



## **City Council**

## **Redevelopment Agency**

### **AGENDA**

**Monday**

**SPECIAL**

**Regular Session 5:00 PM**

**May 3, 2010**

**City Hall  
100 West California Avenue  
Ridgecrest CA 93555**

**(760) 499-5000**

**Steven P. Morgan, Mayor  
Ronald H. Carter, Mayor Pro Tempore  
Thomas R. Wiknich, Vice Mayor  
Marshall G. Holloway, Council Member  
Jerry D. Taylor, Council Member**

**AGENDA - CITY COUNCIL / REDEVELOPMENT AGENCY - SPECIAL**

**May 3, 2010**

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Last Ordinance 10-01  
Last Council Resolution 10-28  
Last RRA Resolution 10-01



**CITY OF RIDGECREST**

**CITY COUNCIL  
RIDGECREST REDEVELOPMENT AGENCY**

**AGENDA**

Special Council/Agency Meeting

Monday, May 03, 2010

**CITY COUNCIL CONFERENCE ROOM  
SECOND FLOOR CITY HALL**  
100 West California Avenue  
Ridgecrest, CA 93555

**Special Session – 5:00 p.m.**

This meeting room is wheelchair accessible. Accommodations and access to City meetings for people with other handicaps may be requested of the City Clerk (499-5002) five working days in advance of the meeting.

In compliance with SB 343. City Council/Ridgecrest Redevelopment Agency Agenda and corresponding writings of open session items are available for public inspection at the following locations:

1. City of Ridgecrest City Hall, 100 W. California Ave., Ridgecrest, CA 93555
2. Kern County Library – Ridgecrest Branch, 131 E. Las Flores Ave., Ridgecrest, CA 93555
3. City of Ridgecrest official website at <http://ci.ridgecrest.ca.us>

**CALL TO ORDER**

**ROLL CALL**

**APPROVAL OF AGENDA**

**SPECIAL SESSION – 5:00 p.m.**

**AGENDA - CITY COUNCIL / REDEVELOPMENT AGENCY - SPECIAL**

**May 3, 2010**

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**PLEDGE OF ALLEGIANCE**

**INVOCATION**

**DISCUSSION AND OTHER ACTION ITEMS**

1. **Resolution No. 10-, A Joint Resolution Of The Ridgecrest City Council And Redevelopment Agency Ratifying And Authorizing City Management To Sign And Enter Into Contract Agreement With South California Trane For The Construction Of A Photovoltaic Solar Energy Production Field Bradley**

City of Ridgecrest has solicited multiple solar companies to develop and present solutions for a Solar Energy Production Field providing Renewable Energy for the Civic Center Complex. City staff has determined that the Photovoltaic Solar Renewable Energy System proposed to be installed at 125 S. Warner (APN-478-010-09 also known as Helmer's Park) will be a viable and practical investment for the City. This system is designed to produce 90% of the Civic Center's current annual electrical power consumption, render over \$1.7 million in incentives and renewable energy credits, and decrease the Center's energy bill by more than \$136,000 annually. Ridgecrest Redevelopment Agency may invest and fund this Renewable Energy project. Staff recommends that the RRA invest in this project using existing funds OR it may establish internal lending through the utility fund to be repaid utilizing bond revenues.

**PUBLIC COMMENT**

**MAYOR AND COUNCIL COMMENTS**

**ADJOURNMENT**

**CITY COUNCIL/REDEVELOPMENT AGENCY AGENDA ITEM**

**SUBJECT:**

Joint Resolution authorizing City Management to sign and enter into contract agreement with South California Trane for the construction of a Photovoltaic Solar Energy Production Field.

**PRESENTED BY:**

Craig Bradley

**SUMMARY:**

City of Ridgecrest has solicited multiple solar companies to develop and present solutions for a Solar Energy Production Field providing Renewable Energy for the Civic Center Complex. A large amount of research, planning, and deliberation has been devoted to this project over the last year.

City staff has determined that the Photovoltaic Solar Renewable Energy System proposed to be installed at 125 S. Warner (APN-478-010-09 also known as Helmer's Park) will be a viable and practical investment for the City. This system is designed to produce 90% of the Civic Center's current annual electrical power consumption, render over \$1.7 million in incentives and renewable energy credits, and decrease the Center's energy bill by more than \$136,000 annually.

Per Council direction of the 4-21-10 regular meeting, City staff has reviewed all proposals, contracts, and supporting documents related to the project. Revisions have been completed pre Council direction and reviewed by City legal. Staff recommends the approval of the revised contract.

Additionally studies have determined that the Ridgecrest Redevelopment Agency may invest and fund this Renewable Energy project. Staff recommends that the RRA invest in this project using existing funds OR it may establish internal lending through the utility fund to be repaid utilizing bond revenues. If the Council/RRA so chooses to employ utility funds, subsequent resolutions will be presented to establish lending rates and repayment schedules per the desire of the board.

**FISCAL IMPACT:**

\$3,077,606.00

**ACTION REQUESTED:**

Ratify Resolution:

**CITY MANAGER / EXECUTIVE DIRECTOR RECOMMENDATION:**

Action as requested: Motion to Approve Resolution

Submitted by: Craig Bradley

Action Date:

**RESOLUTION NO. 10-**

**A JOINT RESOLUTION OF THE RIDGECREST CITY COUNCIL AND REDEVELOPMENT AGENCY RATIFYING AND AUTHORIZING CITY MANAGEMENT TO SIGN AND ENTER INTO CONTRACT AGREEMENT WITH SOUTH CALIFORNIA TRANE FOR THE CONSTRUCTION OF A PHOTOVOLTAIC SOLAR ENERGY PRODUCTION FIELD**

**WHEREAS**, the City of Ridgecrest has solicited South California Trane to develop and present solutions for a Solar Energy Production Field providing Renewable Energy for the Civic Center Complex; and

**WHEREAS**, the Ridgecrest City Council has determined the site for this Solar Energy Production Field to be located on a three acre portion of City facilities located at 125 S. Warner (APN-478-010-09, also known as Helmer's Park); and

**WHEREAS**, studies have determined that the Ridgecrest Redevelopment Agency may invest and fund such Solar Energy Production projects; and

**WHEREAS**, city staff has completed all compliance and bid studies related to this project and recommends solutions developed by the Trane organization; and

**WHEREAS**, South California Trane has completed development and submitted a proposal and contract for construction;

**NOW THEREFORE, BE IT RESOLVED** that the City Council of the City of Ridgecrest and the Ridgecrest Redevelopment Agency, does hereby ratify and authorize the City Manager to sign contracts entering into agreement with South California Trane for the construction of a Solar Energy Production Field.

**ADOPTED, AND APPROVED**, this 3rd day of May 2010, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Steven P. Morgan, Mayor

ATTEST:

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Rachel Ford  
City Clerk

**AGREEMENT NO.**  
**between**  
**CITY OF RIDGECREST**  
**and**  
**Trane U.S. Inc**  
**for 495.9 kW DC Solar Photovoltaic System**  
**at Helmer's Park**

As of May 3, 2010, City of Ridgecrest, herein "CITY", and Trane US, Inc, herein "CONTRACTOR", agree as follows:

**ARTICLE 1 - GENERAL**

**Section 1 – Scope of Work**

CONTRACTOR will furnish certain services and work designed to improve facilities owned by the CITY (and more fully described below).

**Section 2 – Payment**

**(a) Contract Sum**

The CITY shall pay the CONTRACTOR the Contract Sum in current funds for the CONTRACTOR's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Exhibit A, plus the CONTRACTOR's Fee.

The CONTRACTOR's Fee (including for changes in the Work where no other agreement is reached by the parties) shall equal 13.0% markup of the Cost of Work for the Overhead plus 12.0% markup of the Cost of Work and Overhead for its Profits.

**(b) Guaranteed Maximum Price**

The sum of the Cost of the Work and the CONTRACTOR's Fee is guaranteed by the CONTRACTOR not to exceed \$1,875,316. Such maximum sum is referred in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the CONTRACTOR without reimbursement by the CITY. Modifications to the Guaranteed Maximum Price are only possible from CITY acceptance of additions and deductions by Change Order as provided in the Contract Documents.

If the Contract Sum is less than the Guaranteed Maximum Price, the CONTRACTOR shall be entitled to fifty percent (50%) of the difference between the Guaranteed Maximum Price and Contract Sum with a maximum of Five Hundred Thousand Dollars (\$500,000) as an incentive to control the Cost of Work.

**(c) Costs to be Reimbursed**

(1) Cost of the Work – The term Cost of the Work shall mean costs necessarily incurred by the CONTRACTOR in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the CITY.

(2) Labor Costs – (i) Wages of construction workers directly employed by the CONTRACTOR to perform the Work at the site or, with the CITY’s approval, at off-site workshops. Wages or salaries of the CONTRACTOR’s supervisory and administrative personnel when stationed at the site. (ii) Costs paid or incurred by CONTRACTOR for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining, and customary benefits such as sick leave, medical benefits, holidays, vacations, pensions.

(3) Subcontractor Costs – payments made by the CONTRACTOR to Subcontractors in accordance with the requirements of the subcontracts.

(4) Costs of Materials and Equipment Incorporated in the Completed Construction – (i) Costs, including transportation and storage, of materials and equipment incorporated or be incorporated in the completed construction. (ii) Costs of materials described in excess of those actually installed to allow for reasonable waste and spoilage up to a total limit of \$5,000. Such unused excess material, if any, shall become the CITY’s property at the completion of the Work, or, at CITY’s option, shall be sold to the CONTRACTOR. Any amounts realized from such sale shall be credited to the CITY as a deduction from the Cost of the Work. The manner of handling excess material over \$5,000 in cost shall be subject to negotiations between CITY and CONTRACTOR.

(5) Costs of other Materials and Equipment, Temporary Facilities and Related Items – (i) Costs including transportation and storage, installation maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by the CONTRACTOR at the site and fully consumed in the performance of

the Work, and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by CONTRACTOR. (ii) Cost for items previously used by the CONTRACTOR shall mean fair market value. (iii) Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the CONTRACTOR at the site, whether rented from the CONTRACTOR or others and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. (iv) Rates and quantities of equipment rented shall be subject to CITY's prior approval. (v) Costs of removal of debris from the site. (vi) Costs of document reproductions, fax transmissions, long distance telephone calls, postage, parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office. (vii) That portion of the reasonable expenses of the CONTRACTOR's personnel incurred while traveling in discharge of duties connected with the Work. (viii) Costs of materials and equipment suitably stored off site at a mutually acceptable location, if approved in advance by CITY.

(6) Miscellaneous Costs – (i) That portion of insurance and bond premiums that can be directly attributed to this Contract. (ii) Sales, use, or similar taxes imposed by a governmental authority that are related to the Work. (iii) Fees and assessments for the building permit and for other permits, licenses and inspections for which the CONTRACTOR is required by Contract Documents to pay. (iv) Fees of laboratories for tests required by the Contract Documents, except those related to defective or conforming Work. (v) Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents. (vi) Data processing costs related to the Work. (vii) Deposits lost for causes other than CONTRACTOR's negligence or failure to fulfill a specific responsibility to CITY as set forth in the Contract Documents. (viii) Expenses incurred in accordance with CONTRACTOR's standard personnel policy for relocation and temporary living allowances for personnel required for the Work, if approved by the CITY.

(7) Other Costs and Emergencies – (i) Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the CITY. (ii) Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property. (iii) Costs of repairing or correcting damaged or nonconforming Work executed by the CONTRACTOR, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the CONTRACTOR and only to the extent that the cost of repair or

correction is not recoverable by the CONTRACTOR from insurance, sureties, Subcontractors or suppliers. (iv) CONTRACTOR shall have the burden of proving the problem was not caused by its negligence or failure to fulfill its specific responsibility.

**(d) Costs Not To Be Reimbursed** – The Cost of Work shall not include: (i) salaries and other compensation of the CONTRACTOR's personnel station at the CONTRACTOR's principal office or offices other than the site office. (ii) expenses of the CONTRACTOR's principal office and offices other than the site office; (iii) overhead and general expenses, including interest on the CONTRACTOR's capital employed for the Work; (iv) rental costs of machinery and equipment; (v) costs due to the negligence or failure to fulfill a specific responsibility of the CONTRACTOR, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable; (vi) costs, other than costs included in Change Orders approved by CITY, that would cause the Guaranteed Maximum Price to be exceeded.

**(e) Discounts, Rebates and Refunds** – (i) Trade discounts shall accrue to CITY provided CITY is not in arrears in its payments. (ii) Amounts that accrue to the CITY shall be credited to the CITY as a deduction from the Cost of Work.

The foregoing shall have the same meanings assigned to them as in AIA Document A111-1997 and A201-1997. However, other than the definitions referenced hereunder, AIA Documents A111-1997 and A201-1997 shall not apply.

