.4** The prevailing party in any arbitration, or any other final, binding dispute proceeding upon which the parties may agree, shall be entitled to recover from the other party reasonable attorneys' fees and expenses incurred by the prevailing party. The prevailing party, if any, shall be determined by the applicable binding dispute tribunal.

#### **10.4 Duty to Continue Performance.**

**10.4.1** 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.

**10.5.2** 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. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

**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 of 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, 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.

**11.2.4** If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Section 11.6 hereof.

### **11.3 Design-Builder's Right to Stop Work.**

**11.3.1** Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop the Work for the following reasons:

**11.3.1.1** Owner's failure to provide financial assurances as required under Section 3.3 hereof; or

**11.3.1.2** Owner's failure to pay amounts properly due under Design-Builder's Application for Payment.

**11.3.2** Should any of the events set forth in Section 11.3.1 above occur, Design-Builder has the right to provide Owner with written notice that Design-Builder will stop the Work unless said event is cured within seven (7) days from Owner's receipt of Design-Builder's notice. Design-Builder shall not stop work unless it provides such written notice and Owner has failed to cure the reason for default within the seven (7) day cure period. If Owner does not cure the problem within such seven (7) day period, Design-Builder may stop the Work. In such case, Design-Builder shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage.

### **11.4 Design-Builder's Right to Terminate for Cause.**

**11.4.1** Design-Builder, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate the Agreement for cause for the following reasons:

**11.4.1.1** The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, because of court order, any government authority having jurisdiction over the Work, or orders by Owner under Section 11.1.1 hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.

**11.4.1.2** Owner's failure to provide Design-Builder with any information, permits or approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during

the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.

**11.4.1.3** Owner's failure to cure the problems set forth in Section 11.3.1 above after Design-Builder has stopped the Work.

**11.4.2** Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under Article 8 of the Agreement.

## **11.5 Bankruptcy of Owner or Design-Builder.**

**11.5.1** If either Owner or Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code (such party being referred to as the "Bankrupt Party"), such event may impair or frustrate the Bankrupt Party's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

**11.5.1.1** The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and

**11.5.1.2** The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the non-Bankrupt Party under this Article 11.

**11.5.2** The rights and remedies under Section 11.5.1 above shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code or the right of Design-Builder to stop Work under any applicable provision of these General Conditions of Contract.

## **11.6 Termination for Convenience.**

**11.6.1** 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:

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

**11.6.1.2** 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

**11.6.1.3** The amount set forth in Article 8 of the Agreement.

11.6.2 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.

## **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.

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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 2<sup>nd</sup> 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 13<sup>th</sup>, 2021  
Mayor Approval: September 16<sup>th</sup>, 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 29<sup>th</sup> 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

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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.

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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

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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

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]

Plasterers & Cement Masons Local 300

[Signature on File]

Boilermakers Local 549

[Signature on File]

Plumbers & Pipefitters Local 246

[Signature on File]

Bricklayers, Tile Setters & Allied Crafts 3

[Signature on File]

Road Sprinkler Fitters Local 669

[Signature on File]

Northern CA Carpenters Regional Council

[Signature on File]

Roofers and Waterproofers Local 27

Drywall/Lathers Local 9083

[Signature on File]

SMART International Association 104

District Council 16 Local Union 294

[Signature on File]

Teamsters Local 431

[Signature on File]

Electricians Local 100

[Signature on File]

Underground Utility/Landscape 355

[Signature on File]

Elevator Constructors Local 8

[Signature on File]

Operating Engineers Local 3

[Signature on File]

Iron Workers Local 155

[Signature on File]

Laborers Local 294

[Signature on File]

IUPAT/DC 16

**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:

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Title of Authorized Person:

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Telephone Number of Authorized Person:

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Address of Authorized Person

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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, 2<sup>nd</sup> Floor**

Fresno, CA 93721

**Project Title:**

Project ID:

**Bid File Number:**

**Contractor Name:**

**Contractor Address:**[illegible]

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, 2<sup>nd</sup> 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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Questions? We're here to help.

## Contact us



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[dbia@dbia.org](mailto:dbia@dbia.org)