



Zero Waste Sonoma

Meeting of the Board of Directors

**July 16, 2026
REGULAR MEETING**

Regular Session begins at 9:00 a.m.

Estimated Ending Time 11:30 a.m.

City of Santa Rosa Council Chambers
100 Santa Rosa Avenue
Santa Rosa, CA

Meeting will also streamed via Zoom:

<https://sonomacounty.zoom.us/j/92248855470?pwd=OFFVNULiWVh5Wk5SSzVyWWdWbndjdz09>

Webinar ID: 922 4885 5470

US: +1 669 444 9171

Passcode: 157476

PUBLIC COMMENT:

Public comment may be submitted via recorded voice message or email. Public comment may also be made by “raising your hand” using the Zoom platform.

Voice recorded public comment: To submit public comment via recorded message, please call 707-565-4432 by 5:00 pm Wednesday, July 15th. State your name and the item number(s) on which you wish to speak. The recordings will be limited to two minutes. These comments may be played or read at the appropriate time during the board meeting.

Email public comment: To submit an emailed public comment to the Board please email leslie.lukacs@sonoma-county.org and provide your name, the number(s) on which you wish to speak, and your comment. These comments will be emailed to all Board members and can be provided anytime leading up to and throughout the meeting.

COMMITMENT TO CIVILITY: The ZWS Board of Directors has a commitment to civility. To assure civility in its public meetings, the public is encouraged to engage in respectful dialogue that supports freedom of speech and values diversity of opinion. Board Members, staff, and members of the public are expected to establish and maintain a cordial and respectful atmosphere during discussions; and foster meaningful dialogue free of personal attacks. Members of the public must also adhere to the speaking time limit. Any commenters in violation of civility standards will be disconnected.



Agenda

Item

1. Call to Order
2. Agenda Approval
3. Public Comments (items not on the agenda)

Consent (w/attachments)

- 4.1 Minutes of the June 18, 2026 Regular Meeting
- 4.2 May, June, and July 2026 Outreach Calendar
- 4.3 Consideration of Merit Increase for Executive Director

Regular Calendar

5. Authorization to Release a Request for Proposals for Construction Manager at Risk Services for the ZWS Household Hazardous Waste Facility Project [Lukacs]
6. Boardmember Comments – NO ACTION
7. Executive Director Report – VERBAL REPORT
8. Staff Comments – NO ACTION
9. Next ZWS meeting: August 20, 2026
10. Adjourn Meeting

Consent Calendar: These matters include routine financial and administrative actions and are usually approved by a single majority vote. Any Boardmember may remove an item from the consent calendar.

Regular Calendar: These items include significant and administrative actions of special interest and are classified by program area. The regular calendar also includes "Set Matters," which are noticed hearings, work sessions and public hearings.

Public Comments: Pursuant to Rule 6, Rules of Governance of the Sonoma County Waste Management Agency/Zero Waste Sonoma, members of the public desiring to speak on items that are within the jurisdiction of the Agency shall have an opportunity at the beginning and during each regular meeting of the Agency. When recognized by the Chair, each person should give his/her name and address and limit comments to 3 minutes. Public comments will follow the staff report and subsequent Boardmember questions on that Agenda item and before Boardmembers propose a motion to vote on any item.

Disabled Accommodation: If you have a disability that requires the agenda materials to be in an alternative format or requires an interpreter or other person to assist you while attending this meeting, please contact the Zero Waste Sonoma Office at 195 Concourse Blvd, Suite B, Santa Rosa, (707) 565-3788, at least 72 hours prior to the meeting, to ensure arrangements for accommodation by the Agency.

Noticing: This notice is posted 72 hours prior to the meeting on the internet at www.zerowastesonoma.gov



To: Zero Waste Sonoma Board Members

From: Leslie Lukacs, Executive Director

Subject: July 16, 2026 Board Meeting Agenda Notes

Consent Calendar

These items include routine financial, informational and administrative items and **staff recommends that they be approved en masse by a single vote.** Any Board member may remove an item from the consent calendar for further discussion or a separate vote by bringing it to the attention of the Chair.

- 4.1 Minutes of the June 18, 2026 Meeting
- 4.2 June, July, and August 2026 Outreach Calendar
- 4.3 Consideration of Merit Increase for Executive Director

5. Authorization to Release a Request for Proposal for Construction Manager at Risk Services for the ZWS Household Hazardous Waste Facility Project

Zero Waste Sonoma has been working with the County of Sonoma Public Infrastructure Department as the project manager and the project design team from COAR to advance development of the new HHW Facility located at 5885 Pruitt Avenue in Windsor. The Construction Manager at Risk project is the next phase and is a delivery method that allows a selected contractor to become involved during the final design phase to perform preparation and coordination of bid packages, scheduling, cost control, value engineering, evaluation, preconstruction phase services, construction phase services, and risk management before construction begins. This collaborative approach enhances cost certainty, mitigates project risks, and facilitates the identification of opportunities to maintain the project within budget while preserving its operational and performance objectives. **Staff Recommendation:** Authorize the Executive Director to release a Request for Proposals (RFP) for Construction Manager at services for the Sonoma County Household Hazardous Waste (HHW) Facility Project at 5885 Pruitt Avenue and authorize the Executive Director to return to the Board with a recommendation for contract award following completion of the competitive selection process.



Minutes of the June 18, 2026 Meeting

Zero Waste Sonoma met on June 18, 2026, at the City of Santa Rosa Council Chambers, 100 Santa Rosa Ave., Santa Rosa, California.

Board Members Present:

City of Cloverdale – Andrés Marquez
City of Cotati – ABSENT
City of Healdsburg – Larry Zimmer
City of Petaluma – Patrick Carter
City of Rohnert Park – Emily Sanborn

City of Santa Rosa – ABSENT
City of Sebastopol – Sandra Maurer
City of Sonoma – Jack Ding
County of Sonoma – Rebecca Hermosillo
Town of Windsor – JB Leep

Staff Present:

Executive Director: Leslie Lukacs
Counsel: Ethan Walsh
Staff: Thora Collard, Kristen Scott, Xinci Tan, Katherine Cushwa, Courtney Scott, Sloane Pagal, Rajesh Jyothiswaran
Agency Clerk: Amber Johnson

1. Call to Order Closed Session 8:31 a.m.

PUBLIC EMPLOYEE PERFORMANCE EVALUATION (Gov. Code § 54957(b)(1))
Title: Executive Director

CONFERENCE WITH LABOR NEGOTIATORS (Gov. Code § 54957.6)
Agency designated representative: Ethan Walsh, Agency Counsel
Unrepresented employee: Executive Director

2. Adjourn Closed Session at 9:09 a.m.

3. Call to Order Regular Meeting

Regular session was called to order at 9:15 a.m.
Introductions

Rebecca Hermosillo arrived at 9:20 a.m.

4. Agenda Approval

5. Public Comments (items not on the agenda)

None

6. Consent (w/attachments)

- 6.1 Minutes of the May 21, 2026 Meeting
- 6.2 May, June, and July 2026 Outreach Calendar
- 6.3 Budget Adjustment to the FY 25/26 Budget for Organics Transportation and Processing

Board Comment:

None

Public Comments:

None

Motion: For approval of the consent calendar.

First: County of Sonoma – Rebecca Hermosillo

Second: City of Petaluma – Patrick Carter

Vote Count:

City of Cloverdale	AYE	City of Santa Rosa	ABSENT
City of Cotati	ABSENT	City of Sebastopol	AYE
City of Healdsburg	AYE	City of Sonoma	AYE
City of Petaluma	AYE	County of Sonoma	AYE
City of Rohnert Park	AYE	Town of Windsor	AYE

AYES -8- NOES -0- ABSENT -2- ABSTAIN -0-

Motion passed.

Regular Calendar

7. Agreement with The Compost Depot to Provide Technical, On-Site Composting Workshops

Board Comments/Action Items:

- Are there any proposed workshops located in Sebastopol?
- Can the workshops be available on the website once completed?
- Would this be copromoted like the eco-wise series workshops were?
- The jurisdictions would like to promote this; can we please get notice when the workshops go live?
- What proposed workshop location is closest to Cloverdale?
- Largely we are searching for farms, vineyards, or agricultural producers to attend these workshops.
- Would these sites be proposed as long term relationships?
- How will this information be reached to the farms who could benefit from these workshops?
- Suggestion to investigate locations further north to serve the communities.

Public Comments:

- None

Motion: Move to approve the Agreement to Provide Technical, On-Site Composting Workshops to The Compost Depot.

First: City of Petaluma – Patrick Carter

Second: City of Sebastopol – Sandra Maurer

Vote Count:

City of Cloverdale	AYE	City of Santa Rosa	ABSENT
City of Cotati	ABSENT	City of Sebastopol	AYE
City of Healdsburg	AYE	City of Sonoma	AYE
City of Petaluma	AYE	County of Sonoma	AYE
City of Rohnert Park	AYE	Town of Windsor	AYE

AYES -8- NOES -0- ABSENT -2- ABSTAIN -0-

Motion passed.

8. Informational Presentation from CRV Operators Regarding Recent Program Changes in Sonoma County

Board Comments/Action Items:

- There is a system like this in Windsor currently operating. It was a very difficult process to get this in operation. Please explain how this operation turns into a profit.
- With the option for donation, it is a real positive opportunity.
- With the partnerships you have made, why are there not more locations available?
- What are your most northern locations? Is there interest in opening more locations in the north?
- Are there geographic gaps for services in Sonoma County?
- How will this system provide assistance for those without access to smartphones?
- Do you feel it is necessary for legislators to make better regulations policies?
- Why are these recycling centers becoming more available?
- Has there been vandalism of the container or litter concerns? Have animals attempted to get into the systems or have they been affected by the addition of the container?
- Suggestion to push the word out on the donation aspect of UCPNB and use the jurisdictions to help with that.
- Have you spoken with the corporate grocers on distributing bags for crv redemption?
- Enforcement needs to be enhanced on the large grocers who will not collect or assist with collection.
- What can the jurisdiction assist with getting more of these up and running?
- Petaluma will be distributing the collection bags at city hall.
- Are there any plans for operation in the City of Sonoma?
- Is it possible that staff can be on site one day a week at the locations so that residents that do not have access to technology can use the container?
- What does the website look like for the users? Are languages other than English available?
- Have you connected with Sonoma County Economic Development Board for getting bags in stores?
- How does this system interact with the franchise agreements with the haulers?
- Do the bags need to contain separate materials? For example, cans in one bag?

- Where can folks get resources for assistance that have not used the system?
- Who is the target audience for the facility opening in Napa?

Public Comments:

- None

9. Boardmember Comments

- The Petaluma Fair begins today through Sunday.

10. Executive Director Report – VERBAL REPORT

11. Staff Comments – NO ACTION

12. Next ZWS meeting: July 16, 2026

13. Adjourn: 10:57 am

Submitted by: Amber Johnson

DRAFT



Agenda Item #: 4.2
Agenda Date: 7/16/2026

ITEM: June, July, August 2026 Outreach Calendar

June 2026 OUTREACH

Start date	End date	Start time	End time	Event
6/2/26	6/2/26	4:00 PM	8:00 PM	HHW Collection Event (Sonoma)
6/9/26	6/9/26	4:00 PM	8:00 PM	HHW Collection Event (Rohnert Park)
6/12/26	6/14/26	9:00 AM	5:00 PM	Luther Burbank Center E-Waste Event
6/13/26	6/13/26	9:00 AM	5:00 PM	Luther Burbank Center Mattress Recycling Event
6/14/26	6/14/26	1:00 PM	4:00 PM	Sebastopol Repair Fair (Sebastopol)
6/16/26	6/16/26	4:00 PM	8:00 PM	HHW Collection Event (Oakmont)
6/23/26	6/23/26	4:00 PM	8:00 PM	HHW Collection Event (Windsor)
6/30/26	6/30/26	4:00 PM	8:00 PM	HHW Collection Event (Bodega Bay)

July 2026 OUTREACH

Start date	End date	Start time	End time	Event
7/8/26	7/8/26	5:00 PM	9:00 PM	Wednesday Night Market Recology Village (Santa Rosa)
7/11/26	7/11/26	10:00 AM	3:00 PM	Cotati Children's Day (Cotati)
7/11/26	7/11/26	10:00 AM	2:00 PM	Devils Darlin's 34th Annual Car Show (Sonoma)
7/17/26	7/19/26	9:00 AM	5:00 PM	Petaluma E-Waste Recycling Event
7/18/26	7/18/26	9:00 AM	5:00 PM	Petaluma Mattress Collection Event
7/22/26	7/22/26	5:00 PM	9:00 PM	Wednesday Night Market (Santa Rosa)
7/24/26	7/24/26	5:00 PM	8:00 PM	Rohnert Park Seasonal Farmers Market
7/25/26	7/25/26	2:00 PM	5:00 PM	Petaluma Seasonal Walnut Park Farmers Market

August 2026 OUTREACH

Start date	End date	Start time	End time	Event
8/5/26	8/5/26	5:00 PM	9:00 PM	Wednesday Night Market (Santa Rosa)
8/7/26	8/16/26	10:00 AM	9:00 PM	Sonoma County Fair
8/15/26	8/15/26	9:00 AM	5:00 PM	Oakmont Mattress Collection Event
8/15/26	8/16/26	9:00 AM	5:00 PM	Oakmont E-Waste Recycling Event



Agenda Item #: 4.3
Staff Contact: Walsh
Agenda Date: 7/16/2026
Approved By: LL

ITEM: Consideration of Merit Increase for Executive Director

I. RECOMMENDED ACTION / ALTERNATIVES TO RECOMMENDATION

That the Board approve the attached resolution to provide a merit increase for Ms. Lukacs based on the favorable evaluation received from the Board for her annual review.

II. BACKGROUND

Ms. Lukacs serves as Zero Waste Sonoma Executive Director pursuant to an agreement for personal services with the County of Sonoma (the "Employment Agreement"). The County and the Agency have entered into an Agreement for Staff Services, pursuant to which the County employs the Executive Director, although the Executive Director serves at the pleasure of and under the direction of the Zero Waste Sonoma Board. Under the terms of the Employment Agreement, the Board provides Ms. Lukacs an annual review of her service as Executive Director. The consensus of the Board based on the review process is that Ms. Lukacs' performance in the past year meets or exceeds expectations.

Ms. Lukacs is currently slotted at the "C" Step of the salary range established by the County for the Agency Executive Director position. The personal services agreement provides that Ms. Lukacs's salary is governed by Sonoma County Salary Resolution 95-0926, as amended (the "Salary Resolution"). Under the salary resolution, Ms. Lukacs is eligible for consideration of a merit increase at her annual review, upon receipt of a satisfactory or exceeds expectation evaluation. The Salary Resolution provides that upon a satisfactory or exceeds expectation evaluation, the employee will typically be eligible for a merit increase of five percent (5%), which is the equivalent of two steps in the salary scale.

Following recommendation from the Board, the County staff can implement the proposed merit increase.

III. DISCUSSION

Given the favorable evaluation, and the terms of the Salary Resolution, Ms. Lukacs is eligible for a merit increase. The Board Chair is recommending that Board request that the County provide Ms. Lukacs a merit increase consistent with typical practice under the Salary Resolution from the "C" Step to the "E" Step on the salary schedule.

The current salary schedule for the Executive Director is set forth below:

Step

A	B	C	D	E	F	G	H	I	Min	Max	
88.84	91.06	93.28	95.61	97.94	100.39	102.84	105.41	107.98	15,452	18,781	Monthly
7,107.20	7,284.80	7,462.40	7,648.80	7,835.20	8,031.20	8,227.20	8,432.80	8,638.40	185,424	225,372	Annually

The above salary schedule lists the salary rates for each step on an hourly and bi-weekly basis. The annual increase from Step "C" to Step "E" goes from approximately \$194,687 annually to approximately \$204,412 annually.

IV. FUNDING IMPACT

The proposed merit increase would constitute a 5% increase in salary for Ms. Lukacs. This increase is accounted for in the Agency's current budget. There are sufficient funds in the adopted by budget to account for the proposed salary increase.

V. ATTACHMENTS

Resolution

Dated: July 16, 2026

RESOLUTION OF THE SONOMA COUNTY WASTE MANAGEMENT AGENCY
REQUESTING THAT THE COUNTY OF SONOMA PROVIDE A MERIT INCREASE TO LESLIE LUKACS,
EXECUTIVE DIRECTOR

WHEREAS, the Sonoma County Waste Management Agency currently employs Leslie Lukacs ("Lukacs") to serve as Executive Director of the Agency pursuant to that certain Amended and Restated Agreement for Personal Services entered into by and between Lukacs and the County of Sonoma dated June 3, 2025 (the "Employment Agreement"); and

WHEREAS, pursuant to the terms of the Employment Agreement and Sonoma County Salary Resolution 95-0926, Lukacs is eligible for a merit increase following a satisfactory or exceeds expectations review after her annual review; and

WHEREAS, the Board has given Lukacs a favorable review; and

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Sonoma County Waste Management Agency does hereby request that the County grant Lukacs a merit increase from her current Step "C", to Step "E" on the current salary schedule for the Executive Director position.

MEMBERS:

-- Cloverdale	-- Cotati	-- County	-- Healdsburg	-- Petaluma
-- Rohnert Park	-- Santa Rosa	-- Sebastopol	-- Sonoma	-- Windsor

AYES: -- NOES: -- ABSENT: -- ABSTAIN: --

SO ORDERED

The within instrument is a correct copy
of the original on file with this office.

ATTEST: DATE: July 16, 2026

Clerk of the Sonoma County Waste Management Agency
Agency of the State of California in and for the
County of Sonoma



Agenda Item #: 5
Staff Contact: Lukacs
Agenda Date: 7/16/26
Approved By: LL

ITEM: AUTHORIZATION TO RELEASE A REQUEST FOR PROPOSALS FOR CONSTRUCTION MANAGER AT RISK SERVICES FOR THE ZWS HOUSEHOLD HAZARDOUS WASTE FACILITY PROJECT

I. RECOMMENDED ACTION / ALTERNATIVES TO RECOMMENDATION

Authorize the Executive Director to release a Request for Proposals (RFP) for Construction Manager at Risk (CMAR) services for the Sonoma County Household Hazardous Waste (HHW) Facility Project at 5885 Pruitt Avenue and authorize the Executive Director to return to the Board with a recommendation for contract award following completion of the competitive selection process.

II. BACKGROUND

Zero Waste Sonoma has been working with the County of Sonoma Public Infrastructure Department as the project manager and the project design team from COAR to advance development of the new HHW Facility located at 5885 Pruitt Avenue in Windsor. The facility will become the main household hazardous waste facility for the county with a modern design to improve public access, operational efficiency, worker safety, and long-term service capacity for Sonoma County residents.

The ZWS Household Hazardous Waste Facility project continues to advance and 50% Design Development was completed in June 2026. The CMAR project is the next phase and is a delivery method that allows a selected contractor to become involved during the final design phase to perform preparation and coordination of bid packages, scheduling, cost control, value engineering, evaluation, preconstruction phase services, construction phase services, and risk management before construction begins. This collaborative approach enhances cost certainty, mitigates project risks, and facilitates the identification of opportunities to maintain the project within budget while preserving its operational and performance objectives.

III. DISCUSSION

The County of Sonoma is assisting Zero Waste Sonoma with the preparation, issuance, and administration of the procurement process; however, Zero Waste Sonoma will remain the project owner and contracting agency. The selected CMAR firm will contract directly with Zero Waste Sonoma.

The proposed CMAR procurement is authorized under California Public Contract Code Section 20146 et seq., which permits the use of Construction Manager at Risk delivery for qualifying public projects. Unlike the traditional design-bid-build approach, the CMAR delivery method brings the contractor onto the project during the design phase, allowing collaboration between the architect, owner, independent cost estimator, and construction manager to identify cost-saving opportunities, improve constructability, manage project risks, and refine project scheduling before construction begins.

During the preconstruction phase, the selected CMAR firm will provide services including:

- Constructability reviews and design input;
- Cost estimating and open-book pricing;
- Value engineering recommendations;
- Development of project schedules;
- Procurement planning and bid package coordination;
- Risk identification and mitigation;
- Development of management and safety plans; and
- Preparation of a Guaranteed Maximum Price (GMP).

The Grand Maximum Price will be developed with participation from Zero Waste Sonoma, the architect, and an independent cost estimator. This collaborative approach provides greater confidence that the proposed construction cost accurately reflects current market conditions while minimizing change orders during construction.

Following Board authorization, the anticipated procurement schedule is:

ACTION	DATE
ZWS issues RFP	July 23, 2026
Mandatory Site Visit	July 30, 2026 at 1PM
Deadline for Proposers to submit questions regarding this RFP	August 6, 2026 by 5PM
ZWS to respond to Proposers' questions regarding this RFP	August 14, 2026 by 5PM
Deadline for Proposers to submit Proposals	September 8, 2026 by 10AM
Short-list for potential interviews released	September 17, 2026
Interviews of short-listed Proposers (if held)	September 22 – 24, 2026
Perform reference checks of qualified Proposers	September 29 - October 1, 2026
ZWS's Board awards Construction Manager at Risk Agreement (the "Agreement")	October 15, 2026

Evaluation criteria will include the firm's qualifications, relevant CMAR experience, project team, technical approach, understanding of the project, project management capabilities, and fee proposal.

IV. FUNDING IMPACT

Funding for the CMAR preconstruction services is included within the HHW Facility Project budget. The subsequent construction phase and Guaranteed Maximum Price will return to the Board for approval prior to commencement of construction.

V. ATTACHMENTS

Construction Manager at Risk RFP



DRAFT

**Request For Proposals (RFP)
And Contract Documents**

**Construction Manager at Risk (CMAR) Contract
Household Hazardous Waste Facility Project**

5885 Pruitt Avenue, Windsor, CA 95492

Key Information

<u>Pre-Proposal Meeting and Site Visit:</u>	July 30, 2026 at 1PM
<u>Submit Written Questions By:</u>	August 6, 2026 by 5PM
<u>Proposals Due:</u>	September 8, 2026 by 10AM

Zero Waste Sonoma

Notice Inviting Proposals

Construction Manager at Risk (CMAR) Contract Household Hazardous Waste Facility Project

PUBLIC NOTICE IS HEREBY GIVEN that proposals will be received by the County of Sonoma (the “**County**”), on behalf of Sonoma County Waste Management Agency, which is also known as Zero Waste Sonoma (“**ZWS**”) in the office of County of Sonoma Public Infrastructure, 400 Aviation Blvd., Suite 100 Santa Rosa, CA 95403 until 10:00 a.m. PST on **September 8, 2026**. Proposals received after this date will be returned to the proposers unopened.

