

# ATTACHMENT 2

## CONTRACT FOR CONSTRUCTION

This Contract is by and between.

### OWNER

**The City of San Mateo**  
330 West 20<sup>th</sup> Street  
San Mateo, California 94403

### CONTRACTOR

**Staples Construction Company, Inc.**  
1501 Eastman Avenue  
Ventura, California, 93003

Owner and Contractor hereby agree as follows:

### ARTICLE 1 - THE WORK

#### 1.01 Work

- A. Work includes all labor, materials, equipment, services, and documentation necessary to construct the Project defined herein. The Work may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
- B. The Contractor shall complete all Work as specified or indicated in the Contract Documents. The Project is generally described as follows:
  - 1. **Fallen Heroes Memorial at Central Park Site Work which includes but not limited to Site fencing; Tree protection; Site grading; Concrete footings; Concrete paving; Precast paving; Existing pavement repair; Site electrical & lighting; Plaques, Memorial & Site furniture installation; 3<sup>rd</sup> party inspection; Clean-up and closeout.**
  - 2. The Site of the Work includes designated work areas described in greater detail in the Contract Documents but generally located at **50 E. 5th Avenue, San Mateo, CA 94401.**

### ARTICLE 2 - DEFINITIONS AND TERMINOLOGY

#### 2.01 Defined Terms

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
  - 1. Architect:
    - a. **RRM Design Group, 325 Davis Street, San Leandro, CA 94577**
  - 2. Constituent of Concern—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean

Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

3. Engineer:

a. **RRM Design Group, 325 Davis Street, San Leandro, CA 94577**

4. Hazardous Environmental Condition— The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.

5. Resident Project Representative - The authorized representative of Owner assigned to assist Owner at the Site. As used herein, the term Resident Project Representative or “RPR” includes any assistants or field staff of Resident Project Representative. The RPR for this project is:

a. **King Leong, City of San Mateo**

2.02 Terminology

A. The words and terms discussed in the following paragraphs are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

B. Intent of Certain Terms or Adjectives:

1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Owner, Engineer, or Architect. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of any provision of the Contract Documents.

C. Day:

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

D. Defective:

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:

a. does not conform to the Contract Documents; or

- b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
  - c. has been damaged prior to Engineer's recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion.
- E. Furnish, Install, Perform, Provide:
  - 1. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
  - 2. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
  - 3. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
  - 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words "furnish," "install," "perform," or "provide," then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

## 2.03 Contract Documents Defined

- A. The Contract Documents consist of the following documents:
  - 1. This Contract.
  - 2. Performance bond.
  - 3. Payment bond.
  - 4. Exhibits to this Contract (enumerated as follows):
    - a. **Exhibit A - Contractor's Proposal**
    - b. **Exhibit B – Insurance Requirements for Construction Contracts.**
  - 5. National Joint Powers Alliance - Book 2: IQCC Standard Terms and Conditions and Contract General Conditions.
  - 6. National Joint Powers Alliance - Book 3: Task Catalog.
  - 7. National Joint Powers Alliance Book 4: Technical Specifications.
  - 1. The following which may be delivered or issued on or after the Effective Date of the Contract:
    - a. Work Change Directives.

- b. Change Orders.
- c. Field Orders.

### ARTICLE 3 - CONTRACT DOCUMENTS

#### 3.01 Intent of Contract Documents

- A. It is the intent of the Contract Documents to describe a functionally complete project. The Contract Documents do not indicate or describe all the Work required to complete the Project. Additional details required for the correct installation of selected products are to be provided by the Contractor and coordinated with the Owner and RPR. This Contract supersedes prior negotiations, representations, and agreements, whether written or oral. The Contract Documents are complementary; what is required by one part of the Contract Documents is as binding as if required by other parts of the Contract Documents.
- B. During the performance of the Work and until final payment, Contractor and Owner shall submit all matters in question concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents to the RPR. RPR will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.
- C. RPR will render a written clarification, interpretation, or decision on the issue submitted, or initiate a modification to the Contract Documents.
- D. Contractor, and its subcontractors and suppliers, shall not have or acquire any title to or ownership rights to any of the Drawings, Specifications, or other documents (including copies or electronic media editions) prepared by RPR or its consultants.