(f) Monthly progress payments shall be processed as follows:

(1) On or about the 25th day of each month, CONTRACTOR shall submit to CITY an invoice including an estimate of the cumulative amount and value of the work performed by CONTRACTOR prior to that date and subsequent to any prior estimates. The estimate may include the value of all acceptable materials and equipment delivered to the work site and suitably stored for subsequent incorporation in the Work and prepayments required for mobilization or material production. The estimate shall be based on certified copies of paid invoices by the CONTRACTOR.

(2) The CITY shall review the request as soon as practicable to determine whether the payment request is proper. A payment request determined not to be a proper payment shall be returned within seven days after receipt accompanied by a written description of the reasons why the payment request is not proper.

(3) CITY shall pay CONTRACTOR ninety-five percent (95%) of the invoice amount reduced by: amounts due to CITY for equipment, services or materials

furnished by CITY; amounts of claims or liens by the CITY or others, and amounts required to be deducted by federal, state or local governmental authorities.

(4) If the CITY fails to make any progress payment within thirty days after receipt of an undisputed and properly submitted invoice, the CITY shall pay to the CONTRACTOR interest equivalent to the legal rate set forth in Code of Civil Procedure Section 685.101(a) from seven days after receipt of the invoice by the CITY until paid. CONTRACTOR, may at its option, upon seven additional days written notice to the CITY, stop the Work until payment of the undisputed amount owed has been received. The Contract time shall be extended appropriately and the Guaranteed Maximum Price shall be increased by the amount of the CONTRACTOR's reasonable costs of shutdown, delay, and start-up, plus interest.

(5) Progress payments are not acceptance of the work, or any portion of the work. Payments do not preclude CITY from demanding and recovering damages sustained by CONTRACTOR'S failure to fully perform as provided for within this Agreement.

(b) On satisfactory completion of the work, CITY shall pay CONTRACTOR ninety-five percent (95%) of the value of the actual work less prior monthly progress payments.

(c) Within thirty (30) days after recordation of the notice of completion, the undisputed amounts withheld by the CITY shall be released. "Completion" occurs on the acceptance by the governing body of the CITY, or the filing of a notice of cessation of labor.

(d) Notwithstanding the foregoing, CONTRACTOR may receive payment in full, other than retention for claims by the CITY or third parties,

(e) Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement. The CITY shall be afforded access to, and shall be permitted to audit and copy, the CONTRACTOR's records relating to this Agreement, and CONTRACTOR shall preserve these records for a period of three years following final payment.

**Section 3 – Contract Documents**

The complete contract includes the contract documents set forth herein, to wit: this Agreement, General Provisions, Appendices, Bonds, Certificates of Insurance, Workers' Compensation Insurance Certificate, Project Design Engineering Drawings.

**Section 5 – Order of Precedence**

The General Provisions shall govern over Standard Specifications; The AGREEMENT shall govern over all contract documents.

**Section 4 – Compliance with Provisions of Law**

(a) This CITY is subject to the provisions of the law relating to public agencies which are part of this Agreement as though fully set forth herein.

(b) CONTRACTOR shall comply with all applicable provisions of law relating to the work.

**Section 5 – Attorney's Fees**

The Court shall award reasonable costs and expenses, including attorneys' fees, to the prevailing party in any action or proceeding brought to enforce the provisions of this Agreement.

**Section 6 – Notices**

Notices required or permitted shall be given by personal delivery or by first class mail, postage prepaid, or facsimile transmission.

To: CONTRACTOR  
Trane U.S. Inc  
Attention: Russ Svetic  
17760 Rowland Street  
City of Industry, CA 91748

To: CITY  
CITY of Ridgecrest  
Attention: Harvey Rose, City Manager  
100 West California Avenue  
Ridgecrest, CA 93555

### **Section 7 – Assignment**

(a) CONTRACTOR shall not assign this contract or payments under this contract.

(b) CONTRACTOR and each subcontractor hereby assign to the CITY rights, title, and interest in and to causes of action under Section 4 of the Clayton Act (15 U.S.C.A. 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 for this contract or the subcontract. This assignment shall be made and become effective without further acknowledgment by the parties at the time the CITY tenders final payment to the CONTRACTOR.

### **Section 8 – Section Headings**

The section headings in this contract are for the convenience of the parties and shall not affect the interpretation of this Agreement.

### **Section 9 – Discrimination**

The CONTRACTOR shall not refuse to employ or promote any person, and shall not discriminate against any person with respect to compensation or terms and conditions of employment, and shall not discipline or discharge any person employed because of the person's race, religion, creed, color, national origin, ancestry or sex. The CONTRACTOR shall not refuse to accept otherwise qualified employees as indentured apprentices solely on the grounds of race, religion, creed, color, national origin, ancestry or sex.

## **ARTICLE 2 – INDEMNIFICATION, INSURANCE, AND BONDS**

### **Section 10– Insurance**

(a) Before beginning the performance of the work, CONTRACTOR shall purchase and maintain insurance to protect the CONTRACTOR and the CITY from claims: (1) arising from CONTRACTOR's operations under the contract by the CONTRACTOR, a subcontractor or anyone employed by them, or anyone whose acts any of them may be liable; (2) under workers' compensation, disability benefits and other similar benefit acts; (3) for damages because of bodily injury, occupational sickness, or disease, or death of the CONTRACTOR's employees, or persons other than the CONTRACTOR's employees

resulting from an accident caused by named insured; (4) for damages insured by usual personal injury liability coverage sustained by a person as a result of an offense related to employment of such person by the CONTRACTOR, or other persons; (5) for damages, other than the work itself, because of injury to or destruction of tangible property; (6) for damages because of bodily injury, death of a person or property damage arising from ownership, maintenance or use of a motor vehicle; (7) involving contractual liability insurance applicable to the CONTRACTOR's obligations; and (8) for damage to work in progress.

(b) The CONTRACTOR shall provide the following coverages:

(1) Commercial General Liability insurance written on an occurrence basis (Insurance Service Office policy form CG 0001 or insurer's equivalent) in the amount of \$5,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. The insurance policy shall be amended to provide that the general aggregate limit shall apply separately to the work under this contract or the general aggregate shall be twice the required per occurrence limit.

(2) Business Automobile Liability insurance insuring all owned, non-owned and hired automobiles - coverage code 1 "any auto" (Insurance Service Office policy form CA 0001 or insurer's equivalent) in the amount of \$5,000,000 combined single limit per accident for bodily injury and property damage.

(3) Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance with the statutory Workers' Compensation limits as required by the Labor Code of the State of California and \$1,000,000 per accident for bodily injury and disease Employers Liability. The CONTRACTOR and all subcontractors shall cover or insure all of their employees working on or about the construction site regardless of whether such coverage or insurance is mandatory or merely elective under the law.

(4) Installation Floater Insurance: the CONTRACTOR shall provide a certificate(s) of insurance showing that he has obtained for the period of the contract an Installation Floater to cover machinery and equipment of all kinds during transit, installation, and testing at the CITY's premises. At the same time, the CONTRACTOR shall provide the insurance endorsement(s) on the forms provided as a part of the Contract Documents. Such insurance shall include as additional insureds: the CITY, the, the CITY's Representative, and their consultants, and each of their directors, officers, and employees, as their interest may appear, to the extent of CONTRACTOR'S indemnity obligation assumed hereunder.

(c) The insurance policies required above shall contain or be endorsed to contain the following specific provisions.

(1) Commercial General Liability and Automobile Liability

(i) The CITY and its Board Members, officers, employees, agents and volunteers are added as insureds to the extent of CONTRACTOR'S indemnity obligation assumed hereunder. (Commercial General Liability ISO form 2010 11 85 or insurer's exact equivalent).

(ii) The CONTRACTOR's insurance shall be primary insurance as respects the CITY, its Board Members, officers, employees, agents and volunteers and any insurance or self insurance maintained by the CITY shall be excess of the CONTRACTOR's insurance and shall not contribute to it.

(iii) Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage under the policy provided to the CITY, its Board Members, officers, employees, agents and volunteers.

(iv) The policies shall contain a waiver of transfer rights of recovery to the extent of CONTRACTOR'S negligence ("waiver of subrogation") against the CITY, its Board Members, officers, employees, agents and volunteers for any claims arising out of the work of the CONTRACTOR.

(v) The policies may provide coverage which contains deductible or self insured retentions. Such deductible and/or self insured retentions shall not be applicable with respect to the coverage provided to the CITY under such policies. The CONTRACTOR shall be solely responsible for deductible and/or self insured retention and the CITY, at its option, may require the CONTRACTOR to secure the payment of such deductible or self insured retentions by a surety bond or an irrevocable and unconditional letter of credit. The insurance policies that contain deductibles or self insured retentions in

excess of \$25,000 per occurrence shall not be acceptable without the prior approval of the CITY.

(vi) Prior to start of work under the contract, the CONTRACTOR shall file with the CITY evidence of insurance from an insurer or insurers certifying to the required coverage. The coverage shall be evidenced on an ACCORD Certificate of Insurance form (latest version) and be signed by an authorized representative of the insurer(s). A copy of form ISO 2010 required above shall be attached to the Certificate of Insurance at the time that it is filed with the CITY. Should the required coverage be furnished under more than one policy of insurance, the CONTRACTOR may submit as many certificates of insurance as needed to provide the required amounts. In the event that the certificate furnished by the CONTRACTOR does not adequately verify the required coverage, the CITY has the right to require the CONTRACTOR to provide copies of the specific endorsements or policy provisions actually providing the required coverage. The CITY may with reasonable prior notice to CONTRACTOR, require the CONTRACTOR to provide certified copies of any insurance coverage required by this contract provided, however, that CONTRACTOR may cause to have confidential or proprietary information redacted. The receipt of such policy or policies shall not confer responsibility upon the CITY as to sufficiency of coverage.

(2) All Coverages:

Each policy required above shall contain a policy cancellation clause that provides that the policy shall not be canceled or otherwise terminated by the insurer or the CONTRACTOR or reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the CITY, Attention: Project Manager.

(d) All insurance required by this contract shall be placed with insurers licensed by the State of California to transact insurance business of the types required herein. Each insurer shall have a current Best Insurance Guide rating of not less than A:VII unless prior approval is secured from the CITY as to the use of such insurer.

(e) The CONTRACTOR shall require each of its subcontractors to carry insurance in amounts suitable given the nature of their respective work. CONTRACTOR will forward separate certificates and endorsements furnished by each subcontractor to the CITY.

### **Section 11 – Indemnification**

(a) To the fullest extent permitted by law, the CONTRACTOR shall defend, indemnify and hold harmless the CITY, the CITY's Representative, and their consultants,

and each of their directors, officers, agents, and employees from and against all claims, damages, losses, expenses, and other costs, including costs of defense and reasonable attorneys' fees, arising out of both on and off the jobsite, personal injury, bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself), to the extent caused by any negligence or willful misconduct of the CONTRACTOR, any subcontractor, any supplier, of anyone whose acts CONTRACTOR may be liable under the laws of California.

(b) In any and all claims against the indemnified parties by any employee of the CONTRACTOR, any subcontractor, any supplier, of anyone for whose acts CONTRACTOR may be liable, the indemnification obligation under the first and fourth paragraphs in this article on INDEMNITY shall not be limited in any way by any limitation on the amount of damages, compensation, or benefits payable, by or for the CONTRACTOR, or any subcontractor, or any supplier, or other persons under workers' compensation acts, disability benefit acts, or other employee acts.

### **Section 12– Payment Bond**

(a) Before beginning the performance of the work, CONTRACTOR shall file a payment bond with the CITY for its approval and acceptance. The payment bond shall be in the sum of one hundred percent (100%) of the contract price.

(b) The Payment Bond shall be in substantially the form of the bond attached hereto. The bond shall be executed by a representative of the surety having no financial interest in the CONTRACTOR. The payment bond shall be separate and distinct from any other bond required by this contract. The bond shall be equivalent quality to a Standard & Poor's rating of A:VII or higher.

### **Section 13 – Performance Bond**

(a) Before beginning the performance of the work, CONTRACTOR shall file a performance bond with the CITY for its approval and acceptance. The performance bond shall be in the sum of one hundred percent (100%) of the contract price. The bond shall be payable by surety or sureties to CITY if CONTRACTOR fails to fully perform his obligations hereunder.

(b) The performance bond shall be in substantially the form of the performance bond attached hereto. The bond shall be executed by a representative of the surety having no financial interest in the CONTRACTOR. The performance bond

shall be separate and distinct from any other bond required by this contract. The bond shall be equivalent quality to a Standard & Poor's rating of A:VII or higher.

### **ARTICLE 3 – PERFORMANCE**

#### **Section 14 – Time for Completion**

(a) Within 15 days of the execution of this Agreement by all parties, CITY shall tender a Notice to Proceed to CONTRACTOR. CONTRACTOR shall commence work on this project no later than 30 days from the date of the Notice to Proceed.

(b) The work shall be completed within 210 calendar days from the date of the Notice to Proceed.