The County has been contracted by ZWS for the preparation, issuance, and administration of this solicitation process. However, ZWS is the owner of the Project and will be the entity ultimately responsible for awarding and entering into any contract resulting from this RFP. The selected CMAR Firm will not enter into a contract with the County. Rather, the selected CMAR Firm will enter into a contract directly with ZWS, and all contractual rights, obligations, responsibilities, and liabilities arising from the Project and the resulting agreement shall be between ZWS and the selected CMAR Firm. By submitting a proposal in response to this RFP, each proposer acknowledges and agrees that: (1) the County’s role is limited to assisting ZWS with the solicitation process; (2) ZWS will be the contracting party and Project owner; (3) the County shall not be deemed the owner, awarding authority, contracting party, or guarantor of any obligations arising from the Project or any resulting agreement; and (4) the selected CMAR Firm shall look solely to ZWS with respect to the negotiation, execution, performance, payment, enforcement, and administration of any contract awarded as a result of this RFP. Nothing in this RFP shall be construed to create contractual privity between the County and any proposer or between the County and the selected CMAR Firm. The County reserves the right to assist ZWS in reviewing proposals, coordinating communications, facilitating interviews or negotiations, and otherwise supporting the procurement process; however, any final selection, award, and contract execution shall be made by ZWS in accordance with applicable law and ZWS’s applicable policies and procedures.

ZWS is requesting submission of proposals (“Proposal” or “Proposals”) from firms, partnerships, corporations, associations, persons, or professional organizations qualified to be a Construction Manager at Risk (“CMAR Firm(s)”) to perform preparation and coordination of bid packages, scheduling, cost control, value engineering, evaluation, Preconstruction Phase Services, and Construction Phase Services (collectively, the “Services”), in connection with the Sonoma County Household Hazardous Waste Facility project (“Project”) pursuant to a construction manager at

risk contract for a Guaranteed Maximum Price (“GMP”), as provided by Public Contract Code section 20146, et seq.

The award of this contract is subject to an available budget adequate to carry out the provisions of the proposed agreement including the identified scope of services. ZWS reserves the right to reject any or all proposals determined not to be in the best interest of ZWS.

Certain labor categories under this project may be subject to prevailing wages as identified in the State of California Labor Code commencing at sections 1720 et seq. and 1770 et seq. If applicable, employees working in these categories at the site must be paid not less than the basic hourly rates of pay and fringe benefits established by the California Department of Industrial Relations. Copies of the State of California wage schedules are available for review at www.dir.ca.gov/dlsr/. In addition, a copy of the prevailing rate of per diem wages will be made available at ZWS upon request. It shall be mandatory upon the proposer to whom the contract is awarded, and upon any subcontractors, to comply with all Labor Code provisions, which include but are not limited to the payment of not less than the said specified prevailing wage rates to all workers employed by them in the execution of the contract, employment of apprentices, hours of labor and debarment of contractors and subcontractors. Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations (“DIR”). No proposal will be accepted nor any contract entered into without proof of the proposer’s and subcontractors’ current registration with the DIR to perform public work. If awarded a contract, the proposer and its subcontractors, of any tier, shall maintain active registration with the DIR for the duration of the project. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1. The contract awarded pursuant to this RFP may also be subject to compliance monitoring and enforcement by the DIR.

Interested proposers may download copies of the Contract Documents by visiting: <https://esupplier.sonomacounty.ca.gov/psp/FNPRD/SUPPLIER/ERP/h/?tab=DEFAULT> . Firms that anticipate submitting a proposal are required to send an email to ZWS contact acknowledging receipt of the Contract Documents so that ZWS can add the firm to its notification list. Please include the contact person, the name of the firm, address, phone number, and e-mail address. Addenda will be published on ZWS’s website.

For more information, please contact:

Ariana Catalinotto, Senior Project Specialist, County of Sonoma Public Infrastructure, 400 Aviation Blvd., Suite 100, Santa Rosa, CA 95403, or at ariana.catalinotto@sonomacounty.gov.

**Zero Waste Sonoma
Notice Inviting Proposals**

**Construction Manager at Risk (CMAR) Contract
for the
Household Hazardous Waste Facility Project**

I. Background And Introduction

The County of Sonoma ("County"), on behalf of Sonoma County Waste Management Agency, which is also known as Zero Waste Sonoma ("ZWS") is requesting proposals from qualified firms¹ ("Proposers") for Construction Manager At-Risk Services ("Services"). ZWS is requesting submission of proposals ("Proposal" or "Proposals") from firms, partnerships, corporations, associations, persons, or professional organizations qualified to be a Construction Manager at Risk ("CMAR Firm(s)") to perform preparation and coordination of bid packages, scheduling, cost control, value engineering, evaluation, Preconstruction Phase Services, and Construction Phase Services (collectively, the "Services"), in connection with the Sonoma County Household Hazardous Waste Facility project ("Project").

II. ZWS

The principal contact for the ZWS will be Ariana Catalinotto at ariana.catalinotto@sonomacounty.gov or a designated representative, who will coordinate the assistance to be provided by ZWS to the Proposer.

III. Request For Proposals

A. Scope of Services

The Services sought under this Request for Proposals ("RFP") are set forth in more detail in Exhibit "A," attached hereto and incorporated herein by this reference. Notwithstanding the inclusion of such Services in Exhibit "A" the final scope of Services negotiated between ZWS and the successful Proposer shall be set forth in the Agreement ("Agreement") executed by and between ZWS and the successful Proposer. A copy of the sample Agreement is attached hereto as Exhibit "B" and incorporated herein by this reference. A project scope of work is shown in Exhibit "C" and a proposed project schedule is shown in Exhibit "D".

B. Pre-Proposal Meeting and Site Visit

¹Use of the term "firm" throughout this document shall mean individual proprietorship, partnership, Limited Liability Company, corporation or joint venture.

Each Proposer is required to attend a Mandatory Site Visit pre-proposal meeting to be held on July 30, 2026, from 1PM to 2PM at the project site at 5885 Pruitt Avenue in Windsor. Failure to attend this meeting will preclude a firm from submitting a proposal. Attendance at the pre-proposal meeting will ensure the Proposer understands the full scope of the Services requested.

C. Content and Format of Proposal

1. Cover Letter. Provide a cover letter and introduction, including the name and address of the organization and individual submitting the proposal, together with the name, address, telephone and fax numbers, and e-mail address of the contact person who will be authorized to represent the organization, and an expression of the Proposer's ability and desire to meet the requirements of this RFP. The letter must be signed by an individual authorized to bind the firm contractually.

1.1 Proposer Statement of Qualifications. Describe the Proposer's resources, experience, and capabilities as they relate to providing the Services. Submit in the order identified below.

1.2 Executive Summary. An executive summary should briefly describe the Proposer's qualifications and ability to perform the Services.

1.2.1 Qualifications and Experience. The proposal should:

- (a) Provide a description of how the Proposer's experience, technical and professional skills will meet the goals and fulfill the general functions identified in this RFP.
- (b) Any key staff members who would be involved in the performance of the scope of work. Provide their resumes, describe their experience, and identify their proposed role for the Project.
- (c) State the number of years the firm has conducted business.
- (d) Provide a description of the three most relevant contracts held within the last five years.

- 1.2.2 Evidence Of California Licensing. The proposal should include appropriate documentation showing the Proposer is properly licensed in the State of California to perform the Services requested in the scope of work.
- 1.2.3 Project Experience. The Proposer shall have at a minimum, experience and qualifications in the following areas and list projects meeting the criteria listed below in which Proposer has participated as the prime contractor during the past (10) years.
- (a) Projects in which Proposer performed as a construction manager at risk with direct construction costs of at least \$10 million;
 - (b) Construction projects of buildings with at least 10,000 square feet of building area, particularly those using construction manager at risk delivery; and
 - (c) Projects constructed utilizing prefabricated metal construction of at least 10,000 square feet.

For each project identified above, include all information indicated below as necessary and explain or clarify any response as necessary.

Project name/identification:
Project address/location:
Project owner, contact person, and telephone number:
Project architect name and telephone number:
Whether the project was a construction manager at risk project, a design-build project or another alternative delivery (not design-bid-build) project, and Proposer's role in that project:
If the project was a prefabricated metal project:
Project size and facility type:
If the project was a public work, name of agency, contact person, email and telephone number:
If Proposer was a subcontractor, name of general contractor, contact person, email and telephone number:
Scope of work:
Contracted completion date:
Date completed:
Initial contract amount (as of time of bid award):
Final contract amount:
Reason for any escalation of the final contract amount:
List of any claims and disputes and resolution:
List of any liquidated damages assessed:

1.2.4 References. The Proposer shall provide a minimum of four (4) client references, preferably county, or special ZWS governments for whom the Proposer has previously performed services of similar type and scope within the last 5 years.

1.2.5 Subcontractors. The Proposer shall identify functions that are likely to be subcontracted and identify the subcontractor that is anticipated to perform each function, if known at this time.

1.3 Proposed Method to Accomplish the Work. Describe the technical and management approach to providing the Services to ZWS.

Proposer should take into account the scope of the Project, goals of ZWS, and general functions required. Include a draft schedule of tasks, milestones, and deliverables that will provide for timely provision of the Project. In reviewing the scope of work, the Proposer may identify additional necessary tasks and is invited to bring these to ZWS's attention within the discussion of its proposed method to accomplish the Project.

- 1.4 Certification of Proposal. This section shall state: "The undersigned hereby submits its proposal and, by doing so, agrees to furnish services to ZWS in accordance with the Request for Proposal (RFP), and to be bound by the terms and conditions of the RFP."

2. Insurance: (limit: 3 pages - not including supporting documentation) See the Agreement, attached hereto as **Exhibit "B,"** for a description of the insurance requirements.

3. Litigation: (limit: 3 pages) Provide litigation history for any claims filed by your firm or against your firm related to the provision of Services in the last five (5) years.

4. Other Information: (limit: 3 pages) This section shall contain all other pertinent information regarding the following:

4.1 Proposer's Relevant Project and CMAR Experience.

- 4.1.1. Describe the Proposer's qualifications, technical expertise, and professional experience demonstrating its ability to successfully perform the Services and fulfill the objectives of this Project. Describe how the Proposer's experience, resources, and capabilities will meet the goals and general functions identified in this RFP.
- 4.1.2. Identify the Key Personnel proposed for the Project who will be responsible for performing the Services. For each individual, describe their proposed role, relevant qualifications, and experience on projects of similar size, scope, and complexity. Include resumes for all Key Personnel.
- 4.1.3. State the number of years the Proposer has been in business and provide a brief description of the firm's

history and experience delivering construction manager at risk (CMAR) services.

- 4.1.4. Provide descriptions of the three (3) most relevant contracts completed within the past five (5) years. For each project, include the owner, project location, scope, construction value, delivery method, dates of performance, and a summary of the Proposer's responsibilities and outcomes.
- 4.1.5. Provide documentation demonstrating that the Proposer holds all licenses required to perform the Services in the State of California, including evidence that the Proposer is properly licensed and in good standing.
- 4.1.6. Demonstrate the Proposer's experience as the prime contractor by providing examples of projects completed within the past ten (10) years that satisfy the following minimum qualifications:
 - (a) Projects delivered using the Construction Manager at Risk (CMAR) delivery method with direct construction costs of at least ten million dollars (\$10,000,000).
 - (b) Building construction projects consisting of at least 10,000 square feet of building area, with preference given to projects delivered using the CMAR method.
 - (c) Projects consisting of at least 10,000 square feet of prefabricated metal building construction.

4.2 Proposer Structure, Management Structure, Major Subcontractors, and Key Personnel.

- 4.2.1 Describe Proposer's team and management structure, including its teaming arrangements, allocation of roles and responsibilities within Proposer team and how Proposer will institutionally operate. Describe how Proposer's management structure will facilitate completion of all work required for the Project. Describe the prior experience (if any) of Proposer team members working together within a consortium, partnership, or any other form of joint venture.

- 4.2.2 Identify the Major Subcontractor(s) from which the CMAR Firm intends to request bids as Major Subcontractor(s) on the Project and describe the prior experience (if any) of Proposer and Subcontractors working together.
- 4.2.3 Provide an organizational chart which sets forth Proposer's structure, teaming arrangements and reporting requirements, and Major Subcontractors. Provide a separate organizational chart setting forth, at a minimum, Key Personnel, and other material personnel the Proposer wishes to identify and reporting relationships.
- 4.2.4 Identify the following Key Personnel who shall perform Services for the Project: (i) Project Principal/Project Executive, (ii) Project Manager, (iii) Construction Manager, (iv) Construction Superintendent, (v) Scheduler, (vi) Lead Estimator, and (vii) any other role Proposer wishes to designate as a key person (the positions described in clauses (i)-(vii) shall be collectively referred to as "**Key Personnel**"). ZWS expects the same Key Personnel that are proposed to start and finish the Project, or in so far as each team member's responsibilities are needed for the Project. Proposer shall provide the following:

(a) Specifically define the role of each Key Personnel and describe individual experience and responsibilities. Indicate whether any Key Personnel will be limited to any particular Project stage (preconstruction, construction, or otherwise).

(b) Indicate all Key Personnel who will serve as primary contact(s) for ZWS, and their availability and commitment to the Project.

(c) Resumes of Key Personnel shall show Project-relevant and other experience in CMAR Firm projects, experience in the minimum project criteria elements as well as the length of employment with the Proposer. Resumes shall be limited to two pages in length, shall be placed in an appendix to the Proposal and shall not count towards the 75-page limit.

(d) Indicate where the Key Personnel will be physically located.

(e) List at least two references for each of the Key Personnel for comparable projects or programs in which the Key Personnel have played a comparable role. References shall be previous owners or clients with whom the Key Personnel have worked within the last ten years and shall include the name, position, company or agency, current address, telephone number, and e-mail address. References cannot be from entities affiliated with the Proposer or Proposer team.

(f) Include an express, written commitment from the Proposer and the employer of each Key Personnel (if different than the Proposer) that the individuals designated as Key Personnel shall be available to serve in their role and will not be modified without the ZWS's specific prior approval. Proposers shall identify and proffer Key Personnel that will be available for, and be assigned to work on, the Project for the positions identified. By listing staff as Key Personnel, the Proposer agrees to make the staff listed available to complete work at whatever level the Project requires, in the determination of ZWS. Place these written commitments in an appendix to the Proposal along with the resumes. Such commitments shall be placed in an appendix to the Proposal and shall not count towards the 75-page limit.

(g) Describe the scope(s) of self-performed work and estimated percentages of the Services that Proposer intends to perform with its own forces and not subcontract and why such self-performed work is in the best interests of the Project.

4.3 Preconstruction Phase Services and Project Approach

- 4.3.1 Describe the Proposer's experience, expertise, and ability to perform the Preconstruction Phase Services.
- 4.3.2 Describe how Proposer intends to work with County/ZWS Representative and County/ZWS staff to perform the Services. Describe how Proposer intends to develop management techniques and responses related to critical deadlines, supply chain constraints, and labor shortage.
- 4.3.3 Describe how Proposer would engage collaboratively to complete the Project. Provide Proposer's experience with working on Projects where team members were not centrally located in one geographic area. Discuss Proposer's collaboration approach internally with ZWS, including its advisors and subconsultants, and with third-party stakeholders to achieve a high-functioning team through each phase. Describe the tools, techniques, and communication protocols that Proposer will use to encourage, foster, and achieve efficient and effective collaboration.

4.4 Schedule and Current Work Commitments

- 4.4.1 Discuss Proposer's ability to prepare and meet achievable construction schedules for construction projects, Proposer's schedule management procedures, and how Proposer has successfully handled, mitigated and minimized potential delays. Include a narrative overview and summary of the Baseline Construction Phase Project Schedule that describes the overall schedule approach and how that reflects and is likely to achieve timely completion.
- 4.4.2 Provide an initial Baseline Construction Phase Project Schedule, indicating significant milestones, all critical path items, and durations for the Scope of Work. ZWS understands that 100% DD will already have been produced and that the impact the CMAR is able to have on design decisions, which may impact project costs either positively or negatively, will be limited. ZWS also recognizes that having completed the design phase, the CMAR will, likewise, be limited in making design decisions which could

impact Project Schedule. Proposer's proposed initial Baseline Construction Phase Project Schedule shall be based on the information available in this RFP. The Baseline Construction Phase Project Schedule shall be placed in an appendix and shall not count towards the 75-page count.

(a) Specify the current and projected workload of the Proposer for the next two (2) years. If applicable, provide a statement of all recent, current, or anticipated contractual obligations and describe how Proposer will manage that workload to not interfere or impede Proposer's ability to provide the Services described herein to ZWS.

(b) Indicate any limitations or surety restrictions related to the size of the Project or existing backlog that the Proposer can contract for and can effectively perform.

4.5 Cost, Pricing, Budget, Fee, and Value Engineering Approach

4.5.1 Describe Proposer's overall cost estimating and pricing approach for the Project.

4.5.2 Describe any major risks in achieving a GMP, including what the Proposer foresees as any necessary Early Works Packages and anticipated timing for such Early Works Packages.

4.5.3 Describe Proposer's processes and tools for monitoring, reporting, and managing costs for all phases, including:

(a) Control and reporting processes for designing to budget;

(b) Scope, cost, and schedule baseline development and management/change control processes and the participation and interaction among the scheduling, estimating, project and construction teams to execute these processes;

(c) Risk management processes and how quantified risk cost and Schedule of Values are factored into the cost and schedule baseline, projected cost and

schedule performance, cash flow reporting, and input from specialty contractors; and

(d) Explanation of Proposer's philosophy on contingency, including the understanding, development, and management of contingencies allowed under the Agreement.

(e) ZWS is seeking a CMAR Firm that has direct experience and/or aptitude to "value engineer" or analyze a project's plans, components, and features, and find more efficient and cost-effective methods or alternatives. Describe Proposer's approach, background, experience, and prior-project track record regarding value engineering. Propose any potential suggestions, recommendations, alternatives or other valuation determinations that the Proposer anticipates for the Project.

(f) Discuss Proposer's ability to manage costs and stay within budget on comparable projects and particularly its expertise with managing and staying within a GMP.

4.6 Risk Management, Environmental, and Safety

4.6.1 Discuss what Project risks that the Proposer has identified and how it will strategize/coordinate with ZWS to address and mitigate these risks.

4.6.2 Describe Proposer's approach to environmental management for the Project and its experience and ability to ensure that it can perform construction activities in an environmentally responsible manner consistent with Applicable Law and permits.

4.6.3 Discuss Proposer's safety program, the content and frequency of its safety meetings, the basis for its current Experience Modification Rate ("EMR") number, its Injury and Illness Prevention Program and who Proposer's safety officer would be and his/her qualifications for that position.

As stated in the attached Scope of Work, the Hazardous Waste Facility is a pre-fabricated metal building. Prior experience with pre-fabricated metal buildings, while not a scoring factor, should be mentioned in the CMAR proposal. Also, Proposers should identify their selected pre-engineered metal building (PEMB) contractor as part of their submittal and include the contractor's qualifications and relevant experience. The CMAR team will be responsible for contracting for the final engineering associated with the PEMB system based on their selected manufacturer, specialty subcontractor, or licensed engineer to complete the delegated design scope.

Due to an aggressive project schedule, the CMAR entity will need to onboard vendors and subcontractors immediately upon contract award. As such, CMAR entities must submit proposed vendors, who have already been briefed on the Project, with the Proposal.

A separate demo permit is currently being pursued. The CMAR entities will need to get pricing to inform their proposed GPC.

Rough grading and utility work will need to be performed by the CMAR entity.

The CMAR team's proposal should include a potential scope for conducting a cost and feasibility analysis to help ZWS determine whether including solar as part of the Project would be beneficial. The analysis would evaluate the potential costs, benefits, and feasibility of including these systems without presupposing that they will ultimately be included.

5. Certification of Proposal: This section shall state:

The undersigned hereby submits its proposal and, by doing so, agrees to furnish services to ZWS in accordance with the Request for Proposal (RFP), and to be bound by the terms and conditions of the RFP.

6. Attachments: In addition to the above information contained in the proposals, Proposers shall complete and include the following Attachments, included and incorporated herein:

6.1 Attachment No. 1: Proposer/Subcontractor Identification Qualification Questionnaire.

6.2 Attachment No. 2: Proposer/ Subcontractor Questionnaire

6.3 Attachment No. 3: Financial Information

6.4 Attachment No. 4: Pricing Form – Submitted in a separate file entitled “Pricing Information”

7. Pricing Information:

7.1 The pricing information shall be submitted in a separate file entitled “Pricing Information”. Pricing information shall not be included in any other portion of the proposal.

7.2 ZWS’s current estimate for the Direct Cost of the Work for the Construction is \$16,768,329 (as of 7/8/2026), which does not include the CMAR Firm’s profit, overhead, general conditions, or contingency.

7.3 Please provide a lump sum, not-to-exceed fee proposal for the Project. The fee proposal shall be broken down by task and further broken down by staff, subconsultant costs, and expenses for each task. The fee proposal shall include hourly rates for all personnel.

8. No Deviations from the RFP:

8.1 In submitting a proposal in response to this RFP, Proposer is certifying that it takes no exceptions to this RFP including, but not limited to, the Agreement. If any exceptions are taken, such exceptions must be clearly noted in the proposal and may be a reason for rejection of the proposal. As such, Proposer is directed to carefully review the sample Agreement and, in particular, the insurance and indemnification provisions therein.

9. Selection Process:

ZWS will evaluate proposals based on the following criteria:

Category	Points
Proposer’s Relevant Project and CMAR Experience	100
Proposer Structure, Management Structure, Major Subcontractors, and Key Personnel	100
Preconstruction Phase Services and Project Approach	75
Schedule and Current Work Commitments	75
Cost, Pricing, Budget, Fee, and Value Engineering Approach	100

Risk Management, Environmental, and Safety	50
Total	500

10. It is ZWS's intent to select a Proposer to perform the Services based on the above criteria. ZWS reserves the right to reject all proposals, select by proposal review only or interview as needed. Certain Proposers may be selected to make a brief presentation and oral interview after which a final selection will be made. The successful Proposer will be selected on the basis of information provided in the RFP, in-person presentations, and the results of ZWS's research and investigation. Upon selection of a Proposer, ZWS will endeavor to negotiate a mutually agreeable Agreement with the selected Proposer. In the event that ZWS is unable to reach an agreement, ZWS will proceed, at its sole discretion, to negotiate with the next Proposer selected by ZWS. ZWS reserves the right to contract for services in the manner that most benefits ZWS including awarding more than one contract if desired.