#### 3.02 Reporting and Resolving Discrepancies

- A. Reporting Discrepancies:
  - 1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents.
  - 2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.

3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.
- B. Resolving Discrepancies:
1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
    - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
    - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).
  2. When a conflict exists between drawings or between drawings and details, the more stringent of the two shall prevail. When a conflict exists between two specifications, the more stringent of the two shall prevail.
  3. In the event of a conflict that cannot be resolved by interpreting the Contract Documents as a single, integrated document and giving effect to each provision therein, the Contract Document higher in precedence shall control and supersede the Contract Documents lower in precedence in accordance with the following listing arranged from the highest to the lowest in precedence:
    - a. Change Order.
    - b. Addenda.
    - c. Contract.
    - d. Technical Specifications included as an Exhibit to this Contract.
    - e. Drawings included as an Exhibit to this Contract.
    - f. Owner Standard Specifications.
    - g. Owner Standard Drawings.
      - a. National Joint Powers Alliance Book 4: Technical Specifications.
      - b. National Joint Powers Alliance - Book 2: IQCC Standard Terms and Conditions and Contract General Conditions.
    - a. The provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document).
    - b. The provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).
    - c. Notice to Bidder.

- d. Instruction to Bidder.

## ARTICLE 4 - CONTRACT TIMES

### 4.01 Contract Times

- A. The Work will be substantially completed within **120** days after the Effective Date of the Contract and completed and ready for final payment within **120** days after the Effective Date of the Contract.

### 4.03 Liquidated Damages

- A. Contractor and Owner recognize that time is of the essence in the performance of the Contract, and that Owner will incur damages if Contractor does not complete the Work according to the requirements of Paragraph 4.01. Because such damages for delay would be difficult and costly to determine and the parties agree that **\$500** per day is a reasonable approximation of the Owner's damages, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner **\$500** for each day that expires after the Contract Time for substantial completion.

### 4.04 Delays in Contractor's Progress

- A. If Owner, RPR, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor or their subcontractors or suppliers.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times.
- D. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor or Contractor's subcontractors or suppliers.

### 4.05 Progress Schedules

- A. Contractor shall develop a progress schedule and submit to the RPR for review and comment before starting Work on the Site. The Contractor shall modify the schedule in accordance with the comments provided by the RPR.
- B. The Contractor shall update and submit the progress schedule to the RPR each month. The Owner may withhold payment if the Contractor fails to submit the schedule.

## ARTICLE 5 - CONTRACT PRICE

### 5.01 Payment

- A. Owner shall pay Contractor in accordance with the Contract Documents, the lump sum amount of **\$241,751.68** for all Work.
- A. For any additional Work authorized by Owner, Owner shall pay Contractor in an amount equal to the total of all extended prices for actual Work completed. The extended price is determined by multiplying the unit price in the **National Joint Powers Alliance - Book 3: Task Catalog** times the actual quantity of that Work item completed. Actual quantities installed will be determined by the RPR.

## ARTICLE 6 - BONDS AND INSURANCE

### 6.02 Bonds

- A. Before starting Work, Contractor shall furnish a performance bond and a payment bond from surety companies that are duly licensed or authorized to issue bonds in the required amounts in the jurisdiction in which the Project is located. Each bond shall be in an amount equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. These bonds shall remain in effect until the completion of the correction period specified in Paragraph 7.12 but, in any case, not less than one year after the date when final payment becomes due.
- B. Performance by Sureties. In the event of any termination, Owner shall immediately give written notice to Contractor and Contractor's sureties, and the sureties shall have the right to take over and perform the Contract, provided, however, that if the sureties, within five days after giving them notice of said termination, do not give Owner written notice of their intention to take over the performance thereof within five days after notice, Owner may take over the work and prosecute the same to completion, by contract or by any other method it may deem advisable, for the account, and at the expense of Contractor, and the sureties shall be liable to Owner for any excess cost or damages occasioned Owner thereby; and, in such event, Owner may, without liability for so doing, take possession of, and utilize in completing the work, such materials, appliances, plant and other property belonging to Contractor as may be on the site of the work and necessary therefore

### 6.03 Insurance

- A. The Contractor shall procure and maintain the insurance specified in the Exhibit B of this Contract for the greater of (1) the duration of the contract plus a period of **five (5)** years after completion of the Project or (2) the duration shown in Exhibit B.