(c) If the work is not completed before this date, the CITY will suffer damage. It is impractical and infeasible to determine the amount of damage. The CONTRACTOR shall pay to the CITY, as fixed and liquidated damages and not as a penalty, the sum of \$1000.00 (One Thousand Dollars) each and every calendar day of delay. The CONTRACTOR and CONTRACTOR's Surety shall be liable for the amount. The CONTRACTOR shall not be charged liquidated damages because of any delays in the completion of the work due to unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR. The CONTRACTOR shall not be charged any liquidated damages due to a delay caused by any approved change order where the CITY has as approved an extension of the completion date.

(d) Within ten (10) days from the beginning of any such delay the CONTRACTOR shall notify the CITY in writing of the cause of delay. CITY shall ascertain the facts and extent of the delay and extend the time for completing the work if in CITY'S judgment the findings of fact justify such an extension. The CITY'S findings of fact shall be final and conclusive.

(e) The CITY may extend the time for completion in the best interest of the CITY. The CITY may extend the time for completion at the request of the CONTRACTOR for other than acts of God and situations beyond the control of both parties. Such extensions may increase the costs for engineering, inspection, supervision, incidental and overhead expenses that are directly chargeable to the contract. The party requesting the extension shall bear the direct costs. Such charges shall be deducted from or paid with the final payment.

(f) The CITY may deduct the liquidated damages from progress payments or from the final payment. The payment of progress payments shall not constitute a waiver of liquidated damages.

### **Section 15 – Force Majeure**

Any prevention, delay, nonperformance or stoppage due to any of the following causes shall excuse nonperformance for a period equal to the duration of the force majeure event. The causes referred to above are strikes, walkouts, labor disputes, failure of power, irresistible superhuman cause, acts of public enemies of the State or United States, riots, insurrections, civil commotion, restrictive governmental laws or regulations or controls applicable to this Agreement, casualties not contemplated by insurance provisions of this agreement, any act of CITY or any party for whom CONTRACTOR is not responsible, or other causes beyond the reasonable control of the party obligated to perform.

### **Section 16 – Extra Work**

(a) The CITY may require changes in, additions to, or deductions from the work to be performed or to the materials to be furnished under this contract. No extra work shall be performed or change made except pursuant to a written order from the CITY signed by the CONTRACTOR stating the extra work or change is authorized, and setting forth the basis upon which payment is to be made. No claim for additional compensation shall be valid unless pursuant to such a change order. The CITY may extend the completion date as part of any change order. Nothing in this section shall excuse the CONTRACTOR from proceeding with the prosecution of the changed work. When required by the CITY, the CONTRACTOR shall furnish an itemized breakdown of the quantities and prices used in computing the value of any ordered change.

(b) Change orders will result in an adjustment of the GMP amount. Adjustments in the amounts to be paid to the CONTRACTOR by reason of any such change, addition or deduction shall be determined pursuant to Section 3, Payment.

(c) If the CONTRACTOR contends a proposed change is a substantial revision in the character of the work, the question shall be immediately submitted for dispute resolution.

## **ARTICLE 4 – MISCELLANEOUS**

### **Section 17 – Risk of Loss Prior to Final Acceptance**

Except as set forth above relating to acts of God, risk of loss from total or partial destruction of the work, prior to final acceptance, shall be borne by CONTRACTOR to the extent caused by CONTRACTOR's negligence. CONTRACTOR shall repair or replace such damages or destroyed work, to its prior undamaged condition before being entitled to additional progress payments or final payment. Total or partial destruction or damage shall not excuse CONTRACTOR from completion of the work.

### **Section 18 – Termination: CONTRACTOR at Fault**

The CITY may terminate the Contract if the CONTRACTOR:

- (a) Persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- (b) Fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the CONTRACTOR and Subcontractors;
- (c) Disregards significant laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
- (d) Fails to communicate with CITY or otherwise fails to work with CITY in good faith toward completing the project in accordance with the Contract;
- (e) Files for bankruptcy or is involuntarily placed in bankruptcy; or
- (b) Otherwise is guilty of substantial breach of a provision of the Contract Documents.

In such event, the CITY provided that sufficient cause exists to justify such action, may with out prejudice to any other rights and remedies of CITY and after giving the CONTRACTOR and CONTRACTOR's surety, seven business days advance notice in writing. On receipt of such written notice, the CONTRACTOR shall preserve site construction materials, equipment and plant, and undertake immediate steps to remedy such default.

If the CONTRACTOR fails to initiate remedy such default within seven business days after receipt of such written notice, the CITY may terminate the CONTRACTOR's right to proceed with the work as to which default has occurred. Provided that the CITY has paid CONTRACTOR for amounts due for work completed prior to such default. Upon receipt of such written notice, the CONTRACTOR shall for that work affected by any such termination:

(1) Assist the CITY in making an inventory of materials and equipment in storage at the site, en route to the site, in storage or manufacture away from the site, and on order from suppliers;

(2) Assign to the CITY, subcontracts, supply contracts and equipment rental agreements all as designated by the CITY; and

(3) Remove from the site, all construction materials, equipment and plant listed in said inventory other than such construction materials, equipment and plant which are designated in writing by the CITY to be used by the CITY in completing such work.

(b) The CITY may complete the work to which notice applies by contract or otherwise, and may take possession of the materials, plant, tools, equipment, supplies and property furnished by the CONTRACTOR which is designated by the CITY in writing for such purpose.

(c) The expense of completing such work, together with a reasonable charge for administering a contract for such completion, shall be charged to the CONTRACTOR.

(d) When the CITY terminates the Contract for the reasons stated within this Article, the CONTRACTOR shall be entitled to receive payment for Work completed, equipment and material in production, furnished or stored, prior to the date of termination, and cancellation charges, less the cost to Owner of correcting any Work as a result of CONTRACTOR's failure to perform the Work in conformity with the requirements of this Contract. CONTRACTOR shall be entitled to overhead and mark-up for Work it completed and was accepted by the CITY.

### **Section 19 – Termination: CONTRACTOR not at Fault**

CITY may terminate the contract for its convenience and without cause upon ten (10) business days written notice to the CONTRACTOR. In such a case, the CONTRACTOR shall have no claims against the CITY, except for compensation for Work executed, (the value of work performed to the date of termination, for the cost of materials and equipment on hand, in storage, in transit, or on definite commitment, as of the date of termination if such materials and equipment would be needed in the work) and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work executed.

### **Section 20- Suspension: CONTRACTOR not at Fault**

CITY may, at any time, suspend performance of the Work or any part thereof. The CONTRACTOR shall be entitled to an extension of time corresponding to the period of time of such suspension, together with a reasonable additional period of time for demobilization and remobilization (if any) of its personnel assigned to the Jobsite. The, CONTRACTOR shall be reimbursed for its reasonable costs incurred during the period of suspension for maintaining its organization and facilities at the Jobsite and for demobilization and remobilization (if any) of its personnel assigned to the Jobsite.

**Section 21 - Termination: CITY at Fault**

The CONTRACTOR may terminate this Agreement if the Work is stopped for a period of 30 consecutive days through no act or fault of the CONTRACTOR, Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the CONTRACTOR, for any of the following reasons:

- (a) Issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;
- (b) An act of government, such as a declaration of national emergency which requires all Work to be stopped or;
- (c) Because the CITY has not made payment to CONTRACTOR for undisputed funds, or has not notified the CONTRACTOR of the reason for withholding payment of undisputed funds.

The CONTRACTOR may terminate this Agreement if the Work if through no act or fault of the CONTRACTOR, Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the CONTRACTOR, for any repeated suspensions, delays or interruptions of the entire Work by the CITY constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

For any one of the above reasons, CONTRACTOR may, upon 14 days advance written notice to the CITY, terminate the Agreement and recover from the Owner compensation for Work executed, (the value of work performed to the date of termination, for the cost of materials and equipment on hand, in storage, in transit, or on definite commitment, as of the date of termination if such materials and equipment would be needed in the work)

and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work executed.

## **Section 22– Resolution of Claims and Disputes**

(a) A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of contract terms, payment of money, an extension of time or other relief. Claims must be initiated by written notice. The responsibility to substantiate the Claim rests with the party making the Claim. Pending final resolution of a Claim, except as otherwise agreed in writing or provided within the Contract, the CONTRACTOR shall proceed diligently with performance of the Contract and the CITY shall make payments in accordance with the Contract documents.

(b) The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, CONTRACTOR and CITY each commit to resolving the disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions of the Work.

(i) CONTRACTOR and CITY will first attempt to resolve disputes or disagreements at the field level through discussions between CONTRACTOR's Representative and CITY's Representative.

(ii) If a dispute or disagreement cannot be resolved through CONTRACTOR's Representative and CITY's Representative, CONTRACTOR's Senior Representative and CONTRACTOR's Representative and CITY's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than 30 days after the request is made, to attempt to resolve such dispute or disagreement. 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.

(iii) If the dispute or disagreement is not resolved pursuant to the above, either party may take the matter to the mediation and arbitration.

(c) Mediation - Any Claim arising out of or related to the Agreement, except those resolved by the above, shall be subject to mediation as a condition precedent to

arbitration or the institution of legal for equitable or other binding dispute resolution proceedings by either party.

The parties shall endeavor to resolve their Claims by mediation which, unless parties mutually agreement otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect at the time of mediation. Request for mediation shall be filed in writing with the other party to the Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration or other binding dispute resolution proceedings but, in such event, mediation shall proceed in advance thereof or of legal and equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement or the parties or court order.

The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in place where the Project is located. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

(d) Arbitration - Claims, except those waived as provided within this Article for which initial decisions have not become final and binding, and which have not been resolved by mediation but which are not subject to arbitration shall be decided by arbitration which, unless the parties agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect at the time of the arbitration. The demand for arbitration shall be filed in writing with the other party to the Agreement and with the American Arbitration Association.

A demand for arbitration may be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations.

Any arbitration pursuant to this Section may be joined with an arbitration involving common issues of law or fact between the CITY and CONTRACTOR and any person or entity with whom the CITY or CONTRACTOR has a contractual obligation to arbitrate disputes which does not prohibit consolidations or joinder. No other arbitration arising

out of or relating to the CONTRACTOR Agreement shall include, by consolidation, joinder or any other manner, an additional person or entity not a party to the Agreement or not a party to an agreement with the CITY or CONTRACTOR, except by written consent containing a specific reference to the Agreement signed by the CITY and CONTRACTOR and any other person or entities sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in questions not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to the Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

### **Section 23 – Consequential Damages**

In no event will either Party be liable to the other Party for any incidental or consequential damages.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, or caused it to be executed as of the day, month and year first above written.

APPROVED:

CITY of Ridgecrest

BY: \_\_\_\_\_  
CITY Manager

APPROVED AS TO FORM:

BY: \_\_\_\_\_  
CITY Council

APPROVED:

Trane U.S. Inc

BY: \_\_\_\_\_  
Mary Ann Ulik, Contract Manager

(SEAL)

## **GENERAL PROVISIONS**

### **SECTION 1**

#### **DEFINITIONS, TERMS, AND ABBREVIATIONS**

##### **1-1 DEFINITIONS**

Whenever the following terms occur in the Contract Documents, the meaning shall be interpreted as follows:

**ACCEPTANCE, FINAL ACCEPTANCE** - The formal action by the City accepting the work as being complete. Upon City's receipt of written notice from Contractor that the Work are ready for final inspection and acceptance, City and Contractor shall inspect the Work and determine whether the same have been performed in accordance with this Agreement. If City considers the Work complete and performed in accordance with this Agreement, City shall issue a Certificate of Final Acceptance, to be executed by the Authorized Representative of City.

**ACCEPTED BID** - The bid (proposal) accepted by the City.

**AGREEMENT** - See CONTRACT

**BIDDER** - Any individual, partnership, corporation, joint venture, or other combination thereof submitting a proposal for the work contemplated, acting directly or through an authorized representative.

**CONTRACT** - The written agreement executed between the City and the Contractor covering the performance of the work.

**CONTRACTOR** - The individual, partnership, corporation, joint venture, or other combination thereof who has entered into the contract with the City for the performance of the work. The term "Contractor" means the Contractor or his authorized representative.

**CONTRACT DOCUMENTS** - The contract documents set forth in the AGREEMENT; its attached exhibits, project criteria, Contractor's proposal and any written modifications to the proposal accepted by the City, also any and all supplemental agreements amending or extending the work contemplated. Supplemental agreements are written agreements covering alterations, amendments, or extensions to the contract and include contract change orders.

**DAYS** - Unless otherwise specified, days shall mean calendar days.

CITY - The public entity identified as such in the AGREEMENT. The term "City" means the City of Ridgecrest or its authorized representative.

CITY'S REPRESENTATIVE - The person or firm authorized in writing by the City to represent it during the performance of the work by the Contractor. The City's Representative means the City's Representative or his assistants.

CONTRACTOR'S ENGINEER - Contractor's engineer of record

CONTRACTOR'S REPRESENTATIVE - Contractor's project manager

GUARANTEED MAXIMUM PRICE - The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor, subject to additions and deductions by Change Order as provided in the Contract Documents.