11. After negotiating a proposed Agreement that is fair and reasonable, ZWS staff will make the final recommendation to ZWS Board of Directors concerning the proposed Agreement. ZWS Board of Directors has the final authority to approve or reject the Agreement.

D. Protests

1. Protest Procedures: Submitted proposals will be made available for review in accordance with the California Public Records Act and after a submission of a Public Records Act Request to ZWS Clerk's Office. Proposers may file a protest with Ariana Catalinotto. In order for a Proposer's protest to be considered valid, the protest must:

1.1 Be filed in writing not later than 5:00 p.m. (local time) on the fifth business day after ZWS issues a Notice of Intent to Award for the subject project, based on one of the following criteria:

1.1.1 The Proposer's disagreement with the determination or recommendation by ZWS regarding the Proposer's proposal;

1.1.2. Non-compliance with RFP;

1.1.3. Non-compliance with ZWS policy; or

1.1.4. Non-compliance with state or federal law.

- 1.2 Clearly identify the specific irregularity or basis for the protest;
- 1.3 Specify, in detail, the factual and legal grounds for the protest;
- 1.4 Include all relevant supporting documentation with the protest at time of filing.

2. **ZWS Review:** ZWS will review and evaluate the basis of the protest provided the protest is filed in strict conformity with the foregoing. ZWS shall provide the Proposer submitting the protest with a written statement concurring with or denying the protest. Action by ZWS relative to the protest will be final and not subject to appeal or reconsideration. The procedure and time limits set forth in this Section are mandatory and are the Proposer's sole and exclusive remedy in the event of protest. Failure to comply with these procedures will constitute a waiver of any right to further pursue the protest, including filing a Government Code claim or legal proceedings. All protests filed with **ARIANA CATALINOTTO SHALL BE DELIVERED TO THE FOLLOWING ADDRESS:**

Ariana Catalinotto
Sonoma County Public Infrastructure
400 Aviation Blvd, Suite 100
Santa Rosa, CA 95403

E. Proposal Schedule

The tentative schedule will be as follows:

ACTION	DATE
ZWS issues RFP	July 23, 2026
Pre-proposal Meeting & Site Visit	July 30, 2026 at 1PM
Deadline for Proposers to submit questions regarding this RFP	August 6, 2026 by 5PM
ZWS to respond to Proposers' questions regarding this RFP	August 14, 2026 by 5PM

ACTION	DATE
Deadline for Proposers to submit Proposals	September 8, 2026 by 10AM
Short-list for potential interviews released	September 17, 2026
Interviews of short-listed Proposers (if held)	September 22 – 24, 2026
ZWS to perform reference checks of qualified Proposers	September 29 -Oct 1, 2026
ZWS's Board awards Construction Manager at Risk Agreement (the " Agreement ")	October 15, 2026

The above scheduled dates are tentative and ZWS retains the sole discretion to adjust the above schedule. Nothing set forth herein shall be deemed to bind ZWS to award a contract for the Services and ZWS retains the sole discretion to cancel or modify any part of or all of this RFP at any time.

F. Submittal Requirements

1. General: It is strongly recommended that the Proposer submit proposals in the format identified in this RFP to allow ZWS to fully evaluate and compare the proposal. All requirements and questions in the RFP should be addressed and all requested data shall be supplied. ZWS reserves the right to request additional information which, in ZWS's opinion, is necessary to ensure that the Proposer's competence, number of qualified employees, business organization and financial resources are adequate to perform according to the Agreement.

2. Preparation: Proposals should be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of this RFP. Responses should emphasize the Proposer's demonstrated capability to perform the Services. Expensive bindings and promotional materials, etc., are not necessary or desired. However, technical literature that supports the approach to providing the Services and work plan should be forwarded as part of the proposal. Emphasis should be concentrated on completeness, approach to the work and clarity of proposal.

3. Site Examination: Proposers are required to visit the project site at **5885 Pruitt Avenue** in Windsor on **July 30th, 2026 at 1PM** to determine the local conditions which may in any way affect the performance of the work; familiarize themselves with all federal, state and local laws, ordinances, rules, regulations, and codes affecting the performance of the Services; make such investigations, as it may deem necessary for performance of the work at its proposal price within the terms of the Agreement; and correlate its observations, investigations, and determinations with the requirements of the Agreement.

4. Prevailing Wage and Contractor Registration: Proposer is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. Since Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and the total compensation is \$1,000 or more, Proposer agrees to fully comply with such Prevailing Wage Laws. ZWS shall provide Proposer with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Proposer shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Proposer's principal place of business and at the project site. It is the intent of the Parties to effectuate the requirements of sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code within this Agreement, and Proposer shall therefore comply with such Labor Code sections to the fullest extent required by law. Proposer shall defend, indemnify and hold ZWS, its officials, officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

Registration/DIR Compliance. Since Services are being performed on a public works project of over \$25,000 when the project is for construction, alteration, demolition, installation, or repair work, or a public works project of over \$15,000 when the project is for maintenance work, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, the Proposer and all subconsultants must be registered with the Department of Industrial Relations ("DIR"). Proposer shall maintain registration for the duration of the Project and require the same of any subconsultants. This Project is also subject to compliance monitoring and enforcement by the DIR. It shall be Proposer's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR. Any stop orders issued by the DIR against Proposer or any subconsultant that affect Proposer's performance of services, including any delay, shall be Proposer's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Proposer caused delay and shall not be compensable by ZWS. Proposer shall defend, indemnify and hold ZWS, its officials,

officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the DIR against Proposer or any subconsultant.

Labor Certification. By its signature hereunder, Proposer certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

5. Confidentiality of Proposal: Proposals submitted in response to this RFP shall be held confidential by ZWS and shall not be subject to disclosure under the California Public Records Act (Cal. Government Code section 7920.000 *et seq.*) until after either ZWS and the successful Proposer have completed negotiations and entered into an Agreement or ZWS has rejected all proposals. All correspondence with ZWS including responses to this RFP will become the exclusive property of ZWS and will become public records under the California Public Records Act. ZWS will have no liability to the Proposer or other party as a result of any public disclosure of any proposal or the Agreement.

If a Proposer desires to exclude a portion of its proposal from disclosure under the California Public Records Act, the Proposer must mark it as such and state the specific provision in the California Public Records Act that provides the exemption as well as the factual basis for claiming the exemption. For example, if a Proposer submits trade secret information, the Proposer must plainly mark the information as "Trade Secret" and refer to the appropriate section of the California Public Records Act which provides the exemption as well as the factual basis for claiming the exemption. If a request is made for information marked "Confidential", "Trade Secret" or "Proprietary" ("Proprietary Information"), ZWS will provide Proposers who submitted the information with reasonable notice to seek protection from disclosure by a court of competent jurisdiction. Proposer shall have five (5) working days after receipt of such notice to give ZWS written notice of Proposer's objection to ZWS's release of Proprietary Information. Proposer shall indemnify, defend and hold harmless ZWS, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information.

Proposals that indiscriminately identify all or most of the proposal as exempt from disclosure without justification may be deemed unresponsive and disqualified from further participation in this RFP.

6. Submittal Instructions.

The proposal must be received no later than 10AM local time, on or before September 8, 2026.
A Proposer can choose from the following options for submitting proposals:

Proposer shall submit the following:

- Electronic submission via the County of Sonoma's Supplier Portal
- One (1) hard copy of the proposal to address below.
- Thumb drive containing proposal documents.

Proposers who elect to submit a hard copy along with a thumb drive shall submit in person or by courier (ex: DHL, FedEx, USPS, UPS) to the following address: County of Sonoma, Public Infrastructure Department, 400 Aviation Blvd., Suite 100, Santa Rosa, CA 95403, Attention: Ariana Catalinotto, Senior Project Specialist.

A combination of the three listed options described above is highly recommended in the event the County's Supplier Portal is impacted by technical difficulties or may be down due to unforeseen reasons.

It is the Proposer's responsibility to ensure that all proposals are received prior to 10:00AM on Sept 8, 2026. The County takes no responsibility for late proposals and only those proposals received by the due date will be considered for evaluation.

The link to the Supplier Registration Portal is:
<https://esupplier.sonomacounty.ca.gov/psp/FNPRD/SUPPLIER/ERP/h/?tab=DEFAULT>

PLEASE NOTE **Proposers must be registered on the Supplier Portal to submit electronic proposals. See registration instructions on the Supplier Portal link above.**

If you have questions or issues with registration or access to the County's Supplier Portal, please contact Ariana Catalinotto: ariana.catalinotto@sonomacounty.gov.

ATTEMPTS BY A PROPOSER TO CONTACT ANY OTHER PERSON MAY RESULT IN DISQUALIFICATION.

ZWS will not be responsible for proposals that are delinquent, lost, incorrectly marked, sent to an address other than that given herein, or sent by mail or courier service and not signed for by ZWS.

G. Miscellaneous

1. Amendments to RFP: ZWS reserves the right to amend the RFP or issue to all Proposers addenda to answer questions for clarification. Failure to acknowledge and respond to any addenda issued may, in ZWS and the County's sole discretion, render the Proposer's Proposal non-responsive and eligible for rejection.

2. Non-Responsive Proposals: A proposal may be considered non-responsive if conditional, incomplete, or if it contains alterations of form, additions not called for, or other irregularities that may constitute a material change to the proposal.

3. Amendments to Proposals: Unless specifically requested by ZWS, no amendment, addendum or modification will be accepted after a proposal has been submitted to ZWS. If a change to a proposal that has been submitted is desired, the submitted proposal must be withdrawn and the replacement proposal submitted to ZWS prior to the deadline stated herein for receiving proposals.

4. Costs for Preparing: ZWS will not compensate any Proposer for the cost of preparing any proposal, and all materials submitted with a proposal shall become the property of ZWS. ZWS will retain all proposals submitted and may use any idea in a proposal regardless of whether that proposal is selected.

5. Cancellation of RFP: ZWS reserves the right to cancel this RFP at any time prior to contract award without obligation in any manner for proposal preparation, interview, fee negotiation or other marketing costs associated with this RFP.

6. Price Validity: Prices provided by Proposers in response to this RFP are valid for 90 days from the proposal due date. ZWS intends to award the contract within this time but may request an extension from the Proposers to hold pricing, until negotiations are complete and the contract is awarded.

7. No Commitment to Award: Issuance of this RFP and receipt of proposals does not commit ZWS to award a contract. ZWS expressly reserves the right to postpone the proposal for its own convenience, to accept or reject any or all proposals received in response to this RFP, to negotiate with more than one Proposer concurrently, or to cancel all or part of this RFP.

8. Requests for Clarification: All questions, requests for interpretations or clarifications, either administrative or technical, must be requested in writing and directed to ZWS Contact, identified above. All written questions, if answered, will be answered in writing,

conveyed to all interested firms, and posted on ZWS's website. Oral statements by any person should be considered unverified information unless confirmed in writing. To ensure a response, questions must be received in writing by 5:00 p.m. local time on the date identified in the Key Information.

9. Right to Negotiate and/or Reject Proposals: ZWS reserves the right to negotiate any price or provision, task order or service, accept any part or all of any proposals, waive any irregularities, and to reject any and all, or parts of any and all proposals, whenever, in the sole opinion of ZWS, such action shall serve its best interests and those of the tax-paying public. The Proposers are encouraged to submit their best prices in their proposals, and ZWS intends to negotiate only with the Proposer(s) whose proposal most closely meets ZWS's requirements at the lowest estimated cost. The Agreement, if any is awarded, will go to the Proposer whose proposal best meets ZWS's requirements.

10. Non-Discrimination: ZWS does not discriminate on the basis of race, color, national origin, religion, age, ancestry, medical condition, disability or gender in consideration for an award of contract.

Publication Date of RFP: July 23, 2026

Attachment No. 1:

Proposer/Subcontractor Identification Qualification Questionnaire

PROPOSER AND SUBCONTRACTOR INFORMATION		
Proposer's/Subcontractor's legal entity name:		
Years in business under current company name:		
Types of work performed with own forces:		
Gross revenue of the Proposer/Subcontractor for the past three (3) years:		
\$	\$	\$
Name of license holder exactly as on file with the California Contractors State License Board ("CSLB"):		
CSLB License classification(s):		
CSLB License Number(s):		
CSLB License expiration date(s):		
Department of Industrial Relations ("DIR") Registration Number:		
Responsible Managing Officer ("RMO") or Employee ("RME") for Proposer/Subcontractor:		
Number of years Proposer/Subcontractor has done business in California under contractor's license law:		
Number of years Proposer/Subcontractor has done business in California under Proposer's/Subcontractor's <i>current</i> license number:		
Has the Proposer/Subcontractor changed name(s) or license number(s) in the past five (5) years? (Y / N). If "yes", explain on a separate signed sheet, including the reason for the change.		
Has there been any change in ownership of the Proposer/Subcontractor at any time in the past five (5) years? NOTE: A corporation whose shares are publicly traded is not required to answer this question. (Y / N). If "yes", explain on a separate signed sheet, including the reason for the change.		
Is the Proposer/Subcontractor a subsidiary, parent, holding company, or affiliate of another construction entity? NOTE: Include information about other entities if one entity owns ten percent (10%) or more of another, or if an owner, partner, or officer of the Proposer/Subcontractor holds a similar position in another entity. (Y / N). If "yes", explain on a separate signed sheet, the name of the related company(s) and the percent ownership.		

Indicate the form of Proposer's/Subcontractor's entity (type of business entity): (e.g., corporation, limited liability company, joint venture, etc.):

List the following for each corporation officer, general partner, limited partner, owner, etc. (as applicable) for Proposer's/Subcontractor's type of entity. For joint ventures, include this information for each entity in the joint venture and the percent ownership of each joint venture. Attach all additional information on separate signed sheets as needed.

Name	Position	Years with Co.	% Ownership

Identify every construction firm, contractor and/or construction management entity with which Proposer/Subcontractor or any person listed above has been associated (as officer, general partner, limited partner, owner, RMO, RME, etc.) at any time during the *past five (5) years* (an "Associated Entity"). NOTE: For this question, "owner" and "partner" refers to ownership of ten percent (10%) or more of the business, or ten percent (10%) or more of its stock if the business is a corporation. Include all additional information in separate signed sheets as needed.

Name of Person at Associated Entity	Name of Associated Entity	CSLB No. for Associated Entity	Dates of Person's Participation

Note: Duplicate and submit this form for each Subcontractor included in the Proposal.

Attachment No. 2:
Proposer/ Subcontractor Questionnaire

1.	Does Proposer/Subcontractor currently have a Workers' Compensation Insurance policy as required by California law? (Please circle one)	<u>YES NO</u> NO = FAIL
2.	Does Proposer/Subcontractor currently hold all contractors' license(s) necessary to perform the work and have those license(s) been consistently active for at least five (5) years without revocation or suspension? (Please circle one)	<u>YES NO</u> NO = FAIL
3.	Has Proposer/Subcontractor or an Associated Entity been found non-responsible, debarred, disqualified, forbidden, or otherwise prohibited from performing work and/or bidding on work for any public agency within California or the United States within the past five (5) years? (Please circle one)	<u>YES NO</u> YES = FAIL
4.	Has Proposer/Subcontractor or an Associated Entity defaulted on a contract or been terminated for cause by any public agency on any project within North America within the past five (5) years and, if so and if challenged, has that default or termination been upheld by a court or an arbitrator? (Please circle one)	<u>YES NO</u> YES = FAIL
5.	Has Proposer/Subcontractor or an Associated Entity or any of their owners or officers been, within the past ten (10) years, convicted of a crime under federal, state, or local law involving: (1) Bidding for, awarding of, or performance of a contract with a public entity; (2) Making a false claim(s) to any public entity; or (3) Fraud, theft, or other act of dishonesty to any contracting party? (Please circle one)	<u>YES NO</u> YES = FAIL
6.	Has a performance bond surety for Proposer/Subcontractor or a performance bond surety for an Associated Entity had to: (1) Take over or complete a project, (2) Supervise the work of a project, or (3) Pay amounts to third parties, related to construction activities of your entity or an Associated Entity within the past five (5) years? (Please circle one)	<u>YES NO</u> YES = FAIL

ADDITIONAL QUESTIONS	
7.	Has any insurer had to pay amounts to third parties that were in any way related to construction activities of Proposer/Subcontractor within the past five (5) years?(Please circle one) If YES, explain and indicate on separate page(s) the project name(s), the amount(s) paid, and date(s).
	<u>YES</u> <u>NO</u>
8.	Has any insurer, for any form of insurance, refused to renew the insurance policy for Proposer/Subcontractor within the past five (5) years? If YES, explain and indicate on separate page(s) the form of insurance and the year and basis of the refusal.
	<u>YES</u> <u>NO</u>

9.	Has Proposer's/Subcontractor's Workers' Compensation Experience Modification Rate ("EMR") exceeded 1.0 at any time for the past five (5) premium years? (Please circle one) If YES, explain and indicate on separate page(s) the EMR(s) and the applicable date(s), including if your EMR is over 1.0, additional detail on good will efforts to reduce this factor and areas of improvement that have been put into practice to achieve a lower EMR.
	<u>YES</u> <u>NO</u>
10.	Has there been a period when Proposer/Subcontractor had employees but was without Workers' Compensation Insurance or state-approved self-insurance within the past five (5) years? (Please circle one) If YES, explain and indicate on separate page(s) the reason(s) for not having this insurance and the applicable date(s).
	<u>YES</u> <u>NO</u>
11.	Has Proposer/Subcontractor declared bankruptcy or been placed in receivership within the past five (5) years? (Please circle one) If YES, explain and indicate on separate page(s) the type of bankruptcy, Proposer's/Subcontractor's current recovery plan, and the applicable date(s).
	<u>YES</u> <u>NO</u>

12	Has Proposer/Subcontractor been denied bond coverage by a surety company, or has there been a period of time when Proposer/Subcontractor had no surety bond in place during a public construction project when one was required within the past five (5) years? (Please circle one) If YES, provide details on a separate page indicating the date(s) when Proposer/Subcontractor was denied coverage and the name of the company or companies which denied coverage; and the period(s) during which you had no surety bond in place.	<u>YES</u> <u>NO</u>
13	Has Proposer/Subcontractor or an Associated Entity been cited and/or assessed any penalties for non-compliance with state and/or federal laws and/or regulations, including public bidding requirements and Labor Code violations, within the past five (5) years? (Please circle one) If YES, indicate on separate page(s) the project name(s), violation(s), and date(s) of citation(s) and/or assessment(s) and provide an owner contact name, email and phone number.	<u>YES</u> <u>NO</u>
14	Has Proposer/Subcontractor been cited and/or assessed penalties by the Environmental Protection Agency, any air quality management district, any regional water quality control board, or any other environmental agency within the past five (5) years? (Please circle one) If YES, indicate on separate page(s) the project name(s), violation(s), and date(s) of citation.	<u>YES</u> <u>NO</u>
15	Has CAL OSHA and/or federal Occupational Safety and Health Administration cited and assessed penalties against Proposer/Subcontractor, including any “serious,” “willful” or “repeat” violations of safety or health regulations within the past five (5) years? (Please circle one) If YES, indicate on separate page(s) the project name(s), violation(s), and date(s) of citation. If the citation was appealed and a decision has been issued, state the case number and the date of the decision.	<u>YES</u> <u>NO</u>

16	Has Proposer/Subcontractor been cited for violations of the Contractor's State License Law (Business and Professions Code § 7000 <i>et seq.</i>), excluding alleged violations of federal or state law including the payment of wages, benefits, apprenticeship requirements, or personal income tax withholding, within the past five (5) years? (Please circle one) If YES, indicate on separate page(s) the name and owner of the project(s), the nature of the violation(s), and the date(s) of the citation(s).	<u>YES</u> <u>NO</u>
17	Has Proposer/Subcontractor been required to pay either back wages or penalties for its failure to comply with California's prevailing wage laws, with California's apprenticeship laws or regulations, or with federal Davis-Bacon prevailing wage laws within the past five (5) years? (Please circle one) If YES, indicate on separate page(s) the project name(s), the nature of the violation(s), the name and owner of the project(s), the number of employees who were initially underpaid and the amount of back wages and penalties that your entity was required to pay.	<u>YES</u> <u>NO</u>
18	Does Proposer/Subcontractor have a written Quality Assurance/Quality Control ("QA/QC") program? (Please circle one) If YES, indicate on separate page(s) a description of Proposer's/Subcontractor's QA/QC program.	<u>YES</u> <u>NO</u>
19	Does Proposer/Subcontractor require weekly, documented safety meetings to be held for construction employees and field supervisors during the course of a project? (Please circle one)	<u>YES</u> <u>NO</u>
20	Does Proposer/Subcontractor have a written Injury and Illness Prevention Program ("IIPP") that complies with California Code of Regulations, Title 8, sections 1509 and 3203? (Please circle one)	<u>YES</u> <u>NO</u>
21	Provide in the space below the name, address and telephone number of the point of contact at the apprenticeship program (approved by the California Apprenticeship Council) from whom you intend to request the dispatch of apprentices to Proposer/Subcontractor for use on any public work project	

	for which you are awarded a contract by ZWS.
Name:	
Address:	
Telephone:	

Attachment No. 3:
Financial Information

1.0 Financial Statements

Provide audited financial statements for Proposer, and, if applicable, each parent company or affiliate company ("Financially Responsible Party") for the three most recently completed fiscal years. In each case, if the entity is a consortium, partnership, or any other form of a joint venture, provide financial statements for all such members. If unaudited financial statements are provided, Proposer shall state that audited statements are not available.

If the entity has been in existence for less than three fiscal years, Proposer shall expressly state that such entity has been in existence for less than three fiscal years and shall provide financial statements for the number of fiscal years (or portions of fiscal years) it has been in existence.

The financial statements shall include:

- Opinion Letter (Auditor's Report);
- Balance Sheet;
- Income Statement;
- Statement of Cash Flow; and
- Footnotes.

The financial statements must meet the following requirements:

- GAAP/IFRS: Financial statements must be prepared in accordance with United States Generally Accepted Accounting Principles ("U.S. GAAP") or International Financial Reporting Standards ("IFRS"). If financial statements are prepared in accordance with principles other than U.S. GAAP or IFRS, a letter must be provided from a certified public accountant discussing the areas of the financial statements that would be affected by a conversion to U.S. GAAP or IFRS. A restatement of the financial information in accordance with U.S. GAAP or IFRS is not required.
- U.S. Dollars: Financial statements shall be provided in U.S. dollars, if available. If financial statements are not available in U.S. dollars, Proposer must include summaries of the Income Statements, Statements of Cash Flow, and Balance Sheets for the applicable time periods converted to U.S. dollars by a certified public accountant with a description of the formula for conversion.