## ARTICLE 7 - CONTRACTOR'S RESPONSIBILITIES

### 7.01 Supervision and Superintendence

- A. Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, safety, and procedures of construction.

- B. Contractor shall assign a competent resident superintendent who is to be present at all times during the execution of the Work. This resident superintendent shall not be replaced without written notice to and approval by the Owner and RPR except under extraordinary circumstances.
- C. Contractor shall at all times maintain good discipline and order at the Site.
- D. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, Monday through Friday.

#### 7.02 Other Work at the Site

- A. In addition to and apart from the Work of the Contractor, other work may occur at or adjacent to the Site. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.

#### 7.03 Services, Materials, and Equipment

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be new, of good quality and shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable supplier, except as otherwise may be provided in the Contract Documents.

#### 7.04 Subcontractors and Suppliers

- A. Contractor may retain subcontractors and suppliers for the performance of parts of the Work acceptable to Owner, provided that no work may be performed by a subcontractor who is debarred pursuant to Labor Code Sections 1777.1 or 1777.7.

#### 7.05 Quality Management

- A. Contractor is fully responsible for the managing quality to ensure Work is completed in accordance with the Contract Documents.

#### 7.06 Licenses, Fees and Permits

- A. Contractor shall pay all license fees and royalties and assume all costs incident to performing the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others.
- B. Contractor shall obtain and pay for all construction permits and licenses unless otherwise provided in the Contract Documents.

#### 7.07 Laws and Regulations; Taxes

- A. Contractor shall give all notices required by and shall comply with all local, state, and federal Laws and Regulations applicable to the performance of the Work. Except where otherwise



expressly required by applicable Laws and Regulations, neither Owner nor RPR shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

- B. Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and RPR, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages if Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations.
- C. Contractor shall pay all applicable sales, consumer, use, and other similar taxes Contractor is required to pay in accordance with Laws and Regulations.
- D. In accordance with Public Contract Code Section 7103.5, the contractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties.
- E. Contractor shall give notice of hazardous materials and certain changed conditions in jobs involving trenching more than four feet deep.
- F. In accordance with Labor Code Section 1773.2, Contractor will make travel and subsistence payments as required by statute.
- G. In accordance with Labor Code Section 1771, contractor must pay prevailing wages. The prevailing wage scale as determined by the Director of Industrial Relations of the State of California, in force on the day the bid was announced, will be the minimum paid to all craftsmen and laborers working on this project. Contractor shall also require any subcontractors who work or provide any services related to the project to pay all persons performing labor or rendering service under said subcontract or other arrangement at least the general prevailing rate of wages, determined as set forth herein for the respective crafts and employments, including such wages for holiday and overtime work. A copy of the correct determination will be posted at the job site. It is understood that it is the responsibility of Contractor to determine the correct scale. Copies of the prevailing wage rates are on file at the City Clerk's office; however, errors or defects in the materials in the City Clerk's office will not excuse a bidder's failure to comply with the actual scale then in force. In accordance with Labor Code Section 1775, the statutory provisions for failure to pay prevailing wages will be enforced.
- H. In accordance with Labor Code Section 1776, Contractor must comply with the statutory requirements relating to certified copies of payroll records.
- I. In accordance with Labor Code Section 1777.5, Contractor must comply with the statutory requirements relating to the employment of apprentices.
- J. In accordance with Labor Code Section 1810, eight hours labor constitutes a legal day's work. Contractor shall not require more than eight hours' labor in a day and 40 hours in a calendar week from any person employed by Contractor in the performance of such work unless such excess work is compensated for at not less than one and one-half times the basic rate of pay. Contractor shall forfeit as a penalty to Owner the sum of \$25.00 for each laborer, workman,

or mechanic employed in the execution of this contract by Contractor, or by any subcontractor, for each calendar day during which such laborer, workman, or mechanic is required or permitted to labor more than eight hours in any calendar day and 40 hours in any one calendar week in violation of the provisions of Section 1810 and 1816, inclusive, of the Labor Code of the State of California.