PLANS, DRAWINGS - The plans (drawings), or reproductions thereof, which show the location, character, dimensions, and details of the work to be done.

SPECIFICATIONS - The directions, provisions, and requirements contained in the General Provisions and Standard Specifications.

STANDARD SPECIFICATIONS - The contract documents identified or referenced as such.

SUBCONTRACTOR - An individual, partnership, corporation, joint venture, or other combination thereof who has a contract with the Contractor to perform any of the work at the site. Subcontractor also means an individual, partnership, corporation, joint venture, or other combination thereof who has a contract with another subcontractor to perform any of the work at the site.

SUBSTANTIAL COMPLETION - Prior to final acceptance, Contractor shall provide written notice to City that all or substantial portions of the work are substantially complete and request that City issue a Certificate of Substantial Completion and Acceptance. Substantial Completion is the date when the specified work have been performed or installed and are operating as required by this Agreement, with only minor work remaining as may be specified on a punch list agreed to by City and Contractor. Within a reasonable time thereafter, City and Contractor will inspect the specified Work to determine the status of completion. If City does not consider the specified Work substantially complete, it will notify Contractor in writing, giving the reasons therefor. If City considers any or all of the specified Work substantially complete, a Certificate of Substantial Completion and Acceptance will be issued as to such specified Work, executed by the Authorized Representative of City. Contractor's request for a Certificate of Substantial Completion and Acceptance shall not be unreasonably withheld or delayed by City. The Certificate of Substantial Completion shall specify the

date(s) for commencement of warranties for the accepted specified Work. There may be attached to the certificate a tentative list of items to be completed or corrected.

STANDARD DRAWINGS, STANDARD PLANS - That portion of the plans identified or referenced as such.

UTILITY - Public or private fixed works for the transportation of fluids, gases, power, signals, or communications.

WORK - Any and all obligations, duties, and responsibilities necessary to complete the construction assigned to, or undertaken by, the Contractor pursuant to the Contract Documents including all labor necessary to produce such construction and all materials, equipment, and supplies incorporated or to be incorporated in the construction. Also, the completed construction or parts thereof required to be provided under the Contract Documents.

## 1-2 TERMS

Wherever the terms "required," "permitted," "ordered," "designated," "directed," "prescribed," or terms of like import are used, it shall be understood that the requirements, permission, order, designation, prescription, or direction of the City's Representative is intended. Similarly, the terms "acceptable," "satisfactory," "or equal," or terms of like import shall mean acceptable to or satisfactory to the City's Representative, unless otherwise expressly stated. The word "provide" shall be understood to mean furnish and install. Whenever the context so requires, the singular shall include the plural, and the masculine and neuter genders shall each include the other.

## 1-3 ABBREVIATIONS

Wherever the following abbreviations are used, they shall have the meanings indicated:

AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AGA	American Gas Association
AI	The Asphalt Institute
AIA	American Institute of Architects
AIEE	American Institute of Electrical Engineers
AISC	American Institute of Steel Construction
AISI	American Iron & Steel Institute
ANSI	American National Standards Institute (formerly USASI, USAS, ASA)
API	American Petroleum Institute
APWA	American Public Works Association
AREA	American Railway Engineering Association
ASA	American Standards Association (Now ANSI)
ASCE	American Society of Civil Engineers
ASHRAE	American Society of Heating, Refrigerating, and Air-Conditioning Engineers
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
AWS	American Welding Society
AWWA	American Water Works Association
CRSI	Concrete Reinforcing Steel Institute
IEEE	Institute of Electrical and Electronics Engineers
NBFU	National Board of Fire Underwriters
NEMA	National Electrical Manufacturers Association
PCA	Portland Cement Association
State	California Standard Specifications,
SSPC	Steel Structures Painting Council

UBC Uniform Building Code, Pacific Coast  
Building Officials Conference of the  
International Conference of Building Officials  
U/L or UL Underwriters' Laboratories, Inc.  
USASI or USAS United States of America Standards Institute (Now ANSI)

## **SECTION 2**

### **PROPOSAL REQUIREMENTS AND CONDITIONS**

#### **2-1 CONTRACT DOCUMENTS**

The contract documents are set forth in the AGREEMENT and the definition of "Contract Documents" in the section on DEFINITIONS, TERMS, AND ABBREVIATIONS.

#### **2-2 LICENSE**

CONTRACTOR shall be licensed to conduct business in the state of California and licensed to perform the class of work defined by the Contract Documents.

#### **2-3 OWNERSHIP AND USE OF DOCUMENTS AND ELECTRONIC DATA**

Drawings, specifications and other documents including those in electronic form, prepared by the Contractor are Instruments of Service. The Contractor shall retain all common law, statutory and other reserved rights including copyright in those Instruments of Service furnished by him. Drawings, specifications, and other documents and materials and electronic data are furnished for use solely with respect to this Project.

Upon payment, the Contractor grants to the City a non-exclusive license to reproduce and use the Instruments of Service solely in connection with the Project, including the Project's further development by the City and other retained by the City for such purposes, provided that the City shall comply with all obligations, including prompt payment of sums when due, under the Agreement. Subject to the City's compliance with such obligations, such license shall extend to those parties retained by the City for such purposes, including other design professionals. The City shall not otherwise assign or transfer any license herein to another party without the prior written agreement of the Contractor. Any unauthorized reproduction or use of the Instruments of Service by the City or others shall be at the City's sole risk and expense without liability to the Contractor. If this Agreement is terminated for any reason other than default by CONTRACTOR, prior to the completion of the Contractor's services under this Agreement, this license shall be terminated.

Prior to any electronic exchange by the parties of the Instruments of Service or any other document or materials to be provided by one party to the other, the City and Contractor shall agree in writing on the specific conditions governing the format thereof, including any special limitations or licenses not otherwise provided in the Contractor's documents.

If this Agreement is terminated for any reason other than default of the Owner, each of the Contractor's design professionals shall be contractually required to convey to the Owner a non-exclusive license to use the Instruments of Service for the completion, use and maintenance of the Project, conditioned upon the City's written notice to that design professional of the City's assumption of the Contractor's contractual duties to that design professional and payment to that design professional of all amounts due to that design professional and its consultants. If the City does not assume the remaining duties and responsibilities of the Contractor to that design professional under this Agreement, then the City shall indemnify and hold harmless that design professional from all claims and any expense, including legal fees, which that design professional shall incur by reasons of the City's use of such Instruments of Service.

#### 2-4 EXISTING CONDITIONS AND EXAMINATION OF CONTRACT DOCUMENTS

The CONTRACTOR represents that he has carefully examined the Contract Documents and the site where the work is to be performed and that he has familiarized himself with all local conditions and federal, state and local laws, ordinances, rules, and regulations that may affect in any manner the performance of the work. The CONTRACTOR further represents that he has studied all surveys and investigation reports about subsurface and latent physical conditions pertaining to the jobsite, that he has performed such additional surveys and investigations as he deems necessary to complete the work at his Guaranteed Maximum Price, and that he has correlated the results of all such data with the requirements of the Contract Documents. The CONTRACTOR has investigated and is satisfied as to the conditions to be encountered, including locality, uncertainty of weather and all other contingencies, and as to the character, quality, quantities, and scope of the work.

The plans and specifications for the work show subsurface conditions or otherwise hidden conditions as they are supposed or believed by the City to exist; but it is not intended or to be inferred that the conditions as shown thereon constitute a representation that such conditions are actually existent. Where the City or their consultants have made investigations of subsurface conditions in areas where the work is to be performed, such investigations were made only for the purpose of study and design. The conditions indicated by such investigations apply only at the specific location of each boring or excavation at the time the borings or excavations were made. Where such investigations have been made, Contractor may inspect the records as to such investigations subject to and upon the conditions hereinafter set forth. The inspection of the records shall be made at the office of the City's consultant.

When a log of test borings showing a record of the data obtained by the investigation of subsurface conditions by the City, or their consultants is included with the plans or other documents, it is expressly understood and agreed that said log of test borings does not constitute a part of the contract, represents only the opinion of the City or the or their consultants as to the character of the materials encountered by them in the test borings, is included in the plans or other documents only for the convenience of Contractor, and its use is subject to all of the conditions and limitations set forth in this article.

The availability or use of information described in this article is not to be construed in any way as a waiver of the provisions of the first paragraph in this article and Contractor is cautioned to make such independent investigations and examination as he deems necessary to satisfy himself as to conditions to be encountered in the performance of the work.

If conditions are encountered at the site which are 1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contractor Documents, or 2) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contractor's Documents, then the observing party shall give notice of the other party promptly before conditions are disturbed and in no event later than 21 days after first observation of the conditions. The City shall promptly investigate such conditions and, if they differ materially and cause and increase or decrease in the Contractor's cost of, or time required for performance of any part of the Work, shall negotiate with the Contractor an equitable adjustment in the Guaranteed Maximum Price or contract time, or both.

## 2-5 SUBCONTRACTORS

CONTRACTOR shall notify CITY of the following information:

(i) The name and location of the place of business of each subcontractor performing work, labor or render construction services and each subcontractor licensed by the State of California specially fabricating and installing improvements according to detailed drawings or the plans and specifications, in an amount in excess of one-half of one percent of the CONTRACTOR's total bid.

(ii) The portion of the work to be done by each subcontractor.

## SECTION 3

### AWARD AND EXECUTION OF CONTRACT

#### 3-1 BONDS

The successful bidder, simultaneously with the execution of the AGREEMENT, shall furnish a payment bond and a performance bond each in an amount equal to 100 percent of the contract amount, pursuant to Section 995.710 of the Code of Civil Procedure. Bonds shall be furnished by surety companies satisfactory to the City on

the forms furnished as part of the Contract Documents. Surety companies, to be acceptable to the City, must be authorized to do business and have an agent for service of process in California.

### 3-2 INSURANCE REQUIREMENTS

The successful bidder will be required to furnish the City proof of full compliance with all insurance requirements as specified in the AGREEMENT. The forms of certificate of insurance and endorsement which the Contractor, will be required to furnish are included as a part of the Contract Documents.

## **SECTION 4**

### **SCOPE OF WORK**

#### 4-1 WORK TO BE DONE

The work to be done consists of furnishing all transportation, labor, materials, tools, equipment, services, permits, utilities and all other items which are necessary or appurtenant to construct and complete the entire project and construct the project designated in the Contract Documents, and to leave the grounds in a neat and presentable condition.

#### 4-2 OBSTRUCTIONS

The Contractor shall remove and dispose of all structures, debris, or other obstructions of any character necessary to accommodate the work. Where such obstructions consist of improvements not required by law to be removed by the City thereof, all such improvements shall be removed, maintained, and permanently replaced by the Contractor at his expense except as otherwise specifically provided in the Contract Documents.

#### 4-3 UTILITIES

The City has endeavored to provide information as to the existence of utilities at the site of the work from the records of the City's of known utilities in the vicinity of the work. The positions of these utilities as derived from such records are shown on the plans. The service connections to these utilities may not be shown on the plans.

The Contractor shall make his own investigations, including exploratory excavations, to determine the locations and type of existing service laterals or appurtenances when their presence can be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the site of the work. If the Contractor discovers utility facilities not identified in the plans or specifications or in a

position different from that shown in the plans and specifications, he shall immediately notify in writing the City's Representative and the City of the utility facility.

The City shall have the responsibility for the timely removal, relocation, protection, and temporary maintenance of existing main or trunkline utility facilities which are not indicated in the plans and specifications with reasonable accuracy.

In case it should be necessary to remove, relocate, protect, or temporarily maintain a utility because of interference with the work, the work on such utility shall be performed and paid for as follows:

When it is necessary to remove, relocate, protect, or temporarily maintain an existing main or trunkline utility facility not indicated in the plans and specifications with reasonable accuracy, the City will compensate the Contractor for the costs of locating, for the costs of engineering and plan preparation, for the costs of repairing damage not due to the failure of the Contractor to exercise reasonable care, for the costs of removing, relocating, protecting, or temporarily maintaining such utility facilities, and for the costs for labor and equipment on the site necessarily idled during such work. These costs, the work to be done by the Contractor in locating, preparing plans, removing, relocating, protecting, or temporarily maintaining such utility facilities shall be covered by a written change order conforming to the provisions of the Contract Documents . The City may make changes in the alignment and grade of the work to obviate the necessity to remove, relocate, protect, or temporarily maintain such utility facilities or to reduce the costs of the work involved in removing, relocating, protecting, or temporarily maintaining such utility facilities. Changes in alignment and grade will be ordered in accordance with the Contract Documents . If such changes in alignment and grade alter or are materially different from those indicated in the Contract Documents, then the observing party shall give notice of the other party promptly before conditions are disturbed and in no event later than 21 days after first observation of the conditions. The City shall, promptly investigate such conditions and, if they cause an increase or decrease in the Contractor's cost of, or time required for performance of any part of the Work, shall negotiate with the Contractor an equitable adjustment in the Guaranteed Maximum Price or contract time, or both

When it is necessary to remove, relocate, protect, or temporarily maintain a utility (other than [1] existing main or trunkline utility facilities not indicated in the plans and specifications with reasonable accuracy, or [2] existing service laterals or appurtenances when their presence cannot be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the site of the work) the cost of which is not required to be borne by the City thereof, the Contractor shall bear all expenses incidental to the work on the utility or damage

thereto. The work on the utility shall be done in a manner satisfactory to the City thereof; it being understood that the City or the utility has the option of doing such work with his own forces, or permitting the work to be done by the Contractor.