- Audited: Financial statements must be audited by an independent party qualified to render audit opinions (e.g., a certified public accountant). If audited financials are not available for an entity, the Proposal shall include unaudited financial statements for such entity, certified as true, correct, and accurate by the chief executive officer, chief financial officer or treasurer (or by such equivalent position or role) of the entity.
- English: Financial statement information must be prepared in English. If audited financial statements are prepared in a language other than English, then translations of all financial statement information must accompany the original financial statement information.
- Newly Formed Entity: If Proposer or, if applicable, any Financially Responsible Party is a newly formed entity and does not have independent financial statements, financial statements for the equity owners of such entity shall be provided (and the entity shall expressly state that the entity is a newly formed entity and does not have independent financial statements).
- SEC Filings: If any entity for which financial information is submitted hereby files reports with the Securities and Exchange Commission (“SEC”), then such financial statements shall be provided through a copy of their annual report on Form 10K. For all subsequent quarters, provide a copy of any report filed on Form 10Q or Form 8-K which has been filed since the latest filed Form 10K.
- Confidentiality: Proposer shall identify any information which it believes is entitled to confidentiality by placing the word “confidential” on each page.
- Credit Ratings: Proposer shall provide a list identifying: (i) each entity for which financial statements are provided; (ii) a statement indicating whether each entity has a credit rating from a nationally recognized rating agency (such as Fitch Ratings, Moody’s Investor Service, and Standard & Poor’s Ratings Group); and (iii) if so, providing a copy of its current credit rating. If Proposer does not have a credit rating, provide a statement to that effect.

1.1 Material Changes in Financial Condition

Provide information regarding any material changes in financial condition for Proposer and, if applicable, each Financially Responsible Party for the past three fiscal years and anticipated for the next reporting period. In each case, if any of the foregoing entities is a consortium, partnership, or any other form of a joint venture, provide this information for all such members.

If no material change has occurred and none is pending, each of these entities shall provide a letter from their respective chief executive officer, chief financial officer, or treasurer (or equivalent position or role)

so certifying.

In instances where a material change has occurred, or is anticipated, the affected entity shall provide a statement describing each material change in detail, actual and anticipated association changes or disruptions in executive management, the likelihood that the developments will continue during the period of performance of the Project, and the projected full extent, nature and impact, positive and negative, of the changes experienced and anticipated to be experienced in the periods ahead. Include discussion of how the change is anticipated to affect the organizational and financial capacity, ability, and resolve of the Proposer and each Financially Responsible Party, as applicable, to remain engaged in this procurement and submit a responsive Proposal.

Estimates of the impact on revenues, expenses, and the change in equity will be provided separately for each material change as certified by the chief executive officer, chief financial officer, or treasurer (or equivalent position or role).

References to the notes in the financial statements are not sufficient to address the requirement to discuss the impact of material changes.

Where a material change will have a negative financial impact, the affected entity shall also provide a discussion of measures that would be undertaken to insulate the Project from any recent material changes and those currently in progress or reasonably anticipated in the future.

If the financial statements indicate that expenses and losses exceed income in each of the three completed fiscal years or in the aggregate over such period (even if there has not been a material change), the affected entity shall provide a discussion of measures that will be undertaken to make the entity profitable in the future and an estimate of when the entity will be profitable.

Below is a representative list of events intended to provide examples of what ZWS considers a material change in financial condition. This list is intended to be indicative only. At the discretion of ZWS, any failure to disclose a prior or pending material change may result in disqualification from further participation in the selection process.

List of Representative Material Changes

- An event of default or bankruptcy involving the affected entity, or the parent corporation of the affected entity;
- A change in tangible net worth of 10% of shareholder equity;
- A sale, merger or acquisition exceeding 10% of the value of shareholder equity prior to the sale, merger, or acquisition which in any way involves the affected entity or parent corporation of the affected entity;
- A downgrade in credit rating for the affected entity or parent corporation of the affected entity;

- Non-payment of any debt service;
- Inability to meet material conditions of loan or debt covenants by the affected entity or parent corporation of the affected entity which has required or will require a waiver or modification of agreed financial ratios, coverage factors or other loan stipulations, or additional credit support from shareholders or other third parties;
- In the current and three most recently completed fiscal years or in the aggregate over the three most recently completed fiscal years, the affected entity or the parent corporation of the affected entity either: (i) incurs a net operating loss; (ii) sustains charges exceeding 5% of the then shareholder equity due to claims, changes in accounting, write-offs or business restructuring; or (iii) implements a restructuring/reduction in labor force exceeding 200 positions or involves the disposition of assets exceeding 10% of the then shareholder equity; or
- Other events known to the affected entity which represents a material change in financial condition over the past three fiscal years or may be pending for the next reporting period.

1.2 Financially Responsible Party Letter of Support

If the financial statements of a Financially Responsible Party are provided to demonstrate the financial capability of Proposer, an appropriate letter from the applicable Financially Responsible Party must be provided confirming that it will financially support all the obligations of Proposer with respect to the Project. If financial statements are not provided for a Proposer, the entity that supplies the financial statements shall be a Financially Responsible Party. This letter must be signed by the chief executive officer, chief financial officer or treasurer (or equivalent position or role) of the Financially Responsible Party.

Proposers shall note that ZWS may, based upon the review of the information provided pursuant to this section or Proposer's form of organization, specify that an acceptable Financially Responsible Party or a parent or affiliate guaranty is required as a condition precedent prior to award of the Agreement.

For purposes of this section, (a) "parent company" means parent companies at any tier and (b) "affiliate company" means: (i) subsidiary companies at any tier; (ii) entities under common ownership; (iii) joint ventures and partnerships involving such entities (but only as to activities of joint ventures and partnerships involving Proposer as a joint venturer or partner and not to activities of other joint venturers or partners not involving Proposer; and (iv) other financially liable or responsible parties for the entity.

1.3 Off-Balance Sheet Liabilities

For each entity for which financial information is submitted, provide a letter from the chief financial

officer or treasurer (or equivalent position or role) of the entity or the certified public accountant: (a) identifying all off-balance sheet liabilities in excess of \$25 million dollars in the aggregate; or (b) stating there are no such off-balance sheet liabilities.

Attachment No. 4:

Pricing Form – Submitted in a separate file entitled “Pricing Information”

Proposer shall submit this Attachment No. 4 setting forth its proposed Preconstruction Phase Services Lump Sum, Preconstruction Phase Services Hourly Rates, and CMAR Firm’s Fee for Early Construction Phase Work and Construction Phase Work.

Table 1 – Preconstruction Phase Services Lump Sum		
Milestone	Percentage of Lump Sum	Amount
50% Construction Document OPC	50%	\$[●]
100% Construction Document GMP Proposal	50%	\$[●]
Total Preconstruction Phase Services Lump Sum:		\$[●]

Table 2.– Preconstruction Phase Services Hourly Rates	
Project Principal/Project Executive	\$[●]
Project Manager	\$[●]
Construction Manager	\$[●]
Construction Superintendent	\$[●]
Scheduler	\$[●]
Lead Estimator	\$[●]
[Other, including Key Personnel identified pursuant to <u>Section 2.3.4</u> (please specify)]	\$[●]

CMAR Firm’s Fee for Early Construction Phase Work and Construction Phase Work	
CMAR Firm’s Fee	[●]%

Proper Name of Proposer: _____

City, State: _____

Signature: _____

Print Name: _____

Date: _____

Title: _____

EXHIBIT A

Proposed Scope of Services

Exhibit 2A

Scope Of Services (Preconstruction Phase)

1.0 Preconstruction Phase Services – General Responsibilities

Generally, the Preconstruction Phase Services consist of those tasks necessary for the CMAR Firm, in collaboration and coordination with the Architect and Independent Cost Estimator, to develop a Guaranteed Maximum Price (“GMP”) and associated Baseline Construction Phase Project Schedule for Early Construction Phase Amendments and the Construction Phase Amendment. These services also include project management activities and, after completion of the California Environmental Quality Act (“CEQA”) process, specific tasks for the development of certain Management Plans necessary to advance the Project through the Preconstruction Phase, Early Construction Phase, and Construction Phase.

The Preconstruction Phase Services generally include the following activities:

- Development, review, and approval of various Submittals, as described in Section 1.1;
- Management Activities, as described in Section 1.2;
- Preliminary evaluation, as described in Section 1.3;
- Design Development support, as described in Section 1.4;
- Development, review, and approval of Project Schedules, as described in Section 1.5;
- Procurement and GMP development, as described in Section 1.6; and
- Development, review, and approval of Other Management Plans, as described in Section 3.13.

Any recommendations, advice, and/or suggestions regarding potential design alternatives, constructability reviews, value engineering (“VE”), or design modifications provided by the CMAR Firm are made solely in its capacity as a general contractor, and not as a licensed design professional. Evaluation of the suitability of all potential solutions, alternatives, and/or other suggestions will remain the sole responsibility of the Architect. When providing VE suggestions, the CMAR Firm will utilize best practices to ensure accurate pricing is provided.

During the Construction Phase, the CMAR Firm shall not proceed with any Early Construction Phase Work or Construction Phase Work until the Early Construction Phase Work Guaranteed Maximum Price

Proposal (the “Early Construction Phase Work GMP Proposal”) for the Early Construction Phase or the Construction Phase Guaranteed Maximum Price Proposal (the “Construction Phase GMP Proposal”) for the Construction Phase is approved by Zero Waste Sonoma and Zero Waste Sonoma issues Notice to Proceed (“NTP”) for said Early Construction Phase or Construction Phase.

1.1 Submittals Requirements

- Preconstruction Phase Submittals include design review comments, reports, Management Plans, Project Schedules, the Cost Model, Opinions for Proposal Costs (“OPC”), Early Construction Phase Work GMP(s), the Construction Phase GMP and other submittals or work products identified in this Exhibit 2A.
- Unless otherwise indicated in this Exhibit 2A, all Submittals must be prepared, updated, and maintained in accordance with the Submittal Requirements.
- Unless otherwise indicated below, CMAR Firm shall provide one draft version of each Submittal for Zero Waste Sonoma review and one final version that addresses review comments.
- Project Schedules shall be submitted as electronic files in formats as directed by Zero Waste Sonoma.

1.2 Management Activities

CMAR Firm shall perform the following management activities during the course of the Preconstruction Phase Services:

- Participate in one Project kick-off meeting for the Preconstruction Phase Services at a ZWS location in accordance with Section 2.1.
- Participate in weekly check-in/progress meetings on-site, at the office location provided by Zero Waste Sonoma, or via teleconferencing, as directed by Zero Waste Sonoma.
- Participate in biweekly meetings and workshops in accordance with Section 1.4 and throughout Section 2.0.
- Establish and maintain monthly the Project Schedule for the Preconstruction Phase Services in coordination with the Architect.
- Manage and maintain work and files via Sharepoint or in formats as otherwise directed by Zero Waste Sonoma.

- Prepare and submit monthly progress reports with descriptions of the work completed in the last monthly period in a format acceptable to Zero Waste Sonoma. At a minimum, monthly progress reports shall include:
 1. A detailed description of the work and Preconstruction Phase Milestones completed to date;
 2. A detailed description of the work or Preconstruction Phase Milestone for which payment is being requested, if any;
 3. Evidence that (a) the work for which payment is requested, if any, has been completed, and (b) all conditions of payment for the applicable activity or work, including, if applicable, review and approval by Zero Waste Sonoma, have been satisfied;
 4. A summary of anticipated activities for the following monthly period, by task;
 5. Identification of any current or anticipated challenges regarding the execution of the Preconstruction Phase Services; and
 6. Any additional information as required by Zero Waste Sonoma funding agencies, including other Project and cost information reasonably requested; and
- Participate in Project partnering workshops.

1.3 Preliminary Evaluation

The CMAR Firm shall perform the following preliminary evaluation activities at the outset of the Preconstruction Phase Services:

- Preliminary evaluation of Zero Waste Sonoma's Project and construction budget requirements, including a review of all background data made available by Zero Waste Sonoma as to requirements, criteria, priorities, feasibility, and physical and financial limitations with regard to the Project.
- Review of site investigation studies and work products prepared by others and any written comments as necessary to the Architect and Zero Waste Sonoma regarding potential constructability impacts. In addition, the CMAR shall identify additional investigation studies required.

- Preconstruction Phase Site Investigations and conditions surrounding the site and documentation of the conditions observed on the site with photos or videos as required by Zero Waste Sonoma. The CMAR Firm shall review with Zero Waste Sonoma and Architect site data such as access, location of services, security, surveys, soils information, and other relevant information. The CMAR Firm may assist in locating/confirming the location of all utilities, services, and other underground facilities that may impact the Project, but does not assume liability for damage to facilities which are not properly identified by Zero Waste Sonoma.

1.4 Early Construction Phases and Long Lead Procurements

1.4.1 Early Construction Phase

At Zero Waste Sonoma's discretion, Zero Waste Sonoma and CMAR Firm may identify Early Construction Phase Work for the purpose of timely progression of the Project and possible cost savings. The CMAR Firm shall review the design documents for possible Early Construction Phase Work. The Architect and Zero Waste Sonoma shall take such measures as are appropriate to provide that any Early Construction Phase Work will be without duplication or overlap, and will be sequenced to maintain completion of the Project on schedule. Any identified Early Construction Phase Work shall be advanced as a separate Early Construction Phase GMP Proposal under the Agreement.

1.4.2 Long Lead Procurements

At Zero Waste Sonoma's discretion, Zero Waste Sonoma may require long lead items to be purchased early in the process. The CMAR Firm shall assist in reviewing the design to identify long lead procurement items, if any, (equipment, materials, and supplies) for this Project. When each long lead procurement item is identified, the CMAR Firm shall notify Zero Waste Sonoma of the required procurement and schedule. If Zero Waste Sonoma agrees with the early procurement, the CMAR Firm shall arrange for procurement of such long lead procurement items. The CMAR Firm shall keep Zero Waste Sonoma informed of the progress of the Work, including manufacturing or fabricating of such long lead procurement items, and advise Zero Waste Sonoma of any problems or prospective delay in completion or delivery. The long lead procurement items will be paid for as part of a, or under a separate, Early Construction Phase GMP Proposal under the Agreement.

1.4.3 Cost Model

The CMAR Firm shall prepare a Cost Model for estimating Project costs based on a "Schedule of Values" concept as set forth below and in Exhibit 6, and shall provide a copy of such Cost Model to Zero Waste Sonoma within ten (10) days after the Initial Approach to Cost Workshop. Zero Waste Sonoma and the CMAR Firm shall review and mutually agree upon the Cost Model in accordance with the requirements established herein. When approved by Zero Waste Sonoma, the Cost Model shall serve as a basis for all Project construction cost estimates including the OPCs and Early Construction Phase GMP Proposals

and/or Construction Phase GMP Proposal. All assumptions and clarifications shall be listed and submitted with each OPC and Early Construction Phase GMP Proposal and/or Construction Phase GMP Proposal. The CMAR Firm shall provide a Cost Model based on a Schedule of Values for all of the work included in an Early Construction Phase or in the Construction Phase, and based on quantities and prices of items aggregating the Early Construction Phase GMP and/or Construction Phase GMP, as appropriate. The work in each Early Construction Phase and/or the Construction Phase shall be subdivided into component parts in sufficient detail to serve as the basis for payments during the Early Construction Phase or Construction Phase, as appropriate. The Cost Model shall follow the breakdown of scope and categories found in the most recent Construction Specifications Institute (“CSI”) MasterFormat documentation. At a minimum the CMAR Firm must include the following information and the following structure:

- Overhead and profit;
- Supervision;
- Construction Work Fixed General Conditions Cost;
- Layout;
- Mobilization;
- Submittals;
- Bonds;
- Closeout documentation;
- Demolition;
- Installation;
- Rough-in;
- Finishes;
- Testing; and
- Punch list and acceptance.

The aforementioned information shall be broken down into the following areas:

- Site work;
- By each building and/or phase;

- By each floor; and
- By division of work.

1.4.4 Other Activities

The CMAR Firm shall perform the following other activities during the Preconstruction Phase Services:

- Provide support and input to the Architect and Zero Waste Sonoma regarding O&M and repair and replacement (“R&R”) preliminary plan development.
- The CMAR Firm shall advise and assist the Architect and Zero Waste Sonoma, if requested, in dealing with utilities as necessary.

2.0 Preconstruction Phase Services – Tasks and Deliverables

The general workflow of the Preconstruction Phase Services includes the tasks and deliverables listed below.

2.1 Project Kickoff Meeting

The CMAR Firm shall collaboratively work with Zero Waste Sonoma to plan, attend, and actively participate in the Project kickoff meeting. The Project kickoff meeting will be led by ZWS at a ZWS-determined location and will include the following:

- Introduction to the Project, CMAR project delivery method, and Project stakeholders;
- Presentation of Project elements and the Preconstruction Phase Services Scope of Work, including the following:

1. Project status, goals, and objectives; and

Project information, including relevant schematic designs, Specifications, studies, and reports; Discussion of Project schedule and major milestones, including the following:

- Preconstruction Phase Services Project Schedule, including regular team meetings and workshops; and
- Major Preconstruction Phase Milestones and other key activities; Identification and discussion of roles and responsibilities of Zero Waste Sonoma, Architect, CMAR Firm, Independent Cost Estimator, Owner’s Representative, and others;

- Process for design input, including the following:
 2. Preconstruction Phase Milestone review requirements, timing, and process;
 3. Innovation and risk workshops; and
 4. On-going/as needed input and Zero Waste Sonoma requests;
- Communications protocol and plan, including both internal and external communication;
- Identification of change management process, including the following:
 5. Issue identification; and
 6. Escalation and resolution; and
- Initial discussions related to the following:
 7. Cost Model/pricing development approach;
 8. Project risks identification;
 9. Project innovation identification; and
 10. Initial Early Construction Phase discussion.

Deliverable: Participation in meeting by all Key Personnel. Follow up action items and deliverables as assigned by Zero Waste Sonoma.

2.2 Early Construction Phase Definition Workshop(s)

The CMAR Firm shall collaborate with Zero Waste Sonoma and the Architect to plan, attend, and actively participate in one or more Early Construction Phase Definition Workshop(s). The intent of the Early Construction Phase Definition Workshop(s) to identify and determine any Early Construction Phase packages.

Deliverable: Participation in meeting by the CMAR Firm's Key Personnel as directed by Zero Waste Sonoma. Follow up action items and deliverables as assigned by Zero Waste Sonoma.

2.3 Value Engineering Workshop

The CMAR Firm shall collaboratively work with Zero Waste Sonoma and the Architect to plan, attend,

and actively participate in one or more VE Workshop(s), starting at the 50% Construction Development Preconstruction Phase Milestone.

Deliverable: Participation in meeting. Follow up action items and deliverables as assigned by Zero Waste Sonoma.

2.4 Initial Approach to Cost Workshop

The CMAR Firm shall participate in a meeting with Zero Waste Sonoma, Architect, and Independent Cost Estimator to establish baseline production rate assumptions and other assumptions and standards for formulation of the OPCs and any Early Construction Phase GMP Proposal and/or the Construction Phase GMP Proposal. The purpose of the Initial Approach to Cost Workshop will be to establish like assumptions for construction means and methods as well as to establish the plan to communicate changes in scope, quantity, and construction sequencing among the CMAR Firm, Zero Waste Sonoma, Architect, and Independent Cost Estimator in order to affirm a consistent foundation for estimation. See Section 2.5 for a more detailed description, definition, and delineation of the information to include as a part of the open-book Cost Model required for this Project.

The CMAR Firm shall attend and actively participate in this meeting by performing the following:

- A. Introducing Zero Waste Sonoma, Architect, Owner's Representative, and Independent Cost Estimator to the CMAR Firm's proposed Cost Model;
- B. Directing an open discussion with Zero Waste Sonoma, Architect, Owner's Representative, and Independent Cost Estimator regarding specific assumptions and clarifications in the Cost Model needing further discussion and agreement among the CMAR Firm, County, Architect, Owner's Representative, and Independent Cost Estimator. These will be the assumptions and clarifications listed with each iteration of each OPC and each Early Construction Phase GMP Proposal and/or the Construction Phase GMP Proposal; and
- C. Discussing the Cost Model development schedule and developing an update process that integrates County, Architect, Owner's Representative, and Independent Cost Estimator input, analysis, and evaluations.

Deliverable: Cost Model document that includes the description of assumptions and clarifications in the open-book Cost Model for the Project, including production rate assumptions.

2.5 Cost Model Development

The CMAR Firm shall develop and provide an open-book, production-based Cost Model in accordance with Section 1.7.1 for Zero Waste Sonoma's, Architect's, and ICE's examination so that assumptions, design, and other Allowances, risk, and approach to the estimate are fully identified, delineated, and

understood by Zero Waste Sonoma, Architect, and ICE. Zero Waste Sonoma will approve or request further modifications to the Cost Model. The initial Cost Model shall be submitted for review and ultimate approval within twenty (20) days of the Initial Approach to Cost Workshop.

The Cost Model shall define the CMAR Firm's costs related to labor, materials, equipment, subcontractor and supplier quotes, means and methods, production rates, risk, and mobilization in an organized and easily read format. The CMAR Firm is responsible for determining quantities based on the Project Plans and Specifications at each Preconstruction Phase Milestone. The Cost Model shall not include the CMAR Firm's Preconstruction Phase Services Lump Sum, sums due to the Architect, or other costs that are the responsibility of Zero Waste Sonoma. The Cost Model shall not include General Conditions costs, overhead, profit, Contingency, and Allowances.

Deliverable: An initial Cost Model for Zero Waste Sonoma's review and approval within twenty (20) days of the Initial Approach to Cost Workshop to be used for the duration of the Agreement. Modification and adjustment to the initial Cost Model, as needed, for Zero Waste Sonoma approval for use on the Project.

2.6 OPC Development and Updates

OPCs will be developed in accordance with the following requirements.

2.6.1 OPC Updates

After reviewing the Architect's documents at each Preconstruction Phase Milestone for each Early Construction Phase or the Construction Phase, as appropriate, the CMAR Firm shall provide an initial OPC for the Preconstruction Phase Milestone. Each OPC shall be prepared using the approved Cost Model, and shall not include General Conditions costs, overhead, profit, Contingency, and Allowances. The CMAR Firm shall provide a detailed written report to Zero Waste Sonoma, Architect, Owner's Representative, and Independent Cost Estimator regarding the impact of and changes to the Cost Model based on the CMAR Firm's review of design documents made available at the Preconstruction Phase Milestone. The CMAR Firm shall continue to refine each OPC as design progresses with input to/from the Architect, Zero Waste Sonoma, and Independent Cost Estimator on clarifications needed to reduce risk and Allowances. The CMAR Firm shall advise the Architect and Zero Waste Sonoma immediately if it appears that the Early Construction Phase and/or Construction Phase cannot be completed within the budget or schedule.