- K. In accordance with Labor Code Section 1813, the statutory provisions for penalties for failure to comply with wage and hour laws will be enforced.
- L. In accordance with Labor Code Section 1860, the Contractor must secure the payment of workers' compensation to its employees.
- M. In accordance with Labor Code Section 6705, the Contractor must submit a detailed plan of the shoring and bracing for trenches five feet deep or more for contracts in excess of \$25,000.
- N. In accordance with Labor Code Sections 1725.5 and 1771.1, all Contractors and subcontractors must be registered with the Department of Industrial Relations. In accordance with Labor Code Section 1771.4, the Contractor must post job site notices as required by regulation and this project will be subject to compliance monitoring and enforcement by the Department of Industrial Relations.

#### 7.08 Record Documents

- A. Contractor shall maintain one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved shop drawings in a safe place at the Site. Contractor shall annotate them to show changes made during construction. Contractor shall deliver these record documents to RPR upon completion of the Work.

#### 7.09 Safety and Protection

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work.
- B. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
  - 1. All persons on the Site or who may be affected by the Work;
  - 2. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  - 3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and underground facilities not designated for removal, relocation, or replacement in the course of construction.
- C. All damage, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Contractor, or anyone for whose acts the Contractor may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Contract Documents or to the acts or omissions of Owner or RPR and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor).
- D. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

- E. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor shall act to prevent threatened damage, injury, or loss. Contractor shall give RPR prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If RPR determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

#### 7.10 Shop Drawings, Samples, and Other Submittals

- A. Contractor shall review and coordinate the shop drawing and samples with the requirements of the Work and the Contract Documents and shall verify all related field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information.
- B. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
- C. With each submittal, Contractor shall give RPR specific written notice, in a communication separate from the submittal, of any variations that the shop drawing or sample may have from the requirements of the Contract Documents.
- D. RPR will provide timely review of shop drawings and samples.
- E. RPR's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs.
- F. RPR's review and approval of a separate item does not indicate approval of the assembly in which the item functions.
- G. Contractor shall make corrections required by RPR and shall return the required number of corrected copies of shop drawings and submit, as required, new samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by RPR on previous submittals.
- H. Shop drawings are not Contract Documents.

#### 7.11 Warranties and Guarantees

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. RPR and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.

#### 7.12 Correction Period

- A. If within one year after the date of substantial completion, any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly and without cost to Owner, correct such defective Work.

### 7.13 Indemnification

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and RPR, and the officials, employees, and agents, of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of RPR, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work. Contractor will defend Owner, its elected and appointed officials, employees, and agents against any such claims. However, this provision does not apply to claims, loss, liability, damage, or expense arising from the sole negligence or willful misconduct of the Owner

## ARTICLE 8 - OWNER'S RESPONSIBILITIES

### 8.01 Owner's Responsibilities

- A. Except as otherwise provided in the Contract Documents, Owner shall issue all communications to Contractor through RPR.
- B. Owner shall make payments to Contractor as provided in this Contract.
- C. Owner shall provide Site and easements required to construct the Project.
- D. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, unless stated elsewhere in the Contract Documents, Owner shall have sole authority and responsibility for such coordination.
- E. The Owner shall be responsible for performing inspections and tests required by applicable codes.
- F. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- G. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- H. Owner shall furnish copies of any applicable Owner safety programs to Contractor.
- I. In accordance with Public Contract Code Section 9201, Owner shall give contractor timely notification of the receipt of any third-party claims relating to the contract.