The right is reserved to governmental agencies and to City's of utilities to enter at any time upon any street, alley, right-of-way, or easement for the purpose of making changes in their property made necessary by the work and for the purpose of maintaining and making repairs to their property.

#### 4-4 PLANS AND SPECIFICATIONS FURNISHED BY THE CITY

The Contractor shall keep one set of approved plans and specifications in good order available to the City's Representative at the site of the work.

#### 4-5 FINAL CLEANUP

Upon completion and before making application for acceptance of the work, the Contractor shall clean all rights-of-way, streets, borrow pits, and all other grounds occupied by him in connection with the work of all rubbish, excess materials, temporary structures, and equipment, and all parts of the work and grounds occupied by him shall be left in a neat and presentable condition.

### **SECTION 5**

#### **QUALITY OF THE WORK**

##### 5-1 AUTHORITY OF THE CITY'S REPRESENTATIVE

The Contractor's Consultant shall decide any and all questions which may arise as to the interpretation of the plans and specifications and shall have authority to disapprove or reject materials and equipment furnished and work performed which, in his opinion, is not in accordance with the Contract Documents.

##### 5-2 SUPPLEMENTAL DRAWINGS

The plans may be supplemented by such drawings as are deemed by the City necessary to clarify or modify the work. All such drawings delivered to the Contractor by the City's Representative shall be deemed written instructions to the Contractor. If the Contractor believes that any supplemental drawings call for changes in the work for which the contract amount or time for completion should be changed, he shall not proceed with the changes in the work so called for and shall within seven days of the receipt of the supplemental drawings notify the City's Representative in writing of his

estimate of the changes in the contract amount and time for completion he believes to be appropriate.

No payment for changes in the work will be made and no change in the time for completion by reason of changes in the work will be made, unless the changes are covered by a written change order approved by the City in advance of the Contractor's proceeding with the changed work.

### 5-3 CONFORMITY WITH CONTRACT DOCUMENTS AND ALLOWABLE DEVIATIONS

The work shall conform to the lines, grades, dimensions, tolerances, and material and equipment requirements shown on the plans or set forth in the specifications. Although measurement, sampling, and testing may be considered evidence as to such conformity, the Contractor's Consultant shall be the sole judge as to whether the work or materials deviate from the plans and specifications, and his decision as to any allowable deviations therefrom shall be final.

If specific lines, grades, and dimensions are not shown on plans, those furnished by the City's Representative shall govern.

### 5-4 MANUFACTURER'S INSTRUCTIONS

All materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, supplier, or distributor, except as otherwise specifically provided in the Contract Documents.

### 5-5 COORDINATION OF PLANS AND SPECIFICATIONS

The specifications, plans, and Project Design Engineering Drawings are essential parts of the Agreement, and a requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for the complete work. In the event of an apparent difference between plans and specifications, reference shall be made to the Contractor's Consultant whose decision thereon shall be final.

### 5-6 INTERPRETATION OF PLANS AND SPECIFICATIONS

Figured dimensions on drawings shall govern, but work not dimensioned shall be as directed. Work not particularly shown or specified shall be the same as similar parts that are shown or specified. Large-scale details shall take precedence over smaller scale drawings as to shape and details of construction. Specifications shall govern as to materials and workmanship. Drawings and specifications are intended to be fully complementary and to agree. The specification calling for the higher quality material or workmanship shall prevail. Materials or work described in words which so applied have

a well-known technical or trade meaning shall be deemed to refer to such recognized standards. In the event of any discrepancy between any drawings and the figures thereon, the figures shall be taken as correct. In the event of any doubt or question arising respecting the true meaning of the plans or specifications, reference shall be made to the Contractor's Consultant whose decision thereon shall be final.

#### 5-7 ERRORS OR DISCREPANCIES NOTED BY CONTRACTOR

If the Contractor observes that any plans or specifications are at variance with any applicable law, ordinance, regulation, order, or decree, he shall promptly notify the City's Representative in writing of such conflict. The Contractor shall remedy such variance with no resulting increase in the Guaranteed Maximum Price amount.

#### 5-8 SUPERVISION AND SUPERINTENDENCE

The 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. The Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. The Contractor shall be responsible to see that the completed work complies with the Contract Documents.

The Contractor shall designate and keep on the work at all times during its progress a competent superintendent who shall not be replaced without written notice to the City's Representative. The superintendent will be the Contractor's representative at the site and shall have authority to act on behalf of the Contractor. All communications given to the superintendent shall be as binding as if given to the Contractor. During periods when the work is suspended, the Contractor shall make appropriate arrangements for any emergency work which may be required.

Whenever the superintendent is not present on any particular part of the work where the City's Representative may desire to inform the Contractor relative to interpretation of the plans and specifications or to disapproval or rejection of materials or work performed, the City's Representative may so inform the foreman or other worker in charge of the particular part of the work in reference to which the information is given. Within 24 hours thereof, the City's Representative shall notify the Contractor's Representative of the information so given; this information shall be as binding as if given to the superintendent.

#### 5-9 SHOP DRAWINGS

Shop Drawings are drawings, diagrams, illustrations, schedules, performance charts, brochures, and other data which are prepared by the Contractor or any subcontractor, manufacturer, supplier, or distributor and which illustrate some portion of the work.

The Contractor shall review, mark with his approval, and submit for review by the City's Representative Shop Drawings as called for in the Standard Specifications or requested by the City's Representative. Drawings shall be submitted in sextuplet to the City's Representative and be accompanied by a letter of transmittal listing the drawings submitted. Drawings shall show the name of the project, the name of the Contractor, and, if any, the names of suppliers, manufacturers, and subcontractors. Shop Drawings shall be submitted with promptness and in orderly sequence so as to cause no delay in prosecution of the work.

Shop Drawings shall be complete in all respects. If the Shop Drawings show any deviations from the requirements of the plans and specifications because of standard shop practices or other reasons, the deviations and the reasons therefor shall be set forth in the letter of transmittal.

By submitting Shop Drawings, the Contractor represents that material, equipment, and other work shown thereon conforms to the plans and specifications, except for any deviations set forth in the letter of transmittal.

Within 14 calendar days after receipt of said drawings, the City's Representative will return two of the copies of the drawings to the Contractor with any comments noted thereon. If so noted by the City's Representative, the Contractor shall correct the drawings and resubmit them in the same manner as specified for the original submittal. The Contractor in the letter of transmittal accompanying resubmitted Shop Drawings shall direct specific attention to revisions other than the corrections requested by the City's Representative on previous submittals.

The review by the City's Representative is only of general conformance with the design concept of the project and general compliance with the plans and specifications and shall not be construed as relieving the Contractor of the full responsibility for: providing materials, equipment, and work required by the contract; the proper fitting and construction of the work; the accuracy and completeness of the Shop Drawings; selecting fabrication processes and techniques of construction; and performing the work in a safe manner.

No portion of the work requiring a Shop Drawing submittal shall be commenced until the submittal has been reviewed by the City's Representative and returned to the Contractor with a notation indicating that resubmittal is not required.

If the Contractor believes that any Shop Drawing or communication relative thereto calls for changes in the work for which the contract amount or time for completion should be changed, he shall not proceed with the changes in the work so called for and shall promptly notify the City's Representative in writing of his estimate of the changes in the contract amount and time for completion he believes to be appropriate. No payment for changes in the work will be made and no change in the time for completion by reason of changes in the work will be made, unless the changes are covered by a written change

order approved by the City in advance of the Contractor's proceeding with the changed work.

## 5-10 QUALITY AND SAFETY OF MATERIALS AND EQUIPMENT

All equipment, materials, and supplies to be incorporated in the work shall be new, unless otherwise specified. All equipment, materials, and supplies shall be produced in a good and workmanlike manner. When the quality of a material, process, or article is not specifically set forth in the plans and specifications, the best available quality of the material, process, or article shall be provided.

Whenever any material, process, or article is indicated or specified by grade, patent or proprietary name, or by name of manufacturer, such specification shall be deemed to be used for the purpose of facilitating description of the materials, process, or articles desired and shall be deemed to be followed by the words "or (approved) equal," and the Contractor may offer any material, process, or article which shall be substantially equal in every respect to that so indicated or specified; provided, however, that if the material, process, or article offered by the Contractor is not, in the opinion of the City's Representative, equal in every respect to that specified, then the Contractor must furnish the material, process, or article specified or one that in the opinion of the City's Representative is the substantial equal or better in every respect. In the event that the Contractor furnishes material, process, or article more expensive than specified, the difference in cost of such material, process, or article so furnished shall be borne by the Contractor.

In accordance with Section 3400 of the Public Contract Code, the Contractor shall submit data substantiating requests for substitution of "equal" items within 35 days after award of the contract. This 35-day period of time is included in the number of days allowed for the completion of the work.

All materials, equipment, and supplies provided shall, without additional charge to City, fully conform with all applicable state and federal safety laws, rules, regulations, and orders, and it shall be Contractor's responsibility to provide only such materials, equipment, and supplies notwithstanding any omission in the Contract Documents therefor or that a particular material, equipment, or supply was specified.

Materials furnished and work performed hereunder shall be subject to inspection and testing by CITY's authorized agents at CITY's expense. If such inspection and testing reveals non-compliance with the requirements of this contract and is confirmed by Contractor's Consultant, the CONTRACTOR shall bear the cost of necessary corrective measures as well as the cost of subsequent inspecting and testing. The inspection of the work shall not relieve the CONTRACTOR of the obligations under the contract. Even though equipment, materials, or work required under the contract have been inspected, accepted, and estimated for payment, the CONTRACTOR shall replace or repair any such equipment, materials, or work found to be defective or otherwise not to comply

with the requirements of the contract up to the end of the maintenance and guarantee period.

#### 5-11 STANDARDS, CODES, SAMPLES, AND TESTS

Whenever reference is made to a standard, code, specification, or test and the designation representing the date of adoption or latest revision thereof is omitted, it shall mean the latest revision of such standard, code, specification, or test in effect on the day this Agreement is executed.

Tests shall be made in accordance with commonly recognized procedures of technical organizations and such special procedures as may be prescribed elsewhere in the plans and specifications. The Contractor shall furnish without charge such samples for testing as may be required by the City's Representative.

#### 5-12 INSPECTION BY CITY'S REPRESENTATIVE

The City's Representative shall at all times have access to the work during construction and shall be furnished with every reasonable facility for ascertaining full knowledge respecting the progress, workmanship, and character of materials and equipment used and employed in the work.

Whenever the Contractor varies the normal period during which work or any portion of it is carried on each day, he shall give timely notice to the City's Representative so that the City's Representative may, if he wishes, be present to inspect the work in progress. If the Contractor fails to give such timely notice, any work done in the absence of the City's Representative will be subject to rejection.

The Contractor shall give timely notice to the City's Representative in advance of backfilling or otherwise covering any part of the work so that the City's Representative may, if he wishes, inspect such part of the work before it is concealed.

The inspection, if any, by the City's Representative of the work shall not relieve the Contractor of any of his obligations to fulfill the contract as prescribed. Defective work shall be made good, and materials and equipment furnished and work performed which is not in accordance with the Contract Documents may be rejected notwithstanding the fact that such materials, equipment, and work have been previously inspected by the City's Representative or that payment therefor has been included in an estimate for payment.

#### 5-13 REMOVAL OF DEFECTIVE AND UNAUTHORIZED WORK

Any work which does not conform to the requirements of the Contract Documents shall be remedied or removed and replaced by the Contractor, together with any other work which may be displaced in so doing, and no compensation will be allowed him for such

removal, replacement, or remedial work. All nonconforming materials shall be immediately removed from the site.

Any work done beyond the lines and grades shown on the plans or established by the City's Representative or any changes in, additions to, or deductions from the work done without written authority will be considered as unauthorized and will not be paid for. Work so done may be ordered remedied, removed, or replaced at the Contractor's expense.

Upon failure on the part of the Contractor to comply promptly with any order of the City's Representative made under the provisions of this article, the City's Representative shall have authority to cause nonconforming materials, rejected work, or unauthorized work to be remedied, removed, or replaced at the Contractor's expense and to deduct the costs from any moneys due or to become due the Contractor.

#### 5-14 ONE-YEAR GUARANTEE

The performance bond and the payment bond shall continue in full force and effect for the guarantee period.