Zero Waste Sonoma will compare the initial OPC with the estimates prepared by the Architect, Owner's Representative, and/or Independent Cost Estimator. Zero Waste Sonoma and the CMAR Firm shall reconcile any disagreements among the initial OPC and the Architect, Owner's Representative, and/or Independent Cost Estimator estimates to arrive at an agreed final OPC for the construction costs for the Early Construction Phase and Construction Phase through that Preconstruction Phase Milestone. If Zero Waste Sonoma requires updates of the OPC, the CMAR Firm shall provide the requested information in a timely manner.

Each OPC submittal after the 50% Design Development OPC shall identify the Preconstruction Phase

Milestone before “OPC” in the title. For example, the second OPC submittal at 50% Design Development shall be titled “CMAR 50% Design Development OPC.” Each revision of the OPC at each milestone shall be sequentially numbered. For example, the revision of the OPC submittal at 50% Design Development shall be titled “CMAR 50% Design Development OPC, Rev. 1.” Once the OPC for each Preconstruction Phase Milestone is approved by the Zero Waste Sonoma, the Cost Model shall be updated and kept current as the design progresses throughout the Preconstruction Phase until the Early Construction Phase GMP Proposal or the Construction Phase GMP Proposal, as appropriate. Each approved OPC shall ultimately be the best representation of what the construction costs are estimated to be at that Preconstruction Phase Milestone.

The CMAR Firm shall communicate to Zero Waste Sonoma, Architect, and Independent Cost Estimator any assumptions made in preparing each OPC.

Each updated OPC shall include a report of line-item variances from the previous OPC with information describing the basis for each variance. If, at any point, an OPC submitted to Zero Waste Sonoma potentially causes the GMP to exceed the specified Project budget for the Early Construction Phase or Construction Phase, as appropriate, the CMAR Firm shall make appropriate recommendations to Zero Waste Sonoma on means/methods, materials, scope, and/or other design elements that it believes will reduce the estimated construction costs (without altering Zero Waste Sonoma’s overall concept).

Deliverable: OPC updates at each Preconstruction Phase Milestone for each Early Construction Phase or the Construction Phase, as appropriate. Each initial OPC update shall be submitted by the CMAR Firm to Zero Waste Sonoma within fifteen (15) days of receipt of Zero Waste Sonoma-approved Preconstruction Phase Milestone package.

2.6.2 OPC Contents

Each OPC shall be developed in accordance with the Cost Model as set forth in Section 1.7 and Exhibit 6, and shall include the following additional information, at a minimum:

- Overhead and profit;
- Construction Work General Conditions Cost;
- Details of all Allowances and unit price work shown and specified in the detailed design documents;
- Contingency;
- A Project Schedule to support estimated production; and
- A variance report.

2.6.3 Backup Documentation

Each OPC shall be accompanied by backup documentation that shall include the following:

- Cost of the work, including the following:
 1. Unit prices and quantity take-offs;
 2. Details of all Allowances and unit price work;
 3. Material costs, equipment costs, labor costs, hourly labor rates, and total cost. Labor costs shall include employee benefits, payroll taxes, and other payroll burdens;
 4. The total cost for any portion of the work to be performed by Subcontractors, including Subcontractor overhead and profit;
 5. Production rates, transportation, and other facilities and services necessary for the proper execution of the work, whether temporary or permanent, and whether or not incorporated or to be incorporated into the work;
 6. All fixed equipment, site improvements, and utilities; and
 7. Copies of quotations from Subcontractors and suppliers.
- Other Documents
 1. Memoranda, narratives, CMAR Firm's reports, and all other information used by the CMAR Firm to arrive at the price shown in the OPC;
 2. A list of all assumptions and clarifications; and
 3. A breakdown of all Allowances.
- Schedule

A Project Schedule update that is based on the OPC assumptions and production rates as well as the current construction sequencing in the plans.

2.6.4 Self-Performance

The self-performance requirement shall be developed during the Preconstruction Phase and assigned by Zero Waste Sonoma and shall be included in the Early Construction Phase GMP Proposal or Construction Phase GMP Proposal, as appropriate.

In each Early Construction Phase GMP Proposal or Construction Phase GMP Proposal, the CMAR Firm

shall clearly delineate any services to be self-performed in order to meet the assigned self-performance requirement and any services to be subcontracted.

In no event shall the percentage of the work of any individual Subcontractor exceed the percentage of the work of the CMAR Firm without the explicit approval of Zero Waste Sonoma, in its sole discretion.

2.6.5 Indirect Costs

Indirect costs are to be scoped, quantified, and priced as a separate division of cost and are not to be allocated under direct costs, except as stated above for work performed by Subcontractors. Indirect costs shall exclude Construction Work Fixed General Conditions Costs.

2.6.6 Mobilization

Mobilization/demobilization of temporary jobsite offices is to be a detailed item, and the CMAR Firm shall include this under Construction Work Fixed General Conditions Costs. Mobilization/demobilization of construction equipment is to be an individually detailed item for each piece of equipment, all of which is to be included under Construction Work Fixed General Conditions Costs.

2.6.7 Allowances

After all direct costs and indirect costs have been estimated and individually quantified, Allowances shall be specifically identified and allocated depending on risks associated with each pay item.

2.6.8 Confidentiality

The CMAR Firm shall designate any information in an OPC it considers to be confidential trade secrets or proprietary. The CMAR Firm shall clearly mark each page of an OPC that the CMAR Firm considers confidential trade secrets or proprietary prior to submitting it to Zero Waste Sonoma.

Deliverables: The CMAR Firm shall deliver OPCs at each Preconstruction Phase Milestone for each Early Construction Phase or the Construction Phase, as appropriate. Each OPC shall be developed in accordance with the requirements listed above. For earlier design stages some information may not be available. If so, provide the assumptions and clarifications applied to the OPC.

2.7 Project Schedule Development and Update

The CMAR Firm shall perform the following activities during the Preconstruction Phase Services related to Project Schedule development and monitoring:

- Based on the Baseline Preconstruction Phase Project Schedule submitted with the CMAR Firm's Proposal, and in coordination with the Architect and Zero Waste Sonoma, prepare the Preconstruction Phase Project Schedule.
- Develop and provide a draft structure/format for Zero Waste Sonoma review that will

serve as the basis of Baseline Early Construction Phase Project Schedules, if needed, and the Baseline Construction Phase Project Schedule (and the Early Construction Phase Project Schedule and Construction Phase Project Schedule as each is further developed during an Early Construction Phase or the Construction Phase, respectively).

- Obtain Zero Waste Sonoma's agreement to any deviations from the scheduling provisions set forth in the Specifications.
- Incorporate Zero Waste Sonoma review comments to finalize the schedule structure/format for Zero Waste Sonoma approval.
- Develop a preliminary draft of a Work Breakdown Structure ("WBS") for Zero Waste Sonoma review that will be used to inform the ongoing development of the Baseline Early Construction Phase Project Schedules and the Baseline Construction Phase Project Schedule as well as the Guaranteed Maximum Price Cost Model ("GMP Cost Model"). The WBS shall provide a clear description of each work package and deliverable included in the Early Construction Phase Work and the Construction Phase Work. Revise the WBS to address comments received from Zero Waste Sonoma and resubmit for Zero Waste Sonoma approval.
- Develop any Baseline Early Construction Phase Project Schedule, if needed, and the Baseline Construction Phase Project Schedule at the Preconstruction Phase Milestones and more frequently as requested by Zero Waste Sonoma.
- Continuously monitor the impact of proposed design on the Project Schedule and recommend adjustments in the design documents including construction sequencing to ensure completion of the Project in the most expeditious and cost-effective manner possible within the CMAR Firm's means and methods.
- At the 50% Construction Documents Preconstruction Phase Milestone, prepare and provide a list of additional details that would be needed to complete the Project in the allotted time or to accelerate aspects of the Construction Phase Work.

The Project shall be planned using the Project Schedule as described in the Agreement. The Project Schedule shall be used for the coordination of all work activities required to complete any Early Construction Phase and the Construction Phase.

Zero Waste Sonoma and the Architect shall review and provide input into the Project Schedule. The CMAR Firm shall update the Project Schedule with each OPC and Early Construction Phase GMP Proposal and/or Construction Phase GMP Proposal, as appropriate, which will be included as part of the Agreement and adhered to by the CMAR Firm for the duration of the Agreement.

Deliverable: The Project Schedule, prepared (and updated at each design milestone) for the Early Construction Phase and/or Construction Phase, as appropriate, and for the Project overall in an electronic format to be directed by Zero Waste Sonoma, that can produce a critical path method (“CPM”) network diagram.

2.8 Ongoing OPC and Project Schedule Workshops

The OPC and Project Schedule Workshop(s) are an opportunity for the CMAR Firm, Zero Waste Sonoma, Architect, Owner’s Representative, and Independent Cost Estimator to collaborate on established assumptions, allowances, risks, and approaches to the estimating and scheduling process. These meetings shall involve in-depth discussions on the OPCs and the differences with Zero Waste Sonoma’s and the Architect’s, Owner’s Representative’s, and/or Independent Cost Estimator cost estimates. The basis for the review of the OPCs and Zero Waste Sonoma’s and Architect’s, Owner’s Representative’s, and Independent Cost Estimator’s cost estimates shall be on an open-book basis, with the goal that the unit prices provided by all parties become aligned, ultimately becoming the basis for the GMP.

Zero Waste Sonoma shall schedule the number of OPC and Project Schedule Workshops and determine the agenda and content of each workshop (e.g., an OPC-only workshop, a Project Schedule-only workshop, or a workshop that includes both elements). The OPC and Project Schedule Workshop(s) shall support cost and schedule discussion for the Early Construction Phase or Construction Phase, as appropriate.

The OPC and Project Schedule Workshop(s) is either scheduled to coincide with the Preconstruction Phase Milestones or may occur as needed to address cost and schedule questions that arise during design.

Zero Waste Sonoma will compare the OPC to Zero Waste Sonoma’s and/or Architect’s and/or Owner’s Representative’s and/or Independent Cost Estimator’s estimates to identify items that are not within a satisfactory range as determined by Zero Waste Sonoma. Typically, the range is greater than 10% or less than 10% of Zero Waste Sonoma’s and/or Architect’s and/or Owner’s Representative’s estimates.

The CMAR Firm, Zero Waste Sonoma, Architect, Owner’s Representative, and Independent Cost Estimator shall attend OPC and Project Schedule Workshops in order to discuss assumptions, approach to the OPCs, and allocations associated with unit prices not in agreement. The CMAR Firm, Zero Waste Sonoma, Architect, Owner’s Representative, and Independent Cost Estimator are responsible for verifying their own quantities and methods of measurement and payment for all Project work items. The objective of the OPC and Project Schedule Workshop(s), including the open-book basis of review, is to ensure that the assumptions, contingency, risk, allowances, and approach to the OPCs are fully identified, addressed, and understood, allowing for identified risks to be properly addressed in the Early Construction Phase GMP Proposal or Construction Phase GMP Proposal, as appropriate.

Upon completion of each OPC and Project Schedule Workshop, the CMAR Firm shall resubmit each OPC reflecting its revised pricing resulting from the workshop dialogue. The CMAR Firm shall address in each OPC update how identified risks are affecting the OPC and any changes that may need to be incorporated as a result of innovative ideas, material, or other design changes.

Where design questions arise that require cost or schedule information that would be useful to assist in determining the best approach to design, the CMAR Firm, Zero Waste Sonoma, Architect, Owner's Representative, and Independent Cost Estimator may hold informal cost or schedule meetings as needed. These meetings shall be focused on specific elements of the Early Construction Phase or Construction Phase rather than the total Early Construction Phase or Construction Phase cost.

Deliverables: OPC revisions for each Preconstruction Phase Milestone. The OPC revisions shall include all updates as discussed and agreed in each of the OPC and Project Schedule Workshops.

A narrative report documenting the summary of indirect costs, margin (home office overhead and profit), and Allowances shall also be provided. The narrative report shall document assumptions and clarifications and/or decisions of costing, including all identified risk that may impact the fluctuations in pricing and a description of allowances and exclusions. The narrative report shall also describe changes in prices and conditions associated with the changes in prices. A detailed description of all allowances shall be tracked from each iteration of the OPC to the next and finally to the Early Construction Phase GMP Proposal and/or Construction Phase GMP Proposal, as appropriate.

The OPC revisions and narrative report shall be submitted to Zero Waste Sonoma within fifteen (15) days of the OPC and Project Schedule Workshop.

2.9 Design Review

The CMAR Firm shall perform the following design review activities during the Preconstruction Phase Services:

- Consult with, advise, and provide recommendations to Zero Waste Sonoma and the Architect on planning, design (including mechanical, electrical, and plumbing ("MEP") design), and proposed construction of the Project, and provide comments on draft Project Plans and Specifications. During design progression, provide ongoing constructability review and input, including construction feasibility and practicality, construction sequencing, information on material availability and alternative materials/means and methods, recommendations on equipment and/or packaging to advance construction, and independent quantity calculations to verify quantities specified by the Architect. Services under this task shall be provided from 50% Construction Development up to and including 100% Construction Documents.
- Assist and advise the Architect and Zero Waste Sonoma in exploring alternative innovative cost and time saving approaches, materials, and systems to minimize total construction and operation costs. Upon request, assist Architect and Zero Waste Sonoma in preparing comparative life-cycle studies of Zero Waste Sonoma operations and maintenance ("O&M") costs for design alternatives considering costs relating to efficiency, usable life, maintenance, energy, and operation.

- Participate in biweekly updates with the Architect, Zero Waste Sonoma, third-party construction management firm, and/or other as needed.
- Attend up to three design review workshops for each Preconstruction Phase Milestone with any necessary personnel to address key design and constructability issues (e.g., interface issues, temporary construction activities, packaging, site conditions, construction impact reduction strategies, cost, and schedule).
- Identify, evaluate, and recommend elements of the Project that may require less than 100% Construction Documents.
- Review design review workshop meeting minutes and provide written comments to Architect.

The CMAR Firm shall advise, participate in meetings, assist, provide written documentation, and complete the tasks and work products as requested by Zero Waste Sonoma relative to the following:

- Coordinate Architect-CMAR Firm Schedules

During the design process, the CMAR Firm shall assist the Architect and Zero Waste Sonoma to prioritize the development of key design components to help ensure that key design decisions affecting constructability, cost, and schedule are addressed in a timely manner.

- Conduct Design and Constructability Reviews

During the design process (including the MEP design), the CMAR Firm shall assist the Architect through constructability reviews. The CMAR Firm shall suggest possible alternatives that could reduce costs, improve overall Project quality, reduce risk, and/or shorten the schedule. The CMAR Firm shall advise on likely construction sequencing approaches as well.

At each Preconstruction Phase Milestone, formalized constructability reviews will occur. The CMAR Firm, Zero Waste Sonoma, Architect, and Owner's Representative shall review and discuss potential issues and approaches and will make recommendations to Zero Waste Sonoma for review and approval. This process will lead to agreement by Zero Waste Sonoma and CMAR Firm on the construction sequencing of the Project.

The CMAR Firm shall assess the feasibility and practicality of any proposed means and methods; selected materials, equipment, construction sequencing suggestions, and labor; material availability; site improvements; earthwork and foundation considerations; coordination of the drawings and specifications; and verification of quantities for any Early Construction Phase and/or the Construction Phase. The CMAR Firm shall review the Project Plans and Specifications, and offer redline comments to improve the plans for constructability, clarify ambiguities, and provide consistency with the CMAR Firm's proposed means and methods.

Deliverables: Follow up action items and deliverables as assigned by Zero Waste Sonoma. Design and constructability reviews and suggestions related to construction sequencing. Design and constructability review deliverables should be in the form of redline drawing markups with a narrative as needed. Attendance at design and constructability review meeting to discuss comments.

- Final Design Review Meeting

Near the end of finalizing design (including MEP design), the CMAR Firm shall review the Project Plans and Specifications, to confirm that the Project Plans and Specifications incorporate/address previous comments and form the basis to develop the Early Construction Phase GMP Proposal and/or Construction Phase GMP Proposal, as appropriate. The CMAR Firm shall offer final redline comments to improve the Project Plans for constructability, clarify ambiguities, and provide consistency with the CMAR Firm's proposed means and methods. Upon completion of this review and resolution of any final comments the resultant Project

Plans and Specifications become the basis for the Early Construction Phase GMP Proposal and/or Construction Phase GMP Proposal, as appropriate.

Deliverables: Final design and constructability reviews and suggestions related to construction sequencing. Design and constructability review deliverables shall be in the form of redline drawing markups with a narrative as needed. Attend design and constructability review meetings to discuss comments. Final quantities, construction sequencing, and constructability shall be agreed upon at the Final Design Review Meeting for use in the Early Construction Phase GMP Proposal and/or Construction Phase GMP Proposal, as appropriate, and construction follow up action items and deliverables as discussed at the meeting.

2.10 Risk, Opportunity, and Innovation Workshop

The Risk, Opportunity, and Innovation Workshop centers on identifying, defining, and documenting Project-specific risk, opportunity, and/or innovation, as well as assessing the following:

- Probability of occurrence;
- Potential mitigation or implementation strategies;
- Magnitude of cost and quantity impacts; and
- Schedule impacts.

The CMAR Firm, Zero Waste Sonoma, Architect, and Owner's Representative shall discuss and collaborate on the Project-specific risks, potential innovations, and mitigation strategies to determine the best approach for any Early Construction Phase and/or Construction Phase. The number of workshops needed will be determined by Zero Waste Sonoma in consultation with the CMAR Firm and Architect.

Following the initial Risk, Opportunity, and Innovation Workshop, the County will prepare the Project

risk register. The risk register is a tool used to identify, assess, mitigate, and monitor Project risks. The risk register includes a matrix that identifies each risk; its risk level, cost impact, schedule impact, and responsible party; approaches to minimize risk; and results of the risk mitigation. The risk register is continually reviewed by Zero Waste Sonoma, CMAR Firm, Architect, and Owner's Representative and updated by the County throughout the Preconstruction Phase Services to assist with key decisions on Design Development, risk, and Project costs.

Deliverable: Participation in initial and follow-up Risk, Opportunity, and Innovation Workshops. Risk information and ideas to mitigate the cost and time of each. Ongoing identification of Project risk and potential options for mitigation. Follow up action items and deliverables as assigned by Zero Waste Sonoma.

2.10.1 Risk Identification and Management

The CMAR Firm shall identify, quantify, document, and implement Project construction risks and risk avoidance, reduction, and mitigation strategies in a Risk Management Plan, as well as monitor and provide written input into the Project risk register. The risk register will be maintained by the County. The CMAR Firm shall participate in the preparation, modifications, and maintenance of the Project risk register and the CMAR Firm shall continuously communicate its assumptions regarding impacts to risk as the design progresses.

Deliverable: A Risk Management Plan, including (1) written documentation for the risk register specifying the associated value, savings, and cost of risk avoidance, reduction, and mitigation strategies during each design and constructability review meeting, at a minimum, and (2) a report that summarizes the decisions for risk elimination or reduction and associated value of each decision in terms of cost and savings in direct relationship to each Early Construction Phase GMP Proposal and/or the Construction Phase GMP Proposal, as appropriate.

2.10.2 Innovation Evaluation

The CMAR Firm shall propose Project innovations throughout the Preconstruction Phase Services. The CMAR Firm shall develop criteria to evaluate innovation suggestions to demonstrate if the suggestion will offer the most value in terms of cost, schedule, and quality. The CMAR Firm shall provide estimates of the value of the innovation (in terms of cost, savings, risk reduction/mitigation, and schedule impact), and prioritize the innovations for Zero Waste Sonoma and the Architect to consider for inclusion into the Project Plans and Specifications. Zero Waste Sonoma, at its sole discretion, will determine what innovations are incorporated into the Project.

Deliverable: Written innovations and evaluation criteria and evaluation results for all suggested innovations to be discussed throughout design during each design and constructability review meeting.

A report that summarizes both the innovations considered and the innovations implemented, to be submitted with the Early Construction Phase GMP Proposal and/or Construction Phase GMP Proposal.

2.11 Management Plans

After completion of the CEQA process, the CMAR Firm shall proceed with the development of the following management plans.

2.11.1 Subcontractor Procurement Plan

After completion of the CEQA process, the CMAR Firm shall develop, for Zero Waste Sonoma's approval, the Subcontractor Procurement Plan for any Early Construction Phase and/or the Construction Phase.

The CMAR Firm shall identify work that the CMAR Firm proposes to self-perform (which must be no less than self-performance percentage assigned by Zero Waste Sonoma for each Early Construction Phase or the Construction Phase, measured on a dollar value basis) and shall identify any known Subcontractors. The CMAR Firm shall submit a narrative report that describes how the mix of self-performed and subcontracted work ensures that the overall division of work and pricing will be most advantageous to Zero Waste Sonoma.

The list of intended Subcontractors and material suppliers must be included as part of each Early Construction Phase GMP Proposal and/or Construction Phase GMP Proposal, as appropriate. If an Early Construction Phase and/or the Construction Phase is agreed and awarded, the CMAR Firm shall update the list of Subcontractors and material suppliers as the work progresses so that Zero Waste Sonoma will have, at all times, a current and accurate list of Subcontractors and material suppliers. The information submitted shall include the items of work and cost.

The quotes supplied by potential Subcontractors shall be included in the corresponding Early Construction Phase GMP Proposal and/or Construction Phase GMP Proposal. The following highlights the Subcontractor Procurement Plan requirements for inclusion in each Early Construction Phase GMP Proposal and/or Construction Phase GMP Proposal, as appropriate:

- All subcontracts, once finalized, must be in writing and must contain all applicable provisions of the Agreement and all laws and regulations. All Subcontractors performing work on the Project must possess a California contractor's license.
- The CMAR Firm shall allow Zero Waste Sonoma access to all subcontracts at all tiers and records regarding the subcontracts and shall provide copies of said subcontracts to Zero Waste Sonoma within three (3) days of Zero Waste Sonoma's request for a subcontract. No Subcontractor shall work on this Project while disqualified or debarred by the County, State of California or any other state, or the federal government.
- The intent of Zero Waste Sonoma's subcontracting requirements shall not be circumvented by the CMAR Firm by placing a Subcontractor's employees directly on the CMAR Firm's payroll. If a person or group of people generally operated as an independent contractor, Zero Waste Sonoma will treat them as Subcontractors for purposes of the Subcontractor Procurement Plan.

- The CMAR Firm's and its Surety's liability under the Agreement and the bonds will not be waived or in any way diminished by subcontracting or other assignment of interest under the Agreement.