## ARTICLE 9 - RPR'S STATUS DURING CONSTRUCTION

### 9.01 RPR's Status

- A. RPR will be Owner's representative during construction. The duties and responsibilities and the limitations of authority of RPR as Owner's representative during construction are set forth in this Contract.
- B. Neither RPR's authority or responsibility under this Article 9 or under any other provision of the Contract, nor any decision made by RPR in good faith either to exercise or not exercise

such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by RPR, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by RPR to Contractor, any subcontractor, any supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

- C. RPR will make visits to the Site at intervals appropriate to the various stages of construction. RPR will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work.
- D. RPR has the authority to reject Work if Contractor fails to perform Work in accordance with the Contract Documents.
- E. RPR will render decisions regarding the requirements of the Contract Documents and judge the acceptability of the Work.
- F. RPR will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. RPR will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

## **ARTICLE 10 - CHANGES IN THE WORK**

### **10.01 Authority to Change the Work**

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work.

### **10.02 Change Orders**

- A. Owner and Contractor shall execute appropriate Change Orders covering:
  - 1. Changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
  - 2. Changes in the Work which are: (a) ordered by Owner or (b) agreed to by the parties or (c) resulting from the RPR's decision, subject to the need for RPR's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and
  - 3. Changes in the Contract Price or Contract Times or other changes which embody the substance of any final binding results under Article 12.
- B. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

## **ARTICLE 11 - DIFFERING SUBSURFACE OR PHYSICAL CONDITIONS**

### **11.01 Differing Conditions Process**

- A. If Contractor believes that any subsurface or physical condition including but not limited to utilities or other underground facilities that are uncovered or revealed at the Site either differs materially from that shown or indicated in the Contract Documents or is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract Documents then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency), notify Owner and RPR in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.
- B. After receipt of written notice, RPR will promptly:
  - 1. Review the subsurface or physical condition in question;
  - 2. Determine necessity for Owner obtaining additional exploration or tests with respect to the condition;
  - 3. Determine whether the condition falls within the differing site condition as stated herein;
  - 4. Obtain any pertinent cost or schedule information from Contractor;
  - 5. Prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and
  - 6. Advise Owner in writing of RPR's findings, conclusions, and recommendations.
- C. After receipt of RPR's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting RPR's written findings, conclusions, and recommendations, in whole or in part.

## **ARTICLE 12 - CLAIMS AND DISPUTE RESOLUTION**

### **12.01 Claims Process**

- A. The party submitting a claim shall deliver it directly to the other party to the Contract and the RPR promptly (but in no event later than 10 days) after the start of the event giving rise thereto.
- B. The party receiving a claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the claim through the exchange of information and direct negotiations. All actions taken on a claim shall be stated in writing and submitted to the other party.

- C. If efforts to resolve a claim are not successful, the party receiving the claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the claim within 45 days, the claim is deemed denied.
- D. If the dispute is not resolved to the satisfaction of the parties, Owner or Contractor shall give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction unless the Owner and Contractor both agree to an alternative dispute resolution process.

#### 12.02 Mediation

- A. Should any dispute arise out of this Contract, any party may request that it be submitted to mediation. The parties shall meet in mediation within 30 days of a request. The mediator shall be agreed to by the mediating parties; in the absence of an agreement, the parties shall each submit one name from mediators listed by the American Arbitration Association, the California State Board of Mediation and Conciliation, or other agreed-upon service. The mediator shall be selected by a blind draw. The cost of mediation shall be borne equally by the parties. Neither party shall be deemed the prevailing party. No party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated settlement. The mediation process, once commenced by a meeting with the mediator, shall last until agreement is reached by the parties but not more than 60 days, unless the maximum time is extended by the parties.

### **ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION OF DEFECTIVE WORK**

#### 13.01 Tests and Inspections

- A. Owner and RPR will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access.
- B. Contractor shall give RPR timely notice of readiness of the Work for all required inspections and tests and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- C. If any Work that is to be inspected, tested, or approved is covered by Contractor without written concurrence of RPR, Contractor shall, if requested by RPR, uncover such Work for observation. Such uncovering shall be at Contractor's expense.