Contractor warrants that, for a period of one year from the date of Final Acceptance (the "Warranty Period"), Contractor-manufactured equipment installed hereunder and the installation work included within the Work (i) shall be free from defects in material, manufacture, and workmanship and (ii) shall have the capacities and ratings set forth in Contractor's catalogs and bulletins. Notwithstanding the foregoing, with respect to selected equipment to be identified in Certificate of Substantial Completion), Contractor shall have the option of commencing the warranty period upon the earlier of (a) the date of initial startup of such selected equipment and (b) the date of beneficial use set forth in the Article on USE OF COMPLETED PORTIONS. For Contractor-manufactured equipment not installed by Contractor the Warranty Period is the lesser of 12 months from initial start-up or 18 months from the date of shipment. Equipment and/or parts that are not manufactured by Contractor are not warranted by Contractor and have such warranties as may be extended by the respective manufacturer. If such defect in Contractor-manufactured equipment or the installation work is discovered within the Warranty Period, Contractor will correct the defect or furnish replacement equipment (or, at its option, parts therefor) and, if said Contractor-manufactured equipment was installed pursuant hereto, labor associated with the replacement of parts or equipment not conforming to this warranty. No liability whatsoever shall attach to Contractor until said equipment and Work have been paid for in full and then said liability shall be limited to Contractor's cost to correct the defective equipment or work and/or the purchase price of the equipment shown to be defective. Contractor's warranties expressly exclude any remedy for damage or defect caused by corrosion, erosion, or deterioration, abuse, modifications or repairs not performed by Contractor, improper operation, or normal wear and tear under normal usage. Contractor shall not be obligated to pay for the cost of lost refrigerant. Further warranty protection is available on an extra-cost basis.

THE WARRANTY AND LIABILITY SET FORTH IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES AND LIABILITIES, WHETHER IN CONTRACT OR IN NEGLIGENCE, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL (INCLUDING WITHOUT LIMITATION LOST PROFITS), OR PUNITIVE DAMAGES. NO REPRESENTATION OR WARRANTY OF MERCHANTABILITY OR FITNESS OF PURPOSE IS MADE REGARDING PREVENTION BY THE SCOPE OF SERVICES, OR ANY COMPONENT THEREOF, OF MOLD, FUNGUS, BACTERIA, MICROBIAL GROWTH, OR ANY OTHER CONTAMINATES. CONTRACTOR SPECIFICALLY DISCLAIMS ANY LIABILITY IF THE SCOPE OF SERVICES OR ANY COMPONENT THEREOF IS USED TO PREVENT OR INHIBIT THE GROWTH OF SUCH MATERIALS.

#### 5-15 EQUIPMENT

The CONTRACTOR must furnish adequate equipment and facilities to perform properly the work in a workmanlike manner in accordance with these specifications. Such equipment and facilities must be in a good state of repair and maintained in such state during the progress of the work and shall meet requirements of applicable ordinances and laws. No worn or obsolete equipment shall be used, and in no case shall the maker's rating of capacity for equipment be exceeded.

### **SECTION 6**

#### **PROSECUTION AND PROGRESS**

##### 6-1 SUBCONTRACTING

If the Contractor should subcontract any part of this contract, the Contractor shall be as fully responsible to the City for the acts and omissions of his subcontractor and of the persons either directly or indirectly employed by his subcontractor as he is for the acts and omissions of persons directly employed by him. Nothing contained in the Contract Documents shall create any contractual relationship between any subcontractor and the City. The Contractor shall cause every subcontractor to be bound by the terms of the Contract Documents.

The divisions and sections of the specifications and the identifications of any drawings shall not control the Contractor in dividing the work among subcontractors.

##### 6-2 ASSIGNMENT

The performance of the contract may not be assigned, except upon the written consent of the City. Consent will not be given to any proposed assignment which would relieve the original Contractor or his surety of their responsibilities under the contract, nor will the City consent to any assignment of a part of the work under the contract.

Upon obtaining a prior written consent of the City, the Contractor may assign moneys due or to become due him under the contract, to the extent permitted by law, but any assignment of moneys shall be subject to all proper setoffs in favor of the City and to all deductions provided for in the contract, and particularly all money withheld, whether assigned or not, shall be subject to being used by the City for the completion of the work in the event that the Contractor should be in default therein.

No assignment of this contract will be approved unless it shall contain a provision that the funds to be paid to the assignee under the assignment are subject to a prior lien for services rendered or materials supplied for performance of the work called for under the contract in favor of all persons, firms, or corporations rendering such services or supplying such materials and that the City may withhold funds due until all work required by the Contract Documents is completed to the City's satisfaction.

#### 6-3 CONTRACTOR'S CONSTRUCTION SCHEDULE AND COST BREAKDOWN

Within ten days after execution of the contract, the Contractor shall deliver to the City's Representative a construction progress schedule and cost breakdown in bar chart form showing the proposed dates of commencement and completion and cost of each of the various parts of the work and the anticipated amount of each monthly payment that will become due the Contractor in accordance therewith.

#### 6-4 TIME FOR COMPLETION AND FORFEITURE DUE TO DELAY

The Contractor shall complete all or any designated portion of the work called for under the contract within the time set forth in Exhibit B in the AGREEMENT. The City may declare the Contractor in default, should the Contractor fail to perform any covenant or condition contained in the Contract Documents substantially different than the time period specified, which shall constitute a material breach of this contract entitling the City to terminate the contract unless the Contractor applies for, and receives, an extension of time in accordance with the procedures set forth in this article and the article on EXTENSION OF TIME. City shall provide Contractor with an opportunity to cure, consistent with Section 17 of the Agreement.

Failure of the City to insist upon the performance of any covenant or condition within the time period specified in the Contract Documents shall not constitute a waiver of the Contractor's duty to complete performance within the designated periods unless the waiver is in writing.

The City's agreement to waive a specific time provision or to extend the time for performance shall not constitute a waiver of any other time provisions contained in the

Contract Documents. Failure of the Contractor to complete performance promptly within the additional time authorized in the waiver or extension of time agreement shall constitute a material breach of this contract.

The Contractor shall not be deemed in breach of this contract and no forfeiture due to delay shall be made because of any delays in the completion of the work due to causes beyond the reasonable control and without the fault or negligence of the Contractor, provided the Contractor requests an extension of time in accordance with the procedures set forth in this article and the article on EXTENSION OF TIME. Causes of delay beyond the control of Contractor shall include acts of God, acts of a public enemy, acts of the government, acts of the City, or acts of another contractor in the performance of a contract with the City, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and weather, or delays of subcontractors due to such causes, or delays caused by failure of the City or the City of a utility to provide for removal or relocation of existing utility facilities. Delays caused by the negligence of Contractor or his agents, servants, employees, officers, subcontractors, directors, or of any party subcontracting with Contractor to perform part or all of the work or to supply any equipment or materials shall not be excusable delays.

The Contractor will be compensated for damages incurred due to delays for which the City is responsible if such delays are beyond the Contractor's control in the circumstances involved and were not within the contemplation of the parties when the contract was awarded to the Contractor. Such actual costs will be determined by the dispute resolution process.

#### 6-5 EXTENSION OF TIME

The time specified for completion of all of the work or any part of the work may be extended only by a written change order executed by the City or other written form executed by the City.

Requests for an extension of time must be delivered to the City's Representative within ten business days following the date of the occurrence which caused the delay. The request must be submitted in writing and must state the cause of the delay, the date of the occurrence causing the delay, and the amount of additional time requested. Requests for extensions of time shall be supported by all evidence reasonably available or known to the Contractor which would support the extension of time requested. Requests for extensions of time failing to include the information specified in this article and requests for extensions of time which are not received within the time specified above shall result in the forfeiture of the Contractor's right to receive any extension of time requested.

When the Contractor has submitted a request for an extension of time in accordance with the procedures of this article and the article on TIME FOR COMPLETION AND FORFEITURE DUE TO DELAY, the Governing Body of the City will ascertain the facts and extent of the delay and extend the time for completing the work if, in its judgment,

the findings of fact justify such an extension, and its findings of facts thereon shall be final and conclusive. An extension of time may be granted by the Governing Body of the City after the expiration of the time originally fixed in the contract or as previously extended, and the extension so granted shall be deemed to commence and be effective from the date of such expiration.

Any extension of time shall not release the sureties upon any bond required under the contract.

## 6-6 USE OF COMPLETED PORTIONS

When the work or any portion of it is Substantially Complete to be utilized or placed into service, the City may with Contractor's written consent utilize such portions of the work and to place the operable portions into service and to operate same.

Upon said consent for utilization or operation by the City, the Contractor shall be relieved of the duty of: maintenance, security, heat, utilities, and insurance for the portions so utilized or placed into operation. With said utilization, the applicable warranty shall commence.

However, that nothing in this article shall be construed as relieving the Contractor of the full responsibility for completing the remaining work in its entirety, for making good defective work and materials, for protecting the work from damage it may cause, and for being responsible for damage and for the work as set forth in the General Provisions and other contract documents nor shall such action by the City be deemed completion and acceptance, and such action shall not relieve the Contractor, his sureties, or insurers of the provisions of the AGREEMENT.

## SECTION 7

### LEGAL RELATIONS AND RESPONSIBILITIES

#### 7-1 OBSERVING LAWS AND ORDINANCES

The Contractor shall keep himself fully informed of all applicable laws, ordinances, and regulations which in any manner affect those engaged or employed in the work or the materials used in the work or which in any way affect the conduct of the work and of all such laws, ordinances, and regulations of public bodies or tribunals having any jurisdiction or authority over same. If any discrepancy or inconsistency is discovered in the plans, specifications, or contract for the work in relation to any such law, ordinance, regulation, he shall forthwith report the same to the City's Representative in writing and cease operations on that part of the work until the City's Representative has given him appropriate instructions as provided for in the Contract Documents .

The Contractor shall at all times observe and comply with and shall cause all his agents, employees, subcontractors, and suppliers to observe and comply with all applicable laws, ordinances, regulations, and shall hold harmless, indemnify, and defend the City, the City's Representative, and their consultants, and each of their directors, officers, employees, and agents from and against all claims, damages, losses, expenses, and other costs, including costs of defense and attorneys' fees, to the extent caused by the willful violation of any such law, ordinance, regulation, by the Contractor, his employees, agents, subcontractors, or suppliers.

## 7-2 PERMITS AND LICENSES

The Contractor shall procure all permits and licenses, and give all notices necessary and incidental to the due and lawful prosecution of the work.

## 7-3 INVENTIONS, PATENTS, AND COPYRIGHTS

The Contractor shall pay all royalties and assume all costs arising from the use of any invention, design, process, materials, equipment, product, or device which is the subject of patent rights or copyrights.

The Contractor shall hold harmless, indemnify, and defend the City, the, the City's Representative, and their consultants, and each of their directors, officers, employees, and agents from and against all claims, damages, losses, expenses, and other costs, including costs of defense and attorneys' fees, arising out of any infringement of any U.S. patent rights or copyrights incident to the use in the performance of the work or resulting from the incorporation in the work of any invention, design, process, materials, equipment, product or device, and shall defend all such claims in connection with any alleged infringement of such rights. Contractor does not warranty against infringement by reason of the City's design of the articles or the use thereof in combination with other materials or in the operation of any process.

## 7-4 PUBLIC CONVENIENCE

(a) CONTRACTOR's operation shall cause no unnecessary public inconvenience. The access rights of the public shall be considered at all times. Unless otherwise authorized, traffic shall be permitted to pass through the work or an approved detour shall be provided. Safe, adequate, continuous and unobstructed pedestrian and vehicular access shall be maintained to fire hydrants, residences, commercial and industrial establishments, churches, schools, parking lots, service stations, motels, fire and police stations, and hospitals, unless other arrangements are made satisfactory to the owners.

(b) Vehicular access to residential driveways shall be maintained to the property line except when necessary construction precludes such access for reasonable periods of time.

(c) Grading operations, roadway excavation and embankment construction shall provide a reasonably satisfactory surface for traffic. When rough

grading is completed, the roadbed surface shall be brought to a smooth even condition satisfactory for traffic.

- (d) The CONTRACTOR shall comply with applicable state and local requirements for closure of streets. CONTRACTOR shall provide barriers, guards, lights, signs, temporary bridges, flagmen and watchmen advising the public of detours and construction hazards. CONTRACTOR shall comply with additional public safety requirements arising during construction. CONTRACTOR shall furnish and install and upon completion of the work, promptly remove all signs and warning devices.
- (e) At least forty-eight hours in advance of closing or partial closing or of reopening any street, alley or other public thoroughfare, CONTRACTOR shall notify the police, fire, traffic and engineering departments of jurisdictional agencies involved and comply with their requirements.

The Contractor shall provide and maintain such fences, barriers, directional signs, lights, and flagmen as are necessary to give adequate warning to the public at all times of any dangerous conditions to be encountered as a result of the construction work and to give directions to the public.

#### 7-5 RESPONSIBILITY FOR LOSS, DAMAGE, OR INJURIES

Contractor's scope of work excludes the handling or responsibility for any hazardous materials. Should Contractor become aware of or suspect the presence of hazardous materials, Contractor may immediately stop work in the affected area and will notify City. Contractor will be required to resume performance of the work in the affected area only in the absence of hazardous materials or when the affected area has been rendered harmless. In no event will Contractor be obligated to transport or handle hazardous materials, to provide any notices to any governmental agency, or to examine the work site for the presence of hazardous materials.