Deliverable: A Subcontractor Procurement Plan for any Early Construction Phase and/or the Construction Phase, updates of the Subcontractor Procurement Plan for each Preconstruction Phase Milestone, and an approved final Subcontractor Procurement Plan prior to submission of the Early Construction Phase GMP Proposal and/or Construction Phase GMP Proposal, as appropriate, including all documentation necessary to support adherence to Zero Waste Sonoma's requirements. Each Subcontractor Procurement Plan shall be submitted with the corresponding Early Construction Phase GMP Proposal and/or Construction Phase GMP Proposal, as appropriate.

2.11.2 Construction Management Plan

After completion of the CEQA process, the CMAR Firm shall prepare and provide for Zero Waste Sonoma review and approval a draft version of a Construction Management Plan for the Early Construction Phase Work and the Construction Phase Work that, at a minimum, addresses the following items:

- Project organization and communication;
- Document management and retention;
- Health, safety, and emergency response procedures;
- Quality Assurance/Quality Control ("QA/QC") management;
- Site management;
- Construction Phase Work communication, scheduling, and sequencing approach;
- Construction noise management;
- Storm water pollution prevention; and
- Cost control.

Based on Zero Waste Sonoma review comments, the CMAR Firm shall prepare and provide a final version of the Construction Management Plan.

Deliverable: A Construction Management Plan for any Early Construction Phase and/or the Construction Phase, updates of the Construction Management Plan for each Preconstruction Phase Milestone, and an approved final Construction Management Plan prior to submission of the Early Construction Phase GMP Proposal and/or Construction Phase GMP Proposal, as appropriate. Each Construction Management Plan shall be submitted with the corresponding Early Construction Phase GMP Proposal and/or Construction Phase GMP Proposal, as appropriate.

2.11.3 Project Commissioning Plan

After completion of the CEQA process, the CMAR Firm shall provide support to Zero Waste Sonoma and Architect as required in the preparation of a draft Project Commissioning Plan that describes in detail the process that will be implemented and the deliverables that will be provided in order to commission, test, and start up the Project. At a minimum, the draft Project Commissioning Plan shall include:

- A description of the overall plan to commission, test, and start up the Project, including identification of roles and responsibilities of the CMAR Firm, Architect, Zero Waste Sonoma, and others;
- A description and outline of the testing process the CMAR Firm will implement to demonstrate performance of individual components of the Project; and
- A description and outline of the Project acceptance testing process and plan.

The CMAR Firm shall provide support to Zero Waste Sonoma and Architect as required to incorporate comments based on Zero Waste Sonoma review of the draft Project Commissioning Plan to facilitate submittal of final version for Zero Waste Sonoma approval.

Deliverable: Comments on and input to a Project Commissioning Plan for the Project and any updates to the Project Commissioning Plan.

2.11.4 Health, Safety and Environment Plan

CMAR Firm is solely responsible for all construction means, methods, safety, techniques, sequences, and procedures on this Project. Each Subcontractor, of any tier, is responsible for all safety precautions and programs in connection with its Work under the Agreement.

The requirements of the California Occupational Safety and Health Administration (“Cal/OSHA”), state, County and city laws, statutes, regulations, codes, ordinances, and orders of those governing bodies having jurisdiction over the Work, including the specific safety requirements listed below, establish the guidelines for this Project that safety and loss prevention programs must meet or exceed. In the event of a conflict or inconsistency, the most stringent standard will govern.

The CMAR Firm shall provide to Zero Waste Sonoma for review and approval a draft Health, Safety and Environment Plan that addresses overall safety at the Project Site and that addresses compliance with all applicable safety laws, rules, and regulations, including Cal/OSHA regulations. At a minimum, the draft Health, Safety and Environment Plan shall address the following:

- Project Safety Team Monthly Meetings: The Project Safety Team is a safety committee for the Project comprised of CMAR Firm, Subcontractors, Zero Waste Sonoma and/or Owner Controlled Insurance Program (“OCIP”) Safety Representative. On a monthly basis the Project Safety Committee shall meet to discuss the Project’s safety program.

These meetings may be incorporated into Project coordination meetings.

- **Drug Free Work Environment:** This Project prohibits the use, possession, distribution or sale on its premises or workplace the following substances: alcoholic beverages, intoxicants, drugs and related drug paraphernalia. Employees must not report to work while under the influence of any drug or alcoholic beverage. Any substance, including prescription drugs, that impairs mental or motor function must not be used while working at or on this Project. Because marijuana remains illegal under federal Law, medical marijuana cards or prescriptions permitting their use will not be allowed. The cost of enforcing this requirement shall be the responsibility of each employer of the effected employee.
- **Safety Representative:** The CMAR Firm and each Subcontractor at every tier shall have a designated safety representative available at the site assigned the responsibilities of managing all aspects of safety related to employees under their direct control. These duties may be performed by a field superintendent or foreman having the required training, experience and qualifications listed below. The safety representative may have duties other than safety provided appropriate adherence to state and local laws, ordinances, codes, regulations and these safety requirements are followed by personnel under their direct control. The safety representative shall have the ability to stop Work in the event of a workplace hazard, until corrective action has been implemented. CMAR Firm's and each Subcontractor's safety representative must have the following minimum qualifications:
 1. A minimum of three (3) to five (5) years of qualified project safety experience on similar types of construction projects.
 2. Evidence of completing the OSHA 10 or 30 Hour Construction Outreach Training or equivalent with the past three years.
 3. Current first aid/cardiopulmonary resuscitation ("CPR") certification provided by The American National Red Cross or equivalent training.
 4. Understanding of federal and/or state safety regulations and OCIP safety requirements.
 5. Ability to conduct appropriate incident investigations.
 6. Ability to communicate with field personnel and Project staff on relevant health and safety items

- Orientation: CMAR Firm and its Subcontractors at every tier, and their respective safety representatives or designees, shall ensure that a complete basic safety orientation is conducted for all employees new to the site. A Project orientation by CMAR Firm is required before any employee can receive a Project Identification and enter the field. Upon successful completion of the Project orientation, all employees will complete and sign a Project orientation form supplied by CMAR Firm and receive a hard hat sticker with an identification number to be worn on the employee's hard hat at all times while on the Project. At a minimum, the Project orientation shall include the following:
 1. Employee safety requirements and policies;
 2. Site-specific safety and health rules;
 3. Permitting procedures, including, but not limited to, Work permits, excavation, confined space entry, and lock-out;
 4. Hazard communication; and
 5. Emergency alarms and evacuation procedures.
- Fall Protection: 100% fall protection shall be implemented by all trades for all fall exposures of six (6) feet or more, except for Work from ladders and work around excavations, which shall follow Cal/OSHA requirements.
- Excavation: Trenching or excavating activities must be under the supervision of a competent person at all times.
- Personal Protective Equipment ("PPE"): Employers must supply all employees with PPE. Employees must at all times wear an ANSI Z89.1 approved hard hat on the jobsite. Safety glasses with permanently affixed side shields are required at all times. All safety glasses, goggles, and face shields must have ANSI-Z87 approval. Sturdy work boots are required at all times on the jobsite. Employees on the jobsite shall not wear tennis shoes, running shoes, casual street shoes, sandals or shoes made of other thin material. A Class II High Visibility reflective vest or equivalent shall be worn at all times while on-site.
- Hazard Communication: CMAR Firm and every Subcontractor at every tier shall maintain a copy of all Material Safety Data Sheets ("MSDS") and a chemical inventory list for all hazardous substances used at the jobsite.

- Return to Work Program: CMAR Firm and each Subcontractor at every tier shall have a written Early Return to Work Program that should be implemented on this Project.
- Experience Modification Factor/Rating: In no instance shall any Subcontractor at any tier with an Experience Modification Factor (“EMR”) of 1.0 or higher be permitted to work on the Project.

Deliverable: A draft Health, Safety and Environment Plan for the Preconstruction Phase for comment by Zero Waste Sonoma and an updated final Health, Safety and Environment Plan for the Preconstruction Phase for Zero Waste Sonoma approval. An updated Health, Safety and Environment Plan for any Early Construction Phase and/or the Construction Phase and an approved final Health, Safety and Environment Plan prior to submission of the Early Construction Phase GMP Proposal and/or Construction Phase GMP Proposal, as appropriate. The Health, Safety and Environment Plan shall be reviewed prior to submission of any Early Construction Phase GMP Proposal and/or the Construction Phase GMP Proposal and, if updates are necessary, the final version submitted with the corresponding Early Construction Phase GMP Proposal and/or Construction Phase GMP Proposal, as appropriate.

2.12 Early Construction Phase GMP Proposal and/or Construction Phase GMP Proposal Development

An OPC shall be updated at 100% Construction Documents for any Early Construction Phase and/or the Construction Phase. At this point, the OPC, along with the Project Specific Information, Special Provisions, Project Plans, Project Schedule, and Specifications becomes the Early Construction Phase GMP Proposal and/or Construction Phase GMP Proposal, as appropriate. In addition, the Early Construction Phase GMP Proposal and/or Construction Phase GMP Proposal, as appropriate, shall include the Project Schedule setting forth the maximum number of days allowed for the Early Construction Phase and/or Construction Phase, as appropriate, and agreement on all construction sequencing and constructability approaches for the Early Construction Phase or Construction Phase. When the Early Construction Phase GMP Proposal and/or Construction Phase GMP Proposal, as appropriate, is approved by Zero Waste Sonoma, under the terms of the Agreement Zero Waste Sonoma shall issue NTP 2 or NTP 3. The Early Construction Phase GMP Proposal and/or Construction Phase GMP Proposal will not be disclosed, to the extent permitted by law, until the Early Construction Phase GMP or Construction Phase GMP is successfully negotiated or Zero Waste Sonoma has received and opened competitive bids for the Project.

At 100% Construction Documents Preconstruction Phase Milestone, or at such other time that Zero Waste Sonoma determines that the design has been finalized to a level sufficient to determine the provable cost of the Early Construction Phase and/or Construction Phase, as appropriate, and provided that the other conditions set forth in the Agreement have been satisfied, as determined by Zero Waste Sonoma, the CMAR Firm shall prepare and submit an Early Construction Phase GMP Proposal and/or Construction Phase GMP Proposal, as appropriate. The Early Construction Phase GMP Proposal and/or Construction Phase GMP Proposal, as appropriate, shall guarantee the prices submitted by the CMAR Firm to complete all Early Construction Phase Work and/or Construction Phase Work within the Project Schedule. Whether these prices include some or all of lump sum items, unit-based items, quantity-based

items, and/or Allowances, the individual prices are guaranteed in accordance with the requirements of the Project Plans and Specifications and the Agreement.

Each Early Construction Phase GMP Proposal and/or Construction Phase GMP Proposal, as appropriate, shall be developed and evaluated in accordance with the following process:

- Zero Waste Sonoma and Architect will produce Project Plans and Specifications with the input of the CMAR Firm.
- The CMAR Firm shall submit with its Early Construction GMP Proposal and/or Construction Phase GMP Proposal, as appropriate, a Subcontractor Procurement Plan that has been approved by Zero Waste Sonoma. Solicitations for Subcontractors and award of Subcontracts shall be in accordance with all Zero Waste Sonoma guidelines and procedures. Concurrently with its Early Construction Phase GMP Proposal and/or Construction Phase GMP Proposal, as appropriate, the CMAR Firm shall provide a list of any known Subcontractors and suppliers with the applicable quotes and purchase orders that were used in the development of the GMP.
- No Early Construction Phase GMP Proposal and/or Construction Phase GMP Proposal, as appropriate, will be approved by Zero Waste Sonoma until Zero Waste Sonoma has approved the CMAR Firm's Subcontractor Procurement Plan.
- Any Early Construction Phase and/or Construction Phase shall only be awarded to the CMAR Firm upon approval by Zero Waste Sonoma of the Early Construction Phase GMP Proposal and/or Construction Phase GMP Proposal. The Early Construction Phase GMP Proposal and/or Construction Phase GMP Proposal, as appropriate, including all back-up documentation, shall be incorporated into the Agreement.
- Zero Waste Sonoma and the CMAR Firm shall agree upon the definition of any Early Construction Phase during the Early Construction Phase Definition Workshop(s).
- Zero Waste Sonoma and the CMAR Firm shall agree upon any Early Construction Phase's and/or the Construction Phase's constructability.
- Zero Waste Sonoma and the CMAR Firm shall agree upon the Project Schedule for any Early Construction Phase and/or the Construction Phase.
- The payment for any Early Construction Phase and/or the Construction Phase shall be in accordance with the Schedule of Values, and which may include quantity-based items, unit-priced based items, lump sum items, and Allowances.
- Zero Waste Sonoma will have an independent cost estimate prepared. Upon receipt

of any Early Construction Phase GMP Proposal and/or Construction Phase GMP Proposal Zero Waste Sonoma will determine the acceptability of the GMP, in its sole discretion. In assessing the GMP, Zero Waste Sonoma may compare the GMP to some or all of the following:

1. The Architect's corresponding estimate;
 2. The Owner's Representative's corresponding estimate; and/or
 3. The Independent Cost Estimator's corresponding estimate.
- Zero Waste Sonoma is under no obligation to accept any Early Construction Phase GMP Proposal and/or Construction Phase GMP Proposal, even if it compares favorably to the foregoing data, averages, and estimates.
 - If any Early Construction Phase GMP Proposal and/or Construction Phase GMP Proposal is not acceptable, Zero Waste Sonoma may enter into a negotiation process with the CMAR Firm to discuss issues of risk assignment, the Early Construction Phase Work and/or Construction Phase Work, unit prices, quantities, key assumptions, and/or any other issues to identify factors contributing to the cost differences.
 - Following the successful resolution of the risk (and other) issues associated with differences among any Early Construction Phase GMP Proposal and/or Construction Phase GMP Proposal, as appropriate, and the corresponding Architect, Owner's Representative, and/or Independent Cost Estimator's estimates, Zero Waste Sonoma, in its sole discretion, may ask the CMAR Firm to submit an updated Early Construction Phase GMP Proposal and/or Construction Phase GMP Proposal. If Zero Waste Sonoma and CMAR Firm define one or more Early Construction Phases, and the initial Early Construction Phase GMP Proposal (or any later Early Construction Phase GMP Proposal) is not acceptable to Zero Waste Sonoma, Zero Waste Sonoma reserves the right, in its sole discretion, to not award any subsequent Early Construction Phase and/or the Construction Phase to the CMAR Firm and cancel the Agreement. If Zero Waste Sonoma opts to put out the remainder of the Project for re-procurement, the CMAR Firm acknowledges that it will be precluded from bidding or proposing on any re-procurement of the work that was included in the unapproved Early Construction Phase GMP Proposal and/or Construction Phase GMP Proposal.
 - The CMAR Firm shall monitor conditions in the construction market to identify factors that will or may affect costs and time for completing individual Early Construction Phases and the Project overall. For each Early Construction Phase GMP Proposal

and/or the Construction Phase GMP Proposal, as appropriate, the CMAR Firm shall review the specific market segment and provide a narrative summary to Zero Waste Sonoma that demonstrates a competitive market for the individual Early Construction Phase and/or Construction Phase.

- If an Early Construction Phase or the Construction Phase is not awarded to the CMAR Firm, or if Zero Waste Sonoma does not approve any Early Construction Phase GMP Proposal and/or Construction Phase GMP Proposal, the CMAR Firm is not excused from completion of the Preconstruction Phase Services, if such services have not been fully performed.
- Award of any Early Works Phase and/or the Construction Phase is contingent upon provision of required insurance and bonds.
- The CMAR Firm shall designate any information in any Early Construction Phase GMP Proposal and/or the Construction Phase GMP Proposal it considers to be confidential trade secrets or proprietary. The CMAR Firm shall clearly mark each page of documentation that the CMAR Firm considers confidential trade secrets or proprietary prior to submitting it to Zero Waste Sonoma.

Deliverable: Each Early Construction Phase GMP Proposal and the Construction Phase GMP Proposal (including updates, if requested by Zero Waste Sonoma) in accordance with the requirements delineated herein, and utilizing the Cost Model along with a narrative report documenting critical assumptions and/or decisions relevant to the pricing, including the same backup documentation listed for the OPCs.

3.0 OPC and Early Construction Phase GMP Proposal and Construction Phase GMP Proposal Format

Each OPC submittal and each Early Construction Phase GMP Proposal and the Construction Phase GMP Proposal shall be submitted electronically and formatted as follows:

- Submittal number, including revision number;
- Date of submittal;
- Early Construction Phase number, if relevant;
- Project name; and
- Numbered pages within each tab.

In addition, each OPC submittal and each Early Construction Phase GMP Proposal and Construction

Phase GMP Proposal shall be organized in the order described below:

- TABLE OF CONTENTS;
- TITLE PAGE

Early Construction Phase number, if relevant; name of the Project; date of submittal, and title of submittal.

- TAB 1 – Executive Summary

The CMAR Firm shall provide a brief Project summary overviewing the overall Project, as well as a brief Early Construction Phase summary, if relevant. The CMAR Firm shall include the general approach to construction including any special equipment needs or materials. The CMAR Firm shall summarize any key interactions with existing facilities, unusual site conditions, utility issues, or conditions affected by third parties. The CMAR Firm shall state the anticipated Project Schedule for the Early Construction Phase or Construction Phase, as appropriate. Any amended services or scope changes included in the OPC or Early Construction Phase GMP Proposal and/or Construction Phase GMP Proposal that differ from the review set of Project Plans and Specifications for the corresponding design milestone shall be specifically highlighted.

- TAB 2 – Early Construction Phase or Construction Phase Project Team

The CMAR Firm shall list its personnel, including Key Personnel, in graphic and written form, for the Early Construction Phase or Construction Phase including names, titles, job responsibilities, and contact information and identify any known Subcontractors.

- TAB 3 – List of Documents

Each OPC submittal and Early Construction Phase GMP Proposal and/or Construction Phase GMP Proposal shall include the following indices:

1. Project Plans Index: Project Plans shall be organized by listing each sheet number, sheet title, and current revision date.
2. Specification Index: A detailed listing of each Specification section required by Zero Waste Sonoma. Any additional Special Provisions and/or Supplemental Specifications needed for construction shall be identified on this list and called out separately.
3. For an Early Construction Phase GMP Proposal and/or the Construction Phase GMP Proposal, Project Plans shall be signed, sealed, and dated. Specifications, and other documents related to construction upon which the Early Construction Phase GMP Proposal and/or Construction Phase GMP Proposal is based shall be included with

acknowledgment on the face of each document that it is the document upon which the CMAR Firm based its Early Construction Phase GMP Proposal and/or Construction Phase GMP Proposal, as appropriate.

- TAB 4 – Assumptions, Exclusions, and Substitutions

Each OPC submittal and Early Construction Phase GMP Proposal and the Construction Phase GMP Proposal shall include the following information:

1. Assumptions: A summary of all assumptions and clarifications organized by Project Plan sheet number or by Specification sections in accordance with TAB 3.
2. Exclusions: A summary of exclusions organized by Project Plan sheet number or by Specification sections in accordance with TAB 3.
3. Substitutions: A summary of substitutions to materials or systems described by Project Plan sheet number or by Specifications sections in accordance with TAB 3.

- TAB 5 – Early Construction Phase and/or Construction Phase Cost Breakdown

An estimated construction cost breakdown for the Early Construction Phase or Construction Phase, as appropriate, using the approved Cost Model, including quantities and standard unit prices. The estimated construction cost breakdown shall include Allowances. The CMAR Firm shall provide a breakdown for all allowable indirect costs by unit cost and duration.

- TAB 6 - Innovative Cost and Time Savings Recommendations

All innovative cost and time savings recommendations proposed to date shall be listed, along with indication whether the recommendation was accepted by Zero Waste Sonoma and included in the OPC submittal or the Early Construction Phase GMP Proposal or Construction Phase GMP Proposal and the date of acceptance. Each proposed innovative cost and time savings recommendation shall state the price and whether the price is valid for a limited time period.

- TAB 7 – Project Schedule

The Project Schedule must reflect the production rates, construction sequencing, and any logic used in the calculation of the OPC or Early Construction Phase GMP or Construction Phase GMP, as appropriate. The Project Schedule shall include Project milestones.

- TAB 8 – Subcontract and Material Quotes and Documentation

The CMAR Firm shall provide copies of written quotes from Subcontractors and suppliers or further documentation as backup for the prices submitted in each OPC submittal and Early Construction Phase GMP Proposal or Construction Phase GMP Proposal.

- TAB 9 – Responses to Review Comments (to be included with any OPC or Early Construction Phase GMP Proposal or Construction Phase GMP Proposal updates/revisions only)

If an OPC or Early Construction Phase GMP Proposal or Construction Phase GMP Proposal is revised and resubmitted, all review comments provided by Zero Waste Sonoma regarding the initial OPC submittal or Early Construction Phase GMP Proposal or Construction Phase GMP Proposal shall be provided. For each update/revision, the CMAR Firm shall provide a written response below each comment. An update/revision submitted without responses to the review comments will be returned by Zero Waste Sonoma. Any proposed deviations from the Project Plans or Specifications shall be approved in writing by Zero Waste Sonoma.

- TAB 10 – OPC/Early Construction Phase GMP Proposal or Construction Phase GMP Proposal Reconciliation

A summary spreadsheet that compares the amounts in the current OPC submittal or the Early Construction Phase GMP Proposal or the Construction Phase GMP Proposal to the previously reconciled OPC submittal shall be included. This spreadsheet shall show all activities being completed with their individual and their aggregate comparison to the previously reconciled OPC submittal.

- TAB 11 – Overall Project Cost Tabulation

A summary spreadsheet that tabulates the GMP, which shall be the sum total of each Early Construction Phase GMP and the Construction Phase GMP, as based on each Early Construction Phase's and the Construction Phase's most current OPC or, for Early Construction Phases with approved Early Construction Phase GMP Proposals, each Early Construction Phase GMP Proposal.

EXHIBIT 2B

SCOPE OF WORK (EARLY CONSTRUCTION PHASE)

[Note: Scope of Work (Early Construction Phase) to be developed during Preconstruction Phase and incorporated as this Exhibit by the Early Construction Phase Amendment. If there is more than one Early Construction Phase, Scopes of Work shall be numbered 2B-1, 2B-2, and so on.]

EXHIBIT 2C

SCOPE OF WORK (CONSTRUCTION PHASE)

[Note: Scope of Work (Construction Phase) to be developed during Preconstruction Phase or Early Construction Phase and incorporated as this Exhibit by the Construction Phase Amendment.]