#### 13.02 Defective Work

- A. Contractor shall ensure that the Work is not defective.
- B. RPR has the authority to determine whether Work is defective, and to reject defective Work.
- C. Prompt notice of all defective Work of which Owner or RPR has actual knowledge will be given to Contractor.
- D. The Contractor shall promptly correct all such defective Work.
- E. When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. If the Work is defective or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work

will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.

## **ARTICLE 14 - PAYMENTS TO CONTRACTOR**

### **14.01 Progress Payments**

- A. The Contractor shall prepare a schedule of values that will serve as the basis for progress payments. The schedule of values will be in a form of application for payment acceptable to RPR. The unit price breakdown submitted with the bid will be used for unit price work. Break lump sum items into units that will allow for measurement of Work in progress.

### **14.02 Applications for Payments:**

- A. Contractor shall submit an application for payment in a form acceptable to the RPR, no more frequently than monthly, to RPR. Applications for payment will be prepared and signed by Contractor. Contractor shall provide supporting documentation required by the Contract Documents. Payment will be paid for Work completed as of the date of the application for payment.
- B. Beginning with the second application for payment, each application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior applications for payment.

### **14.03 Retainage**

- A. The Owner shall retain 5% of each progress payment until the Work is substantially complete.

### **14.04 Review of Applications**

- A. Within 10 days after receipt of each application for payment, the RPR will either indicate in writing a recommendation for payment and present the application for payment to Owner or return the application for payment to Contractor indicating in writing RPR's reasons for refusing to recommend payment. The Contractor will make the necessary corrections and resubmit the application for payment.
- B. RPR will recommend reductions in payment (set-offs) which, in the opinion of the RPR, are necessary to protect Owner from loss because the Work is defective and requires correction or replacement.
- C. The Owner is entitled to impose set-offs against payment based on any claims that have been made against Owner on account of Contractor's conduct in the performance of the Work, incurred costs, losses, or damages on account of Contractor's conduct in the performance of the Work, or liquidated damages that have accrued as a result of Contractor's failure to complete the Work.

### **14.05 Contractor's Warranty of Title**

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than seven days after the time of payment by Owner.



#### 14.06 Substantial Completion

- A. The Contractor shall notify Owner and RPR in writing that the Work is substantially complete and request the RPR issue a certificate of substantial completion when Contractor considers the Work ready for its intended use. Contractor shall at the same time submit to Owner and RPR an initial draft of punch list items to be completed or corrected before final payment.
- B. RPR will make an inspection of the Work with the Owner and Contractor to determine the status of completion. If RPR does not consider the Work substantially complete, RPR will notify Contractor and Owner in writing giving the reasons therefor.
- C. If RPR considers the Work substantially complete or upon resolution of all reasons for non-issuance of a certificate identified in 14.06.B, RPR will deliver to Owner a certificate of substantial completion which shall fix the date of substantial completion and include a punch list of items to be completed or corrected before final payment.

#### 14.07 Final Inspection

- A. Upon written notice from Contractor that the entire Work is complete, RPR will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

#### 14.08 Final Payment

- A. Contractor may make application for final payment after Contractor has satisfactorily completed all Work defined in the Contract, including providing all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents and other documents.
- B. The final application for payment shall be accompanied (except as previously delivered) by:
  - 1. All documentation called for in the Contract Documents;
  - 2. Consent of the surety to final payment;
  - 3. Satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any liens or other title defects, or will so pass upon final payment;
  - 4. A list of all disputes that Contractor believes are unsettled; and
  - 5. Complete and legally effective releases or waivers (satisfactory to Owner) of all lien rights arising out of the Work, and of liens filed in connection with the Work.
- C. The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the RPR's written recommendation of final payment.

#### 14.09 Waiver of Claims

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted.

## ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

### 15.01 Owner May Suspend Work

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 60 consecutive days by written notice to Contractor and RPR. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension.