#### 7-6 CONTRACTOR'S RESPONSIBILITY FOR THE WORK

Until the acceptance of the work, the Contractor shall have the responsible charge and care of the work and of the materials to be used therein (including materials for which he has received partial payment or materials which have been furnished by the City) and shall bear the risk of injury, loss, or damage to any part of the work or materials by the action of the elements or from any other cause, whether arising from the execution or from the non-execution of the work.

The Contractor shall rebuild, repair, restore, and make good all injuries, losses, or damages to any portion of the work or the materials occasioned by any cause before its completion and acceptance and shall bear the expense thereof. Where necessary to protect the work or materials from damage, the Contractor shall at his expense provide suitable drainage and erect such temporary structures as are necessary to protect the work or materials from damage. The suspension of the work or the granting of an

extension of time from any cause whatever shall not relieve the Contractor of his responsibility for the work and materials as herein specified.

In an emergency affecting the safety of life or property, including adjoining property, the Contractor, without special instructions or authorizations, shall act at his discretion to prevent such threatened loss or injury.

Notwithstanding the foregoing provisions of this article, the Contractor shall not be responsible for the cost of repairing or restoring damage to the work, which damage is determined to have been proximately caused by an Act of God, provided that the work damaged is built in accordance with accepted and applicable building standards and the plans and specifications.

Notwithstanding the foregoing, the Contractor will not be liable for damages to the extent such damages are caused by the City, its employees, agents and contractors

#### 7-7 PRESERVATION OF PROPERTY

The Contractor shall exercise due care to avoid injury to existing improvements or facilities, utility facilities, adjacent property, and trees and shrubbery that are not to be removed.

All trees, shrubbery, and landscaping that are not to be removed, and pole lines, fences, signs, survey markers and monuments, buildings and structures, conduits, pipelines under or above ground, sewer and waterlines, all highway or street facilities, and any other improvements or facilities within or adjacent to the work shall be protected from injury or damage, and the Contractor shall provide and install suitable safeguards to protect such objects from injury or damage. If such objects are injured or damaged by reason of the Contractor's operation and not caused by the City, its employees, agents and contractors, they shall be replaced or restored at the Contractor's expense to a condition as good as when the Contractor entered upon the work or as good as required by the plans and specifications if any such objects are a part of the work being performed.

The fact that any such pipe or other underground facility is not shown on the plans shall not relieve the Contractor of his responsibility under this article, except as provided within Articles 2-4, Existing Conditions and 4-3, Utilities.

In addition to any requirements imposed by law, the Contractor shall shore up, brace, underpin, and protect as may be necessary, all foundations and other parts of all existing structures adjacent to and adjoining the site of the work which are in any way affected by the excavations or other operations connected with the performance of the work. Whenever any notice is required to be given by the City or the Contractor to any adjacent or adjoining land City or other party before commencement of any work, such notice shall be given by the Contractor.

In an emergency affecting the safety of life or property, including adjoining property, the Contractor, without special instructions or authorizations, shall act at his discretion to prevent such threatened loss or injury.

#### 7-8 REGIONAL NOTIFICATION CENTER CONTACT

Contractor, except in an emergency, shall contact the appropriate regional notification center at least two working days prior to commencing any excavation if the excavation will be conducted in an area or in a private easement which is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the City, and obtain an inquiry identification number from that notification center. No excavation shall be commenced and carried out by the Contractor unless such an inquiry identification number has been assigned to the Contractor or any subcontractor of the Contractor and the City has been given the identification number by the Contractor.

Emergency shall be defined as a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. Emergency includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage (Government Code Section 4216).

Subsurface installation means any underground pipeline, conduit, duct, wire, or other structure operated or maintained in or across a public street or public right-of-way (Government Code Section 4216).

#### 7-9 EXCAVATION

Contractor shall comply with all applicable local and CAL OSHA laws, ordinances, rules, and regulations for excavation, trenches and subsurface modifications.

#### 7-10 SAFETY

In accordance with generally accepted construction practices, the Contractor shall be solely and completely responsible for conditions of the jobsite, including safety of all persons and property during performance of the work, and the Contractor shall fully comply with all state, federal and other laws, rules, regulations, and orders relating to safety of workers and all others.

The right of the City's Representative to conduct construction review or observation of the Contractor's performance will not include review or observation of the adequacy of the Contractor's safety measures in, on, or near the construction site.

## 7-11 PERSONAL LIABILITY

No director, officer, employee, or agent of the City, the City's Representative, or their consultants shall be personally responsible for any liability arising under or by virtue of the contract.

## 7-12 HOURS OF LABOR

The Contractor shall forfeit as a penalty to the City \$25 for each worker employed in the execution of the contract by the Contractor or any subcontractor under him for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of the Labor Code and, in particular, Section 1810 to Section 1815 thereof, inclusive, except that work performed by employees of Contractors in excess of 8 hours per day and 40 hours during any one week shall be permitted upon compensation for all hours worked in excess of 8 hours per day at not less than one and one-half times the basic rate of pay as provided in said Section 1815.

## 7-13 PREVAILING WAGE

The Contractor shall comply with Labor Code Section 1775. In accordance with said Section 1775, the Contractor shall forfeit as a penalty to the City up to \$50 for each calendar day or portion thereof for each worker paid less than the stipulated prevailing rates for such work or craft in which such worker is employed for any work done under the contract by him or by any subcontractor under him in violation of the provisions of the Labor Code and in particular, Labor Code Sections 1770 to 1780, inclusive. The amount of the forfeiture will be determined by the Labor Commissioner based on the considerations specified in Labor Code Section 1775. In addition to said penalty and pursuant to said Section 1775, the difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor. Pursuant to Labor Code Section 1775, to the extent there is insufficient money due a Contractor to cover all penalties forfeited and amounts due, the Division of Labor Standards Enforcement shall be notified of the violation and the Division of Labor Standards Enforcement may maintain an action in any court of competent jurisdiction to recover the penalties and amounts due pursuant to Labor Code Section 1775.

Section 1776 of the Labor Code requires each contractor and its subcontractors to keep accurate payroll records and make such available for inspection by persons and entities identified in that section, in the manner stated therein. Section 1776(g), places the responsibility for compliance with Section 1776 on the prime contractor.

Pursuant to Labor Code Section 1777.1, whenever any contractor or subcontractor performing a public works project is found by the Labor Commissioner to be in violation of Labor Code Section 1770, et seq. with the intent to defraud, except Section 1775, the

contractor or subcontractor or any firm, corporation, partnership or association in which the contractor or subcontractor has a substantial interest shall be ineligible to bid on or to receive any public works contract for a period of not less than one year or more than three years. The period of debarment shall run from the date the determination of the violation is made by the Labor Commissioner.

Whenever any contractor or subcontractor performing a public works project pursuant to this chapter is found by the Labor Commission to be in willful violation of this chapter, except Section 1777.5, the contractor or subcontractor or any firm, corporation, partnership, or association in which the contractor or subcontractor has a substantial interest shall be ineligible to bid on or to receive any public works contract for a period up to three years for each second and subsequent violation occurring within three of a separate and previous willful violation of this chapter. These periods of debarment shall run from the date the determination of the violation is made by the Labor Commissioner.

A willful violation occurs when the contractor or subcontractor knew or reasonably should have known of his or her obligations under the public works law and deliberately fails or refuses to comply with its provisions.

#### 7-14 TRAVEL AND SUBSISTENCE PAYMENTS

Each worker needed to execute the work must be paid travel and subsistence payments as defined in the applicable collective bargaining agreements filed in accordance with Labor Code Section 1773.8.

#### 7-15 APPRENTICES

Attention is directed to the provisions in Sections 1777.5, 1777.6 and 1777.7 of the Labor Code concerning the employment of apprentices by the Contractor or any subcontractor under him.

The Contractor and any subcontractor under him shall comply with the requirements of Sections 1777.5 and 1777.6 of the Labor Code in the employment of apprentices.

Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

Willful violations of Section 1777.5 will result in the Contractor, and the business entity under which the Contractor is doing business, being denied the right to bid on, or to receive, any public works contract for a period of up to one year for the first violation and for a period of up to three years for the second and subsequent violations commencing from the date the determination of noncompliance by the Administrator of Apprenticeship becomes an order of the California Apprenticeship Council. In addition, if the Contractor violates Section 1777.5, he will forfeit as a civil penalty the sum of Fifty

Dollars (\$50.00) for each calendar day of noncompliance which shall be withheld from progress payments by City upon notice from the Department of Industrial Relations. (Labor Code Section 1777.7.)

In lieu of the penalty provided for above, the director may for a first time violation and with the concurrence of the joint apprenticeship committee, order the contractor or subcontractor to provide apprentice employment equivalent to the work hours that would have been provided for apprentices during the period of noncompliance.

#### 7-16 WARRANTY OF TITLE

No materials, supplies, or equipment for the work under this contract shall be purchased subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest therein or any part thereof is retained by the seller or supplier. The Contractor warrants clear and good title to all materials, supplies, and equipment installed and incorporated in the work and agrees upon completion of all work to deliver the premises, together with all improvements and appurtenances constructed or placed thereon by him, to the City free from any claims, liens, encumbrances, or charges and further agrees that neither he nor any person, firm, or corporation furnishing any material or labor for any work covered by the contract shall have any right to a lien upon the premises or any improvement or appurtenance thereon, provided that this shall not preclude the Contractor from installing metering devices or other equipment of utility companies or of municipalities, the title of which is commonly retained by the utility company or the municipality. Nothing contained in this article, however, shall defeat or impair the right of such persons furnishing materials or labor under any bond given by the Contractor for their protection or any right under any law permitting such persons to look to funds due the Contractor in the hands of the City. The provisions of this article shall be inserted in all subcontracts and material contracts, and notices of its provision shall be given to all persons furnishing materials for the work when no formal contract is entered into for such materials.

#### 7-17 PROPERTY RIGHTS IN MATERIALS

Nothing in the contract shall be construed as vesting in the Contractor any right of property in the materials used after they have been attached or affixed to the work or the soil, or after payment has been made for materials delivered to the site of the work, or stored subject to or under the control of the City. All such materials shall become the property of the City upon being so attached or affixed or upon payment for materials delivered to the site of the work or stored subject to or under the control of the City.

Soil, stone, gravel, and other materials found at the site of the work and which conform to the plans and specifications for incorporation into the work may be used in the work. No other use shall be made of such materials except as may be otherwise described in the plans and specifications.

#### 7-18 MUTUAL RESPONSIBILITY OF CONTRACTORS

Nothing in the contract shall be interpreted as granting to the Contractor exclusive occupancy of the site of the project. The Contractor must ascertain to his own satisfaction the scope of the project and the nature of any other contracts that have been or may be awarded by the City in the construction of the project, to the end that the Contractor may perform this contract in the light of such other contracts, if any.

The Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on the project. If the performance of any contract for the project is likely to be interfered with by the simultaneous performance of some other contract or contracts, the City's Representative shall decide which contractor shall cease work temporarily and which contractor shall continue or whether the work under the contracts can be coordinated so that the contractors may proceed simultaneously. On all questions concerning conflicting interest of contractors performing related work, the decision of the City's Representative shall be binding upon all contractors concerned and the City, the City's Representative, and their consultants shall not be responsible for any damages suffered or extra costs incurred by the Contractor resulting directly or indirectly from the award or performance or attempted performance of any other contract or contracts on the project or caused by a decision or omission of the City's Representative respecting the order of precedence in the performance of the contracts.

If through acts of neglect on the part of the Contractor, any other contractor or any subcontractor shall suffer loss or damage on the work, the Contractor agrees to settle with such other contractor or subcontractor by agreement or arbitration, if such other contractor or subcontractor will so settle. If such other contractor or subcontractor shall assert any claim against the City, the, the City's Representative, or their consultants or any of their directors, officers, employees, or agents on account of any damage alleged to have been so sustained, the City shall notify the Contractor who shall hold harmless, indemnify, and defend the City, the, the City's Representative, and their consultants, and each of their directors, officers, employees, and agents against any such claim, including all attorneys' fees and any other costs incurred by the indemnified parties relative to any such claim.

#### 7-19 NOTICE AND SERVICE THEREOF

Any notice required or given under the contract shall be in writing, be dated, and signed by the party giving such notice or his duly authorized representative, and be served as follows:

If to the City, by personal delivery or by deposit in the United States mail.

If to the Contractor, by personal delivery to the Contractor or to his authorized representative at the site of the project or by deposit in the United States mail.

If to the surety or any other person, by personal delivery to said surety or other person or by deposit in the United States mail.

All mailed notices shall be in sealed envelopes, shall be sent by certified mail with postage prepaid, and shall be addressed to the addresses in the Contract Documents or such substitute addresses which a party designates in writing and serves as set forth herein.