EXHIBIT “B”

**Zero Waste Sonoma
Construction Manager At-Risk Model Agreement**

**Sonoma County Waste Management
Agency a.k.a. Zero Waste Sonoma**

**Construction Manager At-Risk Contract
For**

**Household Hazardous Waste Facility
Project**

**Construction Manager At-Risk Contract Between
Sonoma County Waste Management Agency also known as Zero Waste Sonoma
And**

*****Insert CMAR Name*****

For The Household Hazardous Waste Facility Project

This Construction Manager At-Risk Contract ("Contract") is made and entered into this [redacted] day of [redacted], 202[redacted] ("Effective Date") by and between the **Sonoma County Waste Management Agency also known as Zero Waste Sonoma** (hereinafter referred to as "Agency") and *****INSERT CMAR NAME***** (hereinafter referred to as "CMAR"). Agency and CMAR are sometimes individually referred to as "Party" and collectively as "Parties."

Recitals

- A. Agency is a public agency of the State of California and is in need of construction management services for the **HOUSEHOLD HAZARDOUS WASTE FACILITY PROJECT** ("Project"), that will include two phase: (1) preconstruction phase services ("Preconstruction Phase" or "Preconstruction Services"); and (2) construction phase services ("Construction Phase" or "Construction Services"), each of which are more fully described in the Contract Documents (collectively, "Services" or "Work").
- B. Agency has retained COAR Design Group ("Architect") to provide and perform certain services in connection with design of the Project, including preparation of the Project's Design Documents (as defined in the General Conditions in **Attachment 1**).
- C. Agency seeks to have CMAR perform the Services and the CMAR warrants and represents that it is able and qualified to perform the Services for the Project.
- D. CMAR shall first perform Preconstruction Services consistent with the requirements of the Contract Documents, during or after which CMAR shall solicit subcontractors to prepare and propose to Agency a GMP (as defined in this Contract) to construct the Project and, if accepted by the Agency, the Parties shall enter into an amendment to the Contract for CMAR's performance of Construction Services.
- E. CMAR represents that is duly licensed in the State of California and has the necessary qualifications to provide such services.
- F. The Parties desire to enter into this Contract for the purpose of setting forth the terms and conditions upon which CMAR shall render Services to Agency.

Terms

1. Contract & Contract Documents

1.1 Incorporation of Recitals, Definitions, and Contract Documents.

(a) The above referenced recitals are true and correct and are incorporated into this Contract by this reference. This Contract includes and hereby incorporates in full by reference the following documents which are the “Contract Document(s),” including all exhibits, drawings, specifications and documents therein, and attachments and addenda thereto, and, in the event of a conflict amongst the Contract Documents, shall be interpreted in the order set forth below:

- (i) Permits from other agencies as may be required by law
- (ii) Changes to the Contract and Contract Documents, including, the GMP Amendment and Change Orders
- (iii) Contract
- (iv) Addenda, most recent first
- (v) Special Conditions (**Attachment 4**)
- (vi) Design Documents, as follows:
 - (1) Specifications (Divisions 1 through 49)
 - (2) Drawings, which shall also be interpreted as follows:
 - a. Figures govern over scaled dimensions
 - b. Detail drawings govern over general drawings
 - c. Addenda/Change Order drawings govern over Drawings
 - d. Drawings govern over Standard Drawings
 - e. Drawings govern over Shop Drawings
- (vii) Scope of Services (**Attachment 2**)
- (viii) Key Personnel (**Attachment 5**)
- (ix) Subcontractor Procurement Process (**Attachment 3**)
- (x) General Conditions (**Attachment 1**)
- (xi) To the extent applicable, in the following order:
 - (1) Local Agency Standards and Specifications

- (2) Standard Drawings
- (3) Reference Documents
- (xii) Project Milestone Schedule (**Attachment 6**)
- (xiii) Construction Phase Fee Responsibility Matrix (**Attachment 7**)
- (xiv) Rate Schedule (**Attachment 9**)
- (xv) The following in no particular order:
 - (1) Performance and Payment Bonds (**Attachment 8**)
 - (2) Certifications (**Attachment 11**)
- (xvi) CMAR's Cost Proposal Form (**Attachment 10**)

Notwithstanding the orders of precedence established above, in the event of conflicts, the higher standard, higher quality and most expensive shall always apply.

1.2 Use of Defined Terms. Any capitalized term herein shall have the meaning accorded to that term throughout the Contract Documents, unless otherwise defined specifically in a Contract Document, in which case, the specific definition will prevail.

1.3 Intent of Contract Documents.

(a) The Contract Documents are complementary; what is required by any one of them will be binding as if required by all. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to the Agency.

(b) CMAR shall furnish, unless otherwise provided in the Contract Documents, all materials, implements, machinery, equipment, tools, supplies and labor necessary to the prosecution and completion of the Project. If utilities to equipment/fixtures are not shown but are necessary to operate the equipment/fixtures, the utilities service installation is considered to be part of the Work. The implied Work will conform to the appropriate sections of the Contract Documents.

(c) Organization of the Contract Documents into divisions, sections, and articles, and arrangement of drawings shall not control the CMAR in dividing Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

(d) Clarifications and interpretations of the Contract Documents shall be issued by the Architect as provided in the General Conditions in (**Attachment 1**).

1.4 Reference Standards.

(a) Reference to federal specifications, federal standards, other standards, specifications, manuals, or codes of any technical society, organization, or association, or to Applicable Laws, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Applicable Laws in effect at the time of the Effective Date, and in case of Subcontractors procured after Preconstruction Services, when such Subcontractors provide bids, except as may be otherwise specifically stated in the Contract Documents.

(b) No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of the Agency, CMAR, or any of their Subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to the Agency, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Services or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

1.5 Integration/Modification. The Contract Documents and any documents specifically incorporated by reference are completely integrated as the complete and exclusive statement of the terms of this Contract. This Contract supersedes all previous contracts, agreements, and/or communications, both oral and written, and constitutes the entire understanding of Agency and CMAR. No extrinsic evidence whatsoever shall be admissible or used to explain or supplement the terms of this Contract, Contract Documents, or any items incorporated by reference. No changes, amendments or alterations shall be effective unless in writing, signed by both Parties, and unless provided otherwise by the Contract Documents.

2. CMAR Services, Responsibilities And Progression Of The Services.

2.1 Pre-Construction and Construction Phases. As described in greater detail herein, the Services provided by the CMAR for the Project shall consist of those performed at the Pre-Construction Phase and Construction Phase (each a "Phase" or collectively the "Phases"). CMAR shall not proceed with any work or any Phase, nor shall the CMAR be entitled to any compensation for any such work unless and until Agency issues a written Notice to Proceed for that Phase. In entering into this Contract, the Parties expressly agree that Agency is under no obligation to issue a Notice to Proceed for any specific Phase, and may or may not issue a Notice to Proceed for a specific Phase, in Agency's sole discretion.

2.2 Performance of the Services. CMAR promises and agrees, at its own cost and expense, to furnish to the Agency all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately perform the Services and complete the Project consistent with the requirements of the Contract Documents. The Pre-Construction Services and Construction Services are more particularly in the Contract Documents, including, without limitation, (**Attachment 1**) and (**Attachment 2**).

2.3 Standard of Care. All of the Services during the Construction Phase shall be performed or provided by or under the control of an individual employed by the CMAR and who is a licensed general contractor under California law. CMAR shall provide the Services using its best professional skill and judgment, acting with due care and in accordance with professional standards of care, the terms hereof and applicable law, code, rule or regulation. CMAR's Services hereunder shall be provided and completed promptly and in such a manner as to avoid hindrance, interruption or delay to the orderly progress and timely completion of the CMAR's review of the Construction Documents and Project construction to permit occupancy of the Project in accordance with the Agency's objectives. CMAR warrants to Agency that the work will be of the highest quality and free from defects and that all work will conform with the requirements of the Contract Documents. CMAR shall supervise, inspect, and direct the Project competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Project in accordance with the Contract Documents. CMAR shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction of the Project. CMAR shall perform, at its own cost and expense and without reimbursement from the Agency, any services necessary to correct errors or omissions which are caused by the CMAR's failure to comply with the standard of care provided for herein.

2.4 Key Personnel. CMAR's key personnel are identified in **Attachment 6**.

2.5 Status of CMAR & Licensing

(a) **Independent CMAR.** CMAR, in the performance of this Contract, shall be and act as an independent contractor. CMAR understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of the Agency, and are not entitled to benefits of any kind or nature normally provided employees of the Agency and/or to which Agency's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. CMAR shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to CMAR's employees. In the performance of the work herein contemplated, CMAR is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of CMAR's Work, Agency being interested only in the results obtained.

(b) **Classification of CMAR's License.** CMAR hereby acknowledges that it currently holds valid Contractor's license(s) issued by the State of California, Contractor's State Licensing Board, in accordance with division 3, chapter 9, of the Business and Professions Code and in the classification called for in the Contract Documents.

3. CMAR's Compensation.

3.1 Pre-Construction Phase Compensation.

(a) Agency shall pay CMAR a total not to exceed amount set forth in the CMAR's Cost Proposal Form attached here for performance of the Pre-Construction Services based on the work

satisfactorily performed and approved by Agency pursuant to the Contract Documents including, without limitation, **Attachment 1** and **Attachment 2** and at the rates and manner set forth in **Attachment 9** to this Contract ("Pre-Construction Fee"). For the purposes of this Contract, the billing rates will remain effective through the entire term of this Contract.

(b) The Pre-Construction Fee includes all costs and expenses for all time and materials required and expended to provide the specific Preconstruction Services including but not limited to the costs of hiring sub-consultants, contractors and other professionals, review of the Project, Construction Documents, review and preparation of necessary documentation relating to the development of the Project, all travel-related expenses, as well as for meetings with Agency and its representatives, long distance telephone charges, copying expenses, salaries of CMAR staff and employees working on the Project, overhead, and any other reasonable expenses incurred by CMAR in performance of the Preconstruction Services. Agency shall not be liable to CMAR for any costs or expenses paid or incurred by CMAR in performing the Services, except as expressly provided for in this Contract.

3.2 Construction Phase Compensation

CMAR EXPRESSLY AGREES AND ACKNOWLEDGES THAT, AS OF THE EFFECTIVE DATE, CMAR IS NOT ENTITLED TO ANY COMPENSATION FOR CONSTRUCTION SERVICES, AND SHALL ONLY BE ENTITLED TO SUCH COMPENSATION IF: (1) THE AGENCY ACCEPTS THE CMAR'S PROPOSAL (AS DEFINED BELOW); (2) THE PARTIES EXECUTE, AND THE AGENCY'S GOVERNING BODY APPROVES, THE GMP AMENDMENT (AS DEFINED BELOW); AND (3) THE AGENCY ISSUES A NOTICE TO PROCEED FOR THE CONSTRUCTION PHASE. CMAR GUARANTEES THAT THE GMP IS THE MAXIMUM COMPENSATION THAT CMAR MAY BE ENTITLED TO FOR CONSTRUCTION PHASE, AND THAT THE GMP IS PREPARED AT THE CMAR'S RISK SUCH THAT CMAR SHALL NOT BE ENTITLED TO ANY ADDITIONAL COMPENSATION FOR THE CONSTRUCTION PHASE UNLESS OTHERWISE PROVIDED BY THE CONTRACT DOCUMENTS.

(a) **GMP for Construction Phase.** CMAR' compensation for Construction Services shall be a not-to-exceed guaranteed maximum price as further described, and subject to, the limitations set forth below and as indicated in the Contract Documents ("Guaranteed Maximum Price" or "GMP"). As of the Effective Date, the GMP has not been agreed to by the Parties. If, during or after the completion of Preconstruction Services and CMAR's presentation of the GMP Proposal to Agency, Agency agrees to CMAR's GMP in the GMP Proposal, the Parties shall amend this Contract and replace this section with a not-to-exceed GMP for all CMAR's Construction Services for the Project, which shall be consistent with the structure, and subject to the limitations, set forth below.

3.3 Definitions for Guaranteed Maximum Price

(i) "Agency Contingency" or "Contingency" means an amount set by Agency that is part of the GMP and which Agency may use to pay for Change Orders for Construction Services, in Agency's sole and absolute discretion. The Agency Contingency shall be for the sole and exclusive use and benefit of Agency.

(ii) “CMAR’s General Conditions” means the costs for activities, facilities, and services required to support the Construction Phase for the Project and manage the Project site, without mark-up, which shall include, without limitation, those items listed as “General Requirements” in the Construction Phase Fee Responsibility Matrix attached hereto as **Attachment 7** and shall not exceed the weekly rate included in the CMAR’s Cost Proposal Form attached as **Attachment 10**.

(iii) “Construction Cost” means all of CMAR’s actual and direct costs of any Construction Services performed, without mark-up. The Construction Cost includes, as applicable, the following:

(1) Total Subcontractor(s)’ costs, fees and charges for Subcontractor performed Construction Services, including bond costs and insurance, and all other costs necessary for subcontractor(s) to perform Construction Services pursuant to the Contract Documents; and

(2) Total CMAR’s costs, fees, charges for self-performed Construction Services and all other costs necessary for CMAR to perform such Construction Services pursuant to the Contract Documents; and

(3) The reimbursable Construction Cost includes all costs necessarily and properly incurred by the CMAR and Subcontractors to construct, test, and commission the Project, which is defined as all costs reasonably and properly incurred in performing the Work at competitive rates, and shall include those items identified in the Construction Phase Fee Responsibility Matrix attached hereto as **Attachment 7**.

(iv) The “Construction Cost” does not include: compensation for CMAR’s General Conditions; CMAR’s and Subcontractor’s personnel stationed at the CMAR’s and Subcontractor’s principal or branch offices; overhead and general expenses except those provided for in Construction Cost; the cost of the CMAR’s and Subcontractor’s capital used in the performance of the Work; costs that would cause the GMP to be exceeded; discounts and rebates and the salvage value of tools and equipment consumed in the Work; costs incurred in performing call-back, repair and warranty work; discounts and rebates and the salvage value of tools and equipment consumed in the Work; costs due to the negligence, error, or omission of the CMAR or Subcontractor or to the failure of the CMAR or Subcontractor to fulfill a specific responsibility to the Agency set forth in this Contract Document; costs incurred as a result of a delay which does not constitute compensable delay under the General Conditions; costs incurred in the performance of the Pre-Construction Phase; any cost not specifically and expressly described as a reimbursable cost; and costs CMAR or Subcontractor is required to bear as a result of CMAR’s or Subcontractor’s failure to perform in accordance with the Contract Documents.

3.4 Components of Guaranteed Maximum Price. The GMP includes the following costs for Construction Services:

(a) **CMAR’s General Conditions.** CMAR’s General Conditions for the Construction Work, consistent with the detailed general conditions presented with CMAR’s proposal.

(b) **Cost of Construction Work.** The Construction Cost for Construction Services performed by CMAR.

(c) **Mark-Ups.**

(i) **Fee for Overhead and Profit.** CMAR's Fee for Overhead and Profit shall be the percentage of the Construction Cost identified in CMAR's Cost Proposal Form attached hereto as **Attachment 10** ("Fee"). CMAR's Fee shall compensate the CMAR for all field and home office overhead, profit, and other costs and expenses not specifically included in the Construction Cost.

(ii) **Bonds.** CMAR's charge for Performance Bond and Payment Bond costs shall be the percentage of the Construction Cost identified in CMAR's Cost Proposal Form attached hereto as **Attachment 8**.

(iii) **Insurance.** CMAR's charge for insurance Costs shall be the percentage of the Construction Cost identified in CMAR's Cost Proposal Form attached hereto as **Attachment 10**.

(iv) **Mark-Up Inapplicable.** CMAR shall not apply any of the above-mark-ups to CMAR's General Conditions or the Agency Contingency.

(d) **Agency Contingency.**

(i) **Agency Contingency Calculation.** Agency Contingency shall be percent of the Construction Cost incurred by the CMAR. CMAR shall be entitled to the above stated mark-up on the Construction Cost for Construction Services paid for out of the Agency Contingency and shall be calculated at the percentage of the Construction Cost for which Contingency is used identified in CMAR's Cost Proposal Form attached hereto as **Attachment 10**.

(ii) **Use of Agency Contingency.** Agency Contingency shall be for the sole use of Agency in its absolute discretion and is included in the GMP. Agency Contingency may be used for any changes directed by Agency, including but not limited to, Change Orders, or for use any other use proposed by Agency, which may be accepted or denied in Agency's sole and absolute discretion. If CMAR desires to utilize the Agency Contingency, it may only propose to utilize the Agency Contingency for the following:

(1) Construction Work not shown or inferred on the Plans and Specifications but missing from bid packages;

(2) Expenditures directed by CMAR and agreed to by Agency, in its sole discretion, for the benefit of the Project;

(3) Coordination of installation tolerances between trades; and

(4) Acceleration of the Contract Time.

(iii) **Prohibited Contingency Use.** Agency Contingency may never be used for:

- (1) Additional Pre-Construction Services;
 - (2) Additional or extended CMAR's general conditions, including Project management staff for construction Work;
 - (3) Weather protection for Work in place, or materials for the benefit of Subcontractors;
 - (4) Insurance co-pay costs;
 - (5) Replacing, correcting, or otherwise remedying defective or nonconforming Work as required by the Contract Documents;
 - (6) Any conflict, ambiguity, or increase in costs arising out of CMAR's error and omissions; and
- (iv) Prior to performing any Work that CMAR intends to be paid for out of any portion of Agency Contingency, CMAR must submit to the Agency a written request for the CMAR's use of Agency Contingency, which is subject to review and approval by Agency in its sole and absolute discretion.

(e) **No Allowances.** CMAR shall not include any allowances in the GMP, unless expressly authorized in writing by Agency. If Agency approves the use of allowances, Agency shall be entitled to set the conditions for allowance use in its sole and absolute discretion.

3.5 Conditions Applicable to Guaranteed Maximum Price.

(a) CMAR guarantees that the final cost to construct the Project shall not exceed the GMP, subject to any additions or deductions as provided in the Contract Documents. Except as otherwise provided in this Contract, CMAR shall assume the risk of all costs in excess of the GMP in the performance the Work and to provide a fully completed and successfully operational Project, complete in every detail according to the provisions of the Contract Documents and shall not be entitled to additional payments because of such excess costs. Should CMAR believe that it is entitled to additional compensation, whether money or time, it must request such compensation pursuant to the Contract Documents.

(b) The GMP includes and assumes that from time to time, CMAR will encounter delays and difficult site conditions arising from limited access to work areas, other interference, or conditions at the Project site. CMAR assumes full responsibility for its examination, investigation and understanding of the difficulties which may be encountered, and has included in its GMP the cost of any Work associated with such difficulties. To the extent the Design Documents are anticipated to require further development by the Architect, CMAR shall provide in the GMP for such further development consistent with the Contract Documents and reasonably inferable therefrom.

3.6 Adjustments to Guaranteed Maximum Price.

(a) The GMP reflected in the GMP Amendment shall not be modified except in the event of the following circumstances: (a) Agency directs and authorizes a change which is related solely to Agency discretionary changes (the foregoing excludes changes authorized by Agency resulting from errors, omissions or other deficiencies in the Design Documents or changes resulting from the acts, omissions or other conduct of the CMAR); (b) unanticipated field conditions which could not be reasonably foreseeable by the CMAR are encountered which requires changes; (c) changes are directed by a governmental agency with jurisdiction over the Project or portions thereof, which could not be reasonably foreseen or anticipated by the CMAR at the conclusion of the Pre-Construction Phase; (d) changes are necessitated by amendment(s) or enactment(s) of laws, rules, ordinances or regulations applicable to the Project or portions thereof which could not be reasonably anticipated or foreseen by the CMAR at the conclusion of the Pre-Construction Phase; or (e) changes resulting from emergencies not caused, in whole or in part, by the acts, omissions or other conduct of the CMAR or its employees, agents or representatives. Adjustments to the GMP shall be reflected in a written amendment to the GMP Amendment duly executed by Agency and the CMAR ("GMP Adjustment Amendments").

(b) Adjustments to the GMP on account of changes in the Work shall be determined as set forth in the Contract Documents, including, without limitation, the General Conditions in **Attachment 1**. In calculating adjustments to the GMP, the allowed costs shall mean the Construction Cost and the allowed mark-up shall mean the CMAR's Fee.

3.7 Escalation.

(a) **Escalation for CMAR's General Conditions.** If, and only if, there is an unreasonable delay in the issuance of a Notice to Proceed for the Construction Stage, and to the extent such delay constitutes a delay for which CMAR establishes it is entitled to compensation as set forth in the General Conditions, will CMAR be entitled to additional payment for escalation of CMAR's General Conditions. CMAR must demonstrate to the reasonable satisfaction of the Agency that specific, individual costs in CMAR's General Conditions have increased, and that those increases correspond to the change in the current Consumer Price Index of the Bureau of Labor Statistic (Construction) applicable to the geographic area in which the Project is located for the time period in which the delay occurred. CMAR shall only be entitled to the pro-rata difference between: (i) the price of each specific, individual costs of CMAR's General Conditions that CMAR demonstrated have escalated during the delay period; and (ii) the costs when the Parties initially established the GMP. Any additional compensation hereunder shall be conditioned upon CMAR's compliance with all applicable provisions of the Contract Documents related to adjustments to the GMP and Guaranteed Project Completion Date.

(b) **Subcontractor Escalation.** CMAR shall not be entitled to additional payment for Subcontractor performed Construction Services if the requested increase results from an escalation of Subcontractor costs compared to the Subcontractor's original bid during GMP preparation as set forth in the Contract Documents. CMAR shall be entitled to such escalation costs only if: (i) the Services are suspended consistent with the provisions of the Contract Documents; and/or (ii) there is a delay in the

issuance of a Notice to Proceed by Agency, or such similar notice from CMAR to a Subcontractor not the fault of CMAR or a Subcontractor. In either event, CMAR must satisfy the requirements of the “Materials Escalation” section below if CMAR seeks escalation costs for materials. Any additional compensation hereunder shall be conditioned upon CMAR’s compliance with all applicable provisions of the Contract Documents related to adjustments to the GMP and Guaranteed Completion Date. These provisions shall be included in any Subcontractor subcontract.