### 15.02 Owner May Terminate for Cause

- A. Contractor's failure to perform the Work in accordance with the Contract Documents or other failure to comply with a material term of the Contract Documents will constitute a default by Contractor and justify termination for cause.
- B. If Contractor defaults in its obligations, then after giving Contractor and any surety ten days written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
  - 1. Declare Contractor to be in default, and give Contractor and any surety notice that the Contract is terminated; and
  - 2. Enforce the rights available to Owner under any applicable performance bond.
- C. Owner may not proceed with termination of the Contract under Paragraph 15.02.B if Contractor within seven days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- D. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- E. In the case of a termination for cause, if the cost to complete the Work, including related claims, costs, losses, and damages, exceeds the unpaid contract balance, Contractor shall pay the difference to Owner.

### 15.03 Owner May Terminate for Convenience

- A. Upon seven days written notice to Contractor, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for, without duplication of any items:
  - 1. Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
  - 2. Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
  - 3. Other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.

- B. Contractor shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.

## **ARTICLE 16 - CONTRACTOR'S REPRESENTATIONS**

### **16.01 Contractor Representations**

- A. Contractor makes the following representations when entering into this Contract:
  - 1. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
  - 2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - 3. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
  - 4. Contractor has considered the information known to Contractor itself; information commonly known to Contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on:
    - a. The cost, progress, and performance of the Work;
    - b. The means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and
    - c. Contractor's safety precautions and programs.
  - 5. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
  - 6. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
  - 7. Contractor has given RPR written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by RPR is acceptable to Contractor.
  - 8. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
  - 9. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that, without exception, all prices in the Contract are premised upon performing and furnishing the Work required by the Contract Documents.

## ARTICLE 17 - MISCELLANEOUS

### 17.01 Cumulative Remedies

- A. The duties and obligations imposed by this Contract and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

### 17.02 Limitation of Damages

- A. Neither Owner, RPR, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

### 17.03 No Waiver

- A. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

### 17.04 Survival of Obligations

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

### 17.05 Contractor's Certifications

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract.

### 17.06 Controlling Law and Venue

- A. This Contract is to be governed by the law of the state of California and, in the event of litigation, venue will be in the County of San Mateo.

### 17.07 Notices

- A. All notices shall be in writing, and delivered in person, or transmitted by certified mail, postage prepaid. Notices required to be given to Owner or Contractor shall be addressed as appears in the signature block at the end of this Contract.

### 17.08 No Partnership or Agency

- A. Nothing in this Contract nor in the contract documents shall be deemed to constitute a partnership in law between Owner and Contractor, or any subcontractor, to constitute either party as an agent of the other for any purpose; or to entitle either party to commit or bind the other in any manner unless expressly agreed upon in the contract documents.

#### 17.09 Severability

- A. If any part or provision of the contract documents is determined by any court to be illegal, invalid, or unenforceable, in whole or in part, the contract documents shall continue to be valid as to its other provisions and the remainder of the affected provision, unless it can be concluded from the circumstances that, in the absence of the provisions found to be null and void, the parties would not have entered into the contract documents. The parties shall use all reasonable efforts to replace any and all provisions or parts found to be null and void with provisions that are valid under the applicable law and come closest to their original intention.

#### 17.10 Waiver

- A. None of the following shall operate as a waiver of any provision of the contract documents, or of any power herein reserved by the Owner, or any right to damages herein provided: 1) inspection by the Owner or its authorized agents or representatives; 2) any order or certificate for payment, or any payment for, or acceptance of the whole or any party of the work by the Owner; 3) an extension of time; or 4) any position taken by the Owner or its authorized agents or representatives.

#### 17.11 Warranty

- A. Contractor warrants and guarantees that the materials and equipment provided shall be at least of the quality specified and new unless otherwise required or permitted by the contract documents and, if no quality is specified, then the materials and equipment shall be of commercial grade, suitable for heavy public use in facilities of similar size and complexity,, that the work performed hereunder will be free from defects, and that the work will conform to the requirements of the contract documents.

IN WITNESS WHEREOF, Owner and Contractor have signed this Contract.

This Contract will be effective on \_\_\_\_\_ (which is the Effective Date of the Contract).