#### 7-20 PARTIAL INVALIDITY

If any provision of this contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

#### 7-21 ATTORNEYS' FEES

Should either party to the contract bring an arbitration or mediation proceeding or other action to enforce any provision of the contract, including an action pursuant to Public Contract Code Section 20104.4, the prevailing party shall be entitled to recover his reasonable attorneys' fees and costs in connection therewith. The term "prevail" as used in this section shall include any action at law, in equity, or pursuant to arbitration in which either party has been successful.

#### 7-22 LANDS AND RIGHTS-OF-WAY

The lands and rights-of-way for the facility to be constructed will be provided by the City. The Contractor shall make his own arrangements and pay all expenses for additional area required by him outside the limits of the City's lands and rights-of-way.

Work in public right-of-way shall be done in accordance with the requirements of the permit issued by the public agency in whose right-of-way the work is located in addition to conforming to the plans and specifications. If a permit is not required, the work shall conform to the standards of the public agency involved in addition to conforming to the plans and specifications.

#### 7-23 WAIVER OF RIGHTS

Except as otherwise specifically provided in the Contract Documents, no action or failure to act by the City, City's Representative, or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract Documents, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder.

#### 7-24 TAXES

The Contractor shall pay all sales, consumer, use, and other taxes.

NOTICE OF TAXABLE POSSESSORY INTEREST - The terms of this document may result in the creation of a possessory interest. If such a possessory interest is vested in a private party to this document, the private party may be subjected to the payment of personal property taxes levied on such interest.

#### 7-25 ASSIGNMENT OF ANTI-TRUST ACTIONS

In entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or subcontractor 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. Section 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the parties.

#### 7-26 PAYROLL RECORDS

It shall be the responsibility of the Contractor to maintain an accurate payroll record showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each employee in accordance with Labor Code Section 1776, and to ensure that each subcontractor also complies with all provisions of Labor Code Section 1776 and this contract provision.

All payroll records shall be certified as accurate by the applicable contractor or subcontractor or its agent having authority over such matters.

The Contractor shall ensure that all payroll records are available for inspection at the Contractor's principal office during normal business hours and shall notify the City, in writing, of the place where all payroll records are located from time to time.

The Contractor shall furnish a copy of all payroll records, upon request, to employees or their authorized agents, to the City, to the Division of Labor Standards Enforcement, and to the Division of Apprenticeship Standards of the Department of Industrial Relations. The Contractor shall also furnish a copy of payroll records to the general public upon request provided the public request is made through the City, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement of the Department of Industrial Relations. In no event shall members of the general public be given access to payroll records at the Contractor's principal office.

Records made available to the general public in accordance with the prior paragraph shall be marked or obliterated in such a manner that the name and address of the

Contractor and/or subcontractor and the name, address, and telephone number of all employees does not appear on the modified record.

The Contractor shall file a certified copy of any requested payroll records with the entity that requested such records within ten days of the date a written request for payroll records has been received.

Failure of the Contractor to comply with any provision of this article or Labor Code Section 1776 within ten days of the date a written request for compliance is received shall result in a forfeiture of \$25 per calendar day or portion thereof, for each worker, until strict compliance is obtained. Upon notification by the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the Department of Industrial Relations, the City shall withhold penalties under this article or Labor Code Section 1776 from the Contractor's payments then due.

#### 7-17 CHARACTER OF WORKERS

Only competent workers shall be employed on the work. Workers who are incompetent, intemperate, troublesome, disorderly or otherwise objectionable, or who fail to perform work properly and acceptably, shall be immediately removed from the work by the CONTRACTOR and not be re-employed.

### **SECTION 8**

#### **ESTIMATES AND PAYMENTS**

##### 8-1 FINAL ESTIMATE AND PAYMENT

When the work has been substantially completed, the Contractor will make a final estimate of the total amount of work done thereunder and the amount to be paid therefor under the terms of the contract. If the City finds the work has been substantially completed according to the contract, he shall accept the work, shall file a notice of completion, and shall pay the entire sum so found to be due after deducting therefrom all previous payments and all amounts to be retained under the provisions of the contract. All prior progress estimates and payments shall be subject to correction in the final estimate and payment. The final payment shall not be due and payable until the expiration of 40 days from the date of filing a notice of completion of the work by the City.

It is mutually agreed between the parties to the contract that no certificate given or payment made under the contract shall be conclusive evidence of performance of the contract and no payment shall be construed to be an acceptance of any defective work or improper materials.

##### 8-2 CITY'S RIGHT TO WITHHOLD CERTAIN AMOUNTS AND MAKE APPLICATION THEREOF

In addition to the amount which the City may retain under the above article on PROGRESS PAYMENTS, the City may withhold a sufficient amount or amounts from any payment otherwise due to the Contractor as in his judgment may be necessary to cover:

Payments which may be past due and payable for properly filed claims against the Contractor or any subcontractors for labor or materials furnished in or about the performance of the work under this contract.

Estimated or actual costs for correcting defective work not remedied.

Amounts claimed by the City as forfeiture due to delay or other offsets.

With advance written notice to Contractor, the City may apply such withheld amount or amounts to the payment of such claims in his discretion. In so doing, the City shall be deemed the agent of the Contractor and any payments so made by the City shall be considered as a payment made under the contract by the City to the Contractor, and the City shall not be liable to the Contractor for such payment made in good faith. Such payments may be made without prior judicial determination of the claim or claims. The City will render to the Contractor a proper account of such funds disbursed in behalf of the Contractor.

### 8-3 WITHHELD CONTRACT FUNDS

Pursuant to Public Contract Code Section 22300, equivalent securities may be substituted for monies withheld to ensure performance of the contract, except contracts for which there will be financing provided by the Farmers Home Administration of the United States Department of Agriculture pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. Sec. 1921 et seq.), or where federal regulations and/or policies do not allow such substitution. The City reserves the right to solely determine the adequacy of the securities being proposed by the Contractor and the value of those securities. The City shall also be entitled to charge an administrative fee, as determined by City in its sole discretion, for substituting equivalent securities for retention amounts. The City's decisions with respect to the administration of the provisions of Section 22300 shall be final and shall include, but not be limited to, determinations of what securities are equivalent, the value of the securities, the negotiability of the securities, the costs of administration and the determination of whether or not the administration should be accomplished by an independent agency or by the City. The City shall be entitled, at any time, to request the deposit of additional securities of a value designated by City, in City's sole discretion, to satisfy this requirement. If the City does not receive satisfactory securities within twelve (12) consecutive days of the date of the written request, City shall be entitled to withhold amounts due Contractor until securities of satisfactory value to City have been received.

#### 8-4 REQUIRED RELEASES

The Contractor shall not be entitled to any payment specified in his Contract which is disputed until such time as the Contractor has executed a release, in the following form, releasing the City from all claims relating to the work for which the Contractor is being paid. The release form contains space for the Contractor to claim any disputed amount and to designate the retention amount for each period associated with the release. Contractor hereby expressly agrees that failure on his part to designate any disputed amount or to designate the correct retention amount for each release period on the release form shall constitute an express waiver of the right of the Contractor to claim any disputed amount or any retention amount at any later date. The City shall have no obligation to pay the Contractor for any work done until the release form attached to these contract documents has been executed by the Contractor and submitted to the City.

**RELEASE FORM**

CITY: \_\_\_\_\_

NAME OF CONTRACTOR: \_\_\_\_\_

PROJECT DESCRIPTION: \_\_\_\_\_

PERIOD WORK PERFORMED: \_\_\_\_\_

The above-named Contractor hereby acknowledges payment in full for all compensation of whatever nature due the Contractor for all labor and materials furnished and for all work performed on the above-referenced project for the period specified above with the exception of contract retention amounts and disputed claims specifically shown below.

RETENTION AMOUNT FOR THIS PERIOD: \$\_\_\_\_\_

<u>DESCRIPTION OF CLAIM</u>	<u>DISPUTED CLAIMS</u>	<u>AMOUNT CLAIMED</u>
_____		_____
_____		_____
_____		_____
_____		_____
_____		_____
_____		_____
_____		_____
_____		_____
_____		_____
_____		_____
_____		_____
_____		_____
_____		_____
_____		_____
_____		_____

The Contractor further expressly waives and releases any claim the Contractor may have, of whatever type or nature, for the period specified which is not shown as a retention amount or a disputed claim on this form. This release and waiver has been made voluntarily by Contractor without any fraud, duress, or undue influence by any person or entity.

Contractor further certifies, warrants, and represents that all bills for labor, materials and work due subcontractors for the specified period have been paid in full and that the parties signing below on behalf of Contractor have express authority to execute this release.

DATED:

\_\_\_\_\_  
PRINT NAME OF CONTRACTOR

\_\_\_\_\_  
DESCRIBE ENTITY (Partnership,  
Corporate, etc.)

By \_\_\_\_\_

By \_\_\_\_\_

## **Exhibit A**

### **Detailed Scope of Work**

#### **Solar PV System Description.**

- System Size: 495.9 kW DC STC Rated
- Panels\*: 2156 Yingli 230-Watt PV Modules (or equivalent)
- Inverter\*: One (1) Xantrex GT-500 kW Inverter (or equivalent)
- Racking: Wattsun Single-Axis Tracking System
- Monitoring Equipment: Energy Recommence Data Acquisition System, Inverter Level, (DAS) (or equivalent)
- Revenue Grade Utility Meter as required by CSI
- AC and DC combiner boxes and safety disconnects
- Open Chain-Link Fence, 8', barbed or razor-wire

\* Solar PV Panels and Inverter are to be direct purchased by The City of Ridgecrest from Borrego Solar, coordinated and construction managed by Trane (Contractor). The negotiated cost of Solar PV Panels and Inverter is \$1,202,290. The City of Ridgecrest will issue a Purchase Order for Solar PV panels and Inverter in this amount to Borrego Solar. This amount is not included in the Guaranteed Maximum Price listed in Section 2(b) of this Agreement. All manufacturers' warranties on all equipment will pass through directly from manufacturer(s) to the City of Ridgecrest. All service/production warranties will pass through directly from Borrego Solar to the City of Ridgecrest.

**Design.** Trane and its subcontractors will design the Solar PV System according to local and national applicable building and electrical codes. Trane will provide Owner with all Design Documents being developed. The Design Documents will be stamped by licensed electrical and/or structural engineers as required by local permitting authorities or under applicable laws or regulations. Trane will furnish marked up construction plans noting any changes for input to as-built plans. Solar PV System will meet all requirements of the California Solar Initiative (CSI) Program.

**Materials.** Trane shall purchase and furnish all necessary materials and Solar PV System components as stated in this Detailed Scope of Work, Design Documents and/or Submittal Package, excluding Solar PV Panels and Inverter(s). Trane and its subcontractors shall integrate and install such materials and components, including Solar PV Panels and Inverter(s), to meet the Solar PV System Description.

**Installation.** Trane and/or its subcontractors reasonably acceptable to Trane will complete all required trenching, mechanical, and electrical work required for installation of the Solar PV System.

**Permitting.** Trane and its subcontractors will obtain all required permits, including, without limitation, building permits, necessary for the construction, interconnection, and operating of the Solar PV System. Owner shall provide such assistance as Trane may reasonably request to assist Trane and its subcontractors in obtaining the required permits; provided that such assistance is of the nature that the Owner or Trane typically is asked to provide a contractor on similar projects under similar circumstances.

**Code.** The Work will be built to local and state building code requirements.

**Utility Interconnection.** Trane and its subcontractors will perform all work and conduct all activities pertaining to the design and installation of the Solar PV System required to interconnect the Solar PV System to the Owner's side of the electrical grid, including, without limitation, any and all switchgear modifications, obtaining interconnection permits or agreements with local utilities upon terms and conditions approved by Owner in writing.

**System QA/QC and Commissioning.** Trane and its subcontractors will perform industry standard commissioning procedures, including pre-startup voltage measurements, ground fault checks, polarity checks and fuse checks, post-startup performance checks and general system safety checks.

**Inspection and Certification.** Trane and its subcontractors will perform all work and conduct all activities required for Solar PV System to pass final inspection under various permit requirements, including, without limitation, building permit, interconnection permit, and local utility to render the Solar PV System fully operational and eligible for solar incentives.

## **Project Assumptions / Exclusions**

**EXCLUSIONS:** This Agreement does not include labor or materials for the following work:

- Removal and/or disposal of any hazardous materials or substances, including asbestos and contaminated soil that Contractor may be exposed to during construction.
- Failure of any part of the Owner's property uncovered and/or not a result of Contractor's good faith efforts, including any pre-existing conditions or code violations.
- Any unidentified obstructions (other than typical utility location methods) or unforeseen underground conditions, including highly weathered rock formations, and the associated costs due to damage and/or repair.
- All labor related to troubleshooting the Owner's internal communications, networks and firewalls as it relates to the data monitoring system.
- Environmental impact studies or other specialty permits.
- Storm Water Pollution Prevention program or other land drainage requirements.
- AHJ requirements above and beyond the NEC Article 690, 2008 edition.