(c) **Materials Escalation.** CMAR may seek additional costs for escalation of materials after the establishment of the GMP, if, and only if, CMAR demonstrates **all** the following conditions are satisfied:

(i) **Condition 1.** CMAR establishes that the escalation was caused by: (i) a force majeure as identified in the General Conditions; or (ii) an event that would qualify as a delay for which CMAR is entitled to additional compensation;

(ii) **Condition 2.** The escalated cost did not result from any action of CMAR, including, without limitation, failing to properly or diligently plan, sequence, schedule, or coordinate the Services;

(iii) **Condition 3.** CMAR timely ordered and/or purchased the materials at issue;

(iv) **Condition 4.** CMAR’s material costs, as reflected in Subcontractor bids, were reasonable at the time that CMAR solicited subcontractors during the Subcontractor Procurement Process;

(v) **Condition 5.** The escalation of a particular material is significant. The term “significant” herein shall mean when the price of an item increases by 3% or more from the later of the following: (i) the date the Parties execute the GMP Amendment; or (ii) the date that CMAR enters a subcontract with a Subcontractor purchasing the material or a contract with a supplier to furnish that material;

(vi) **Condition 6.** CMAR demonstrates an actual increase in the cost of materials after the Parties agreed to the GMP reflected in CMAR’s material cost paid either at time of purchase or delivery, whichever is earlier;

(vii) **Condition 7.** An actual price increase has occurred and can be substantiated by the Engineering News-Record 20-City Average Material Cost Index for the material at issue that demonstrates the increase in price of the material during the period of the delay; and

(viii) **Condition 8.** CMAR complies with all procedures applicable to Change Orders or Claims.

If CMAR satisfies all these conditions, CMAR shall be entitled to compensation for demonstrated escalation costs. The escalation shall be calculated as the difference between the costs CMAR would have paid, and the escalated costs of materials. CMAR shall require that all subcontracts with Subcontractors include this provision, or that all Subcontractors review, acknowledge, and agree to these requirements.

3.8 CMAR Responsibility for Construction Costs Exceeding GMP. If the final accounting of the GMP shows that the final GMP exceeds the GMP as set forth in the GMP Amendment, including all adjustments to the GMP in accordance with this Contract, CMAR shall be solely responsible for all costs exceeding such amount.

3.9 Shared Cost Savings. If the final accounting of the GMP shows that the final GMP is less than the GMP as set forth in the GMP Amendment, including all adjustments to the GMP in accordance with this Contract, the difference shall be considered “savings” and shall be shared as follows: fifty percent (50%) to CMAR and fifty percent (50%) to Agency

3.10 Payment Terms

(a) Payment of Compensation for Pre-Construction Services.

(i) CMAR shall submit a monthly itemized statement of Preconstruction Services charges and expenses to Agency on the fifth (5th) day of each month. The itemized statement shall reflect the hours spent, or scopes of work performed, by CMAR in performing its Preconstruction Services, and, if applicable, the statements shall reflect expenses and materials, and the hourly charges shall not exceed the rates set forth in **Attachment 9**. The itemized statement shall show the days and hours worked each workday CMAR performs Preconstruction Services for the previous month.

(ii) Payment for the Preconstruction Services shall be made for all undisputed amounts in monthly installment payments within thirty (30) Days after CMAR submits an itemized statement to Agency for Preconstruction Services actually completed and after Agency’s written approval of the Preconstruction Services, or the portion of the Preconstruction Services for which payment is to be made. Payment shall not constitute acceptance of any Pre-Construction Services completed by CMAR.

3.11 Payment of Compensation for Construction Services.

(a) CMAR Monthly Payment Requests.

(i) Pursuant to the General Conditions in **Attachment 1**, CMAR shall submit to Agency on forms approved by Agency a written request for payment of the GMP, together with such supporting data as Agency may request covering the amount of the Project work then completed. Unless specified otherwise, such request and supporting data shall be submitted by CMAR so that it is received by Agency no later than the last day of the month preceding the month in which payment will be made. In addition to any requirements included in the General Conditions in **Attachment 1**, CMAR shall submit with each Application for Payment:

(1) An invoice that includes, without limitation, the total contract value, total of additive and deductive Change Orders, total retention, and total Contingency use;

(2) An updated Schedule of Values;

(3) An updated Construction Schedule;

(4) A certification, under the penalty of perjury, that CMAR has completed and uploaded certified payroll to DIR; and

(5) Conditional and unconditional release of liens.

(ii) CMAR acknowledges that the GMP is to be administered on an open book arrangement relative to the costs of the Work. The payment request shall specify the percentage of completion (as of the end of the preceding month) of the work and compensation due CMAR. The payment request shall be supported by such data substantiating the CMAR's right to payment as Agency may require including but not limited to payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, Subcontractor payment requests submitted to CMAR, documentation supporting the Subcontractor's payment requests, and any other evidence required by Agency.

(iii) Upon Agency's approval, Agency will make a progress payment of the GMP to the CMAR in the amount of ninety-five percent (95%) of the estimated value of the Project work performed through the date of the payment request. CMAR shall then make payment to Subcontractors as required pursuant to the Subcontractor contracts and applicable law. Without limitation to any and all remedies available to Agency under law, equity and contract, Agency may withhold disputed retained amounts as provided for under law and the General Conditions.

(iv) Each Application for Payment shall be based on the most recent schedule of values submitted by CMAR in accordance with the Contract Documents. The schedule of values shall allocate the entire GMP among the various portions of the Work, except that CMAR's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as Agency may require. This schedule, unless objected to by Agency, shall be used as a basis for reviewing CMAR's applications for payment. Applications for payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the application for payment. The percentage of completion shall be the percentage of that portion of the Work which CMAR has actually been completed.

(b) **Agency Payments of GMP.** Agency shall make payment to CMAR within thirty (30) days of receipt of an undisputed payment request or the resolution of any billing dispute. Agency may withhold a portion of an application for payment because of defective work not remedied or unsatisfactory prosecution of the work by the CMAR. Agency will release any withheld funds upon CMAR satisfactorily remedying the issue that resulted in the withholding. Agency will not pay late fees to the CMAR on the compensation due CMAR under the terms of this Contract. Payment shall not constitute

acceptance of any work completed by CMAR. The making of final payment shall not constitute a waiver of any claims by Agency for any reason whatsoever. The foregoing shall be in accordance with the General Conditions.

(c) **Payments to Subcontractors.** CMAR shall develop and implement procedures for submittal of applications for progress payments to CMAR by Subcontractors in accordance with the General Conditions and the review, processing and disbursement of progress payments to Subcontractors, along with associated forms and reporting systems. CMAR shall disburse progress payments due each Subcontractor within ten (10) Days of CMAR's receipt of payment from Agency, except to the extent that CMAR's payment of such amount or any portion thereof is subject to withholdings for a Stop Payment Notice, Prevailing Wage Rate violations or other withholdings of payment(s) due the Subcontractors under the terms of the subcontracts or by operation of law. CMAR shall indemnify Agency against any and all claims arising from or related to the failure of the CMAR to comply with the prompt payment requirements under the Public Contract Code.

4. Commencement and Time to Complete Services; Liquidated Damages.

4.1 Time to Complete Preconstruction Services. CMAR shall commence the performance of Pre-Construction Services upon Agency's issuance of a Notice to Proceed and shall complete the Pre-Construction Services, exclusive of Subcontractor procurement and GMP preparation, within 225 Calendar Days of Agency's issuance of the Notice to Proceed.

4.2 Time to Complete Construction Services.

(a) **Guaranteed Project Completion Date.** CMAR shall complete Construction Services within the Guaranteed Completion Date (as defined in the Scope of Services in **Attachment 2**). As of the Effective Date, the Guaranteed Construction Completion Date has not been agreed to by the Parties. If, during or after the completion of Preconstruction Services and CMAR's presentation of the GMP Proposal to Agency, Agency agrees to CMAR's Guaranteed Construction Completion Date in the GMP Proposal, the Parties shall amend this Contract and replace this section with the Guaranteed Construction Completion Date set forth as the total number of Days CMAR in which CMAR shall complete Construction Services.

(b) **Commencement of Construction.** CMAR shall not commence the Construction Services until Agency executes the GMP Amendment and issues a Notice to Proceed with Construction. CMAR may request a Notice to Proceed with Construction prior to completion of the 100% Construction Documents, and Agency may issue same, provided that CMAR shall not construct any portion of the Project until the design of such portion has been approved. The Guaranteed Completion Date shall run from the Notice to Proceed with Construction even if issued prior to completion of the 100% Construction Documents.

(c) **Liquidated Damages.** Time is of the essence. CMAR agrees that it shall be liable to Agency for liquidated damages in an amount of **Five Hundred Dollars (\$500)** per day for each and every

calendar day beyond the Guaranteed Completion Date that completion of the Project has not been achieved at the Project Site. If not completed by the Guaranteed Completion Date, it is understood that Agency will suffer damage, and that it is and will be difficult and/or impossible to ascertain and determine the actual damage which Agency will sustain in the event of and by reason of CMAR's failure to complete the work, and therefore CMAR shall pay to Agency the stipulated sum as fixed and liquidated damages and not as a penalty. Any money due or to become due CMAR may be retained to cover liquidated damages.

(d) **Adjustments to Guaranteed Completion Date.** The Guaranteed Completion Date shall be subject to amendment only if: (a) the GMP is modified in accordance with this Contract and the modified GMP directly affects the time for completion of Project construction; (b) Agency directs or authorizes the suspension of construction of the Project as a whole or in part and such directive or authorization actually delays the final completion of the Project; (c) Agency directs or authorizes delays to construction of the Project as a whole or in part and such directive or authorization actually delays final completion of the Project; or (d) completion of construction of the Project is delayed by the acts or omissions of Agency or its employees, agents or representatives. Adjustments to the Guaranteed Project Completion Date on account of the circumstance described above shall be reflected in GMP Adjustment Amendments duly executed by Agency and CMAR. CMAR acknowledges and agrees that the adjustment of Contract Time which does not have an effect on the final completion of the Project shall not be a basis for adjustment of the Guaranteed Project Completion Date.

5. CMAR Notices of Adjustment.

An express condition precedent to any obligation of Agency to consider or to adjust the GMP or the Guaranteed Completion Date is the CMAR's delivery of written notice to Agency no more than ten (10) days following the initial occurrence of a circumstance which the CMAR believes is justification for adjustment of the GMP or Guaranteed Completion Date. The failure of CMAR to deliver written notice to Agency of the occurrence of circumstances CMAR believes is justification for modification of the GMP or the Guaranteed Completion Date shall be deemed CMAR's waiver of any right to modification of the GMP or the Guaranteed Completion Date for such circumstances. If CMAR provides such written notice, Agency shall thereafter promptly consider the request and equitably adjust the GMP or the Guaranteed Completion Date, as applicable. If the source or nature of a basis for adjustment of the GMP or the Guaranteed Completion Date is on-going, CMAR's delivery of written notice within the time set forth above after the Initial occurrence of such event shall be deemed sufficient notice.

6. Audit.

CMAR shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of CMAR transacted under this Contract. CMAR shall retain these books, records, and systems of account during the term of this Contract and for five (5) years thereafter. CMAR shall permit the Agency, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the

Services covered by this Contract. Audit(s) may be performed at any time, provided that the Agency shall give reasonable prior notice to CMAR and shall conduct audit(s) during CMAR's normal business hours, unless CMAR otherwise consents.

7. Insurance; Indemnification; Bonds.

For all phases of the Project, CMAR shall purchase and maintain insurance, and bonds as set forth below, in the Contract Documents, or as required by law.

7.1 CMAR Insurance. CMAR shall procure and maintain, at CMAR's expense, all insurance specified in the General Conditions. CMAR shall procure and maintain, at CMAR's expense, Professional Liability/Errors and Omissions Liability Insurance in an amount not less than \$5 million per occurrence or claim and in the aggregate and meeting the general policy requirements set forth the General Conditions. With respect to Professional Liability, coverage must be maintained, and evidence provided, for five (5) years following the termination of this Contract.

7.2 Indemnity. CMAR shall indemnify Agency as specified in General Conditions.

7.3 Bonds. Upon execution of the GMP Amendment, CMAR shall provide performance and payment bonds on forms attached hereto. The penal sum of the payment and performance bonds shall be equal to the GMP. If construction is phased or staged with different GMPs established at different times, the penal sum of the bonds shall be increased at the start of each stage or phase based on the cumulative total value of all GMPs in effect.

8. Termination.

The following are applicable to the Pre-Construction Services only. Termination of the Construction Services shall be according the termination provisions in the General Conditions.

8.1 Without Cause by Agency. Agency may, at any time, with or without reason, terminate this Contract and compensate CMAR only for the Services satisfactorily rendered to the date of termination. Written notice by Agency shall be sufficient to stop further performance of Services by CMAR. Notice shall be deemed given when received by the CMAR or no later than three (3) Days after the day the notice was mailed, whichever is sooner.

8.2 Without Cause by CMAR. CMAR cannot terminate this Contract without cause.

8.3 With Cause by Agency. Agency may terminate this Contract upon giving of written notice of intention to terminate for cause. Cause shall include:

- (a) material violation of this Contract by the CMAR; or
- (b) any act by CMAR exposing the Agency to liability to others for personal injury or property damage; or

(c) CMAR is adjudged a bankrupt, CMAR makes a general assignment for the benefit of creditors or a receiver is appointed on account of CMAR's insolvency.

Written notice by Agency shall contain the reasons for such intention to terminate and unless within three (3) Days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Contract shall upon the expiration of the three (3) Days cease and terminate. In the event of this termination, the Agency may secure Pre-Construction Services from another contractor. If the expense, fees, and/or costs to the Agency exceeds the cost of providing the Pre-Construction Services pursuant to this Contract, the CMAR shall immediately pay the excess expense, fees, and/or costs to the Agency upon the receipt of the Agency's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to Agency.

8.4 With Cause by CMAR. CMAR may only terminate this Contract after giving written notice of intention to terminate for cause and the expiration of the time to cure. Cause shall only include:

- (a) Material violation of this Contract by Agency, or
- (b) Failure of Agency to timely pay undisputed CMAR invoices.

Written notice by CMAR shall contain the reasons for such intention to terminate and unless within thirty (30) Days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Contract shall upon the expiration of the thirty (30) Days cease and terminate. During the thirty (30) Days the Inspector shall continue providing Pre-Construction Services to the Agency until the Contract ceases and terminates. In the event of this termination, the Agency may secure Pre-Construction Services from another contractor.

9. Work Product.

All original papers, maps, models, designs, studies, surveys, reports, data, notes, computer files, documents, drawings and other work product (collectively "Work Product") of CMAR produced by CMAR pursuant to this Contract, except documents which are required to be filed with public agencies, shall be deemed solely the property of Agency. CMAR will take such steps as are necessary to perfect or protect the ownership interest of Agency in such Work Product. Upon completion, expiration or termination of this Contract, CMAR shall turn over to Agency all such original Work Product in CMAR's possession or control.

10. General Provisions.

10.1 Notices. Any notice to be given by any Party hereunder must be given in writing and delivered in person, or by reputable nationwide overnight courier (e.g., Federal Express), or forwarded by certified or registered mail, postage prepaid, return receipt requested, at the address indicated below, unless the Party giving such notice has been notified, in writing, of a change of address:

Agency:

[***INSERT***]

CMAR:

[***INSERT***]

Any such notice is effective on the date on which such notice is delivered, if notice is given by personal delivery or overnight courier, or if notice is sent through the United States mail, on the date of actual delivery as shown by the addressee's receipt or upon the expiration of three (3) days following the date of mailing, whichever first occurs.

10.2 Conflicts. This Contract and its exhibits are intended to be complementary in nature; however, in the event of a conflict, the terms of this Contract shall control.

10.3 Separate Contracts. CMAR understands that this is not an exclusive contract and that Agency shall have the right to negotiate with and enter into separate contracts with others providing the same or similar services as those provided by CMAR as Agency desires.

10.4 Compliance. All work, labor and materials shall be done and provided in strict conformity with each of the following: (i) all laws, ordinances, codes, rules, regulations and standard specifications of governmental authorities having jurisdiction over CMAR's work; and (ii) this Contract. CMAR shall also comply, at CMAR's expense, with all requirements of inspectors of any governmental authority having jurisdiction over CMAR's work. CMAR will be responsible for securing any and all required governmental inspections and approvals for the work completed under this Contract.

10.5 Disputes. If any disputes should arise between the Parties concerning the work to be done under this Contract, the dispute shall be resolved in accordance with the dispute resolution procedures in the General Conditions.

10.6 Assignment and Subcontractors. CMAR shall not assign or subcontract any portion of the work to be performed under this Contract or any of the rights or obligations under this Contract, without the prior written consent of Agency, which consent may be withheld in Agency's sole and absolute discretion. Any attempted assignment in violation of the provisions of this paragraph shall be void ab initio. Subject to the foregoing, this Contract shall be binding upon the heirs, administrators, successors and assigns of Agency and CMAR.

10.7 Non-Liability of Agency Officials and Employees. No official or employee of Agency shall be personally liable to the CMAR in the event of any default or breach by Agency or for any amount which may become due to the CMAR or for any breach of the terms of this Contract.

10.8 Conflict of Interest. No director, officer or employee of Agency shall have any financial interest, direct or indirect, in this Contract nor shall any such director, officer or employee participate in any decision relating to this Contract which affects his/her financial interest or the financial interest of any corporation, partnership, entity or association in which he/she is directly or indirectly interested, in violation of any state or federal statute or regulation. The CMAR warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Contract.

10.9 Best Efforts. CMAR recognizes the relations of trust and confidence that are established by this Contract, and covenants with Agency to furnish his/her best skill and judgment, and to actively cooperate and assist in furthering the best interests of Agency in all matters pertaining to the work. CMAR agrees to furnish efficient business administration and capable supervision, and to use every effort to keep upon the work an adequate supply of workmen and materials in order to secure its execution in the most expeditious and economical manner consistent with Agency's best interests. CMAR's employees assigned to the work shall at all times be reasonably satisfactory to Agency.

10.10 Confidential Information. All information gained or Work Product produced by CMAR in the performance of this Contract will be considered confidential, unless such information is in the public domain. CMAR shall not release or disclose any such information or Work Product to persons or entities other than Agency without the prior written consent of the Agency, except as otherwise required by law. CMAR shall promptly notify Agency should CMAR, or its Representatives, be served summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, requests for admissions or other discovery request or court order from any third party regarding this Contract and the services performed under this Contract.

10.11 Amendment. This Contract may not be amended except by a subsequent writing which is signed by the Parties.

10.12 Cooperation. CMAR shall cooperate in the performance of work with Agency and all other agents.

10.13 Governing Law, Venue. This Contract shall be governed by and construed in accordance with the laws of the State of California. The Parties agree that any action or proceeding to enforce or relating to this Contract shall be brought exclusively in the federal or state courts located in Sonoma County, California, and the Parties hereto consent to the exercise of personal jurisdiction over them by any such courts for purposes of any such action or proceeding

10.14 Severability. If any provision of this Contract is found by a court of competent jurisdiction to be void, invalid or unenforceable, then the Parties agree that such invalidity or unenforceability shall have no effect whatsoever on the balance of this Contract.

10.15 Counterparts. This Contract may be signed and delivered in any number of counterparts, each of which, when signed and delivered, shall be an original, but all of which shall together constitute one and the same Contract.

10.16 Time is of the Essence. Time shall be of the essence as to all dates and times of performance contained in this Contract.

10.17 Authority to Execute. Each Party represents and warrants to the other Party that all necessary action has been taken by such Party to authorize the undersigned to execute this Contract and to bind it to the performance of its obligations hereunder.

10.18 Binding on Successors. All representations, covenants and warranties set forth in this Contract, by or on behalf of, or for the benefit of any or all of the Parties hereto, shall be binding upon and inure to the benefit of such Party, its successors and assigns.

10.19 Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Contract, including, but not limited to, the indemnification obligations, shall survive any such expiration or termination.

10.20 Third Party Rights. Nothing in this Contract shall be construed to give any rights or benefits to anyone other than Agency and the CMAR.

Signature Page To Construction Manager At-Risk Contract By And Between The Sonoma County Waste Management Agency also known as Zero Waste Sonoma And [*Insert***]**

IN WITNESS WHEREOF, the Parties hereby execute this Construction Manager At-Risk Contract as of the Effective Date.

DRAFT

Sonoma County Waste Management Agency a.k.a.
Zero Waste Sonoma

INSERT NAME OF CMAR

[IF CORPORATION, TWO SIGNATURES, PRESIDENT
OR VICE PRESIDENT AND SECRETARY OR
TREASURER REQUIRED]

By: _____
[INSERT NAME]
[INSERT TITLE]

By: _____

Its: _____

ATTEST:

Printed _____ Name: _____

By: _____
[INSERT NAME]

[DELETE THE FOLLOWING SIGNATURE LINE IF NOT
REQUIRED]

By: _____

Its: _____

APPROVED AS TO FORM:

Printed _____ Name: _____

By: _____
[INSERT NAME]

CMAR's License Number

DIR Registration Number

Attachment 1
General Conditions

[Begins on the Following Page]

General Conditions

These General Conditions govern the Pre-Construction Phase, Construction Phase, and completion of the Project by the CMAR. Any term not defined in the Contract, or other Contract Documents, shall have the meaning set forth in Article 1 of the General Conditions.

ARTICLE 1 -Terms; Definitions

1.1 Defined Terms.

- A. Whenever used in the Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined below, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. Act of God --An earthquake of magnitude of 3.5 or higher on the Richter scale or a tidal wave.
 2. Additional Work -- New or unforeseen work will be classified as "Additional Work" when the Engineer determines that it is not covered by the Contract.
 3. Applicable Laws -- The laws, statutes, ordinances, rules, codes, regulations, permits, and licenses of any kind, issued by local, state or federal governmental authorities or private authorities with jurisdiction (including utilities), to the extent they apply to the Work.
 4. Change Order ("CO") -- A document that authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Time, issued in accordance with the Contract Documents and in the form contained in the Contract Documents.
 5. Change Order Request ("COR") -- A request made by the Contractor for an adjustment in the Contract Price and/or Contract Times as the result of a Contractor-claimed change to the Work.
 6. Contract -- The entire integrated written agreement between the Agency and Contractor concerning the Work. "Contract" may be used interchangeably with "Agreement" in the Contract Documents. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral, and includes all Contract Documents.
 7. Contract Price -- Amount to be paid by the Agency to the Contractor as full compensation for the performance of the Construction Services and completion of the Work, subject to any additions or deductions as provided in the Contract Documents, and including all

applicable taxes and costs. "Contract Price" may be used interchangeably with "Guaranteed Maximum Price" or "GMP" in the Contract Documents.

8. Contract Time -- The number of days or the dates stated in the Contract Documents to: achieve defined milestones, if any; and to fully complete the Work. "Contract Time" may be used interchangeably with "Guaranteed Completion Date" or "GCD" in the Contract Documents.
9. Contractor -- The individual or entity with which the Agency has contracted for performance of the Work. "Contractor" may be used interchangeably with "CMAR" in the Contract Documents.
10. Critical