OWNER:

CONTRACTOR:

By: Joanne Magrini

By: David Staples

Title: Parks and Recreation Department Director

Title: President

Address for giving notices:

330 West 20<sup>th</sup> Avenue

San Mateo, CA 94403

Address for giving notices:

1501 Eastman Avenue

Ventura, California, 93003

License No.: CA License #710039, Class A & B  
(where applicable)

APPROVED AS TO FORM

\_\_\_\_\_  
Linh Nguyen

Assistant City Attorney

**EXHIBIT A**  
**CONTRACTOR'S PROPOSAL**

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**EXHIBIT B**  
**INSURANCE REQUIREMENTS FOR CONSTRUCTION CONTRACTS**

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**ARTICLE 18 - MINIMUM SCOPE AND LIMIT OF INSURANCE**

- 18.01 Contractor shall procure and maintain for the duration of the contract, *and for five (5) years thereafter*, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees, or subcontractors.
- 18.02 Coverage shall be at least as broad as:
- A. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$5,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
  - B. **Automobile Liability:** Insurance Services Office Form CA 0001 covering Code 1 (any auto), with limits no less than **\$5,000,000** per accident for bodily injury and property damage.
  - C. **Workers’ Compensation** insurance as required by the State of California, with Statutory Limits, and Employers’ Liability insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease.
  - D. **Builder’s Risk** (Course of Construction) insurance utilizing an “All Risk” (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.
  - E. **Surety Bonds** as described below.
  - F. **Professional Liability** (if Design/Build), with limits no less than \$2,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.
  - G. **Contractors’ Pollution Legal Liability** and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.
- 18.03 If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
- 18.04 Self-Insured Retentions. Self-insured retentions must be declared to and approved by the City. At the option of the City, either: the Contractor shall cause the insurer shall to reduce or eliminate such self-insured retentions as respects the City, its officers, officials, employees, and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses. The



policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

## ARTICLE 19 - OTHER INSURANCE PROVISIONS

19.01 The insurance policies are to contain, or be endorsed to contain, the following provisions:

- A. **The City, its officers, officials, employees, and volunteers are to be covered as additional insureds** on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10, CG 11 85 or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 forms if later revisions used).
- B. For any claims related to this project, the **Contractor's insurance coverage shall be primary** insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
- C. Each insurance policy required by this clause shall provide that coverage shall not be canceled, except with notice to the City.

19.02 Builder's Risk (Course of Construction) Insurance

- A. Contractor may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall **name the City as a loss payee** as their interest may appear.
- B. If the project does not involve new or major reconstruction, at the option of the City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City's site.

19.03 Claims Made Policies

- A. If any coverage required is written on a claims-made coverage form:
  - 1. The retroactive date must be shown, and this date must be before the execution date of the contract or the beginning of contract work.
  - 2. Insurance must be maintained, and evidence of insurance must be provided, for at least five (5) years after completion of contract work.
  - 3. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective, or start of work date,

the Contractor must purchase extended reporting period coverage for a minimum of five (5) years after completion of contract work.

4. A copy of the claims reporting requirements must be submitted to the City for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractors Pollution Liability policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

#### 19.04 Acceptability of Insurers

- A. Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best rating of no less than A: VII, unless otherwise acceptable to the City.

#### 19.05 Waiver of Subrogation

- A. **Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire** from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. **The Workers' Compensation policy shall be endorsed with a waiver of subrogation** in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

#### 19.06 Verification of Coverage

- A. Contractor shall furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to City before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

#### 19.07 Subcontractors

- A. Contractor shall require and verify that all subcontractors maintain insurance meeting all requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13.

#### 19.08 Surety Bonds.

- A. Contractor shall provide the following Surety Bonds:
  1. Performance Bond
  2. Payment Bond
  3. Maintenance Bond
- B. The Payment Bond and the Performance Bond shall be in a sum equal to the contract price. If the Performance Bond provides for a one-year warranty a separate Maintenance Bond is not necessary. If the warranty period specified in the contract is for longer than one year a Maintenance Bond equal to 10% of the contract price is required. Bonds shall be duly

executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

Special Risks or Circumstances.

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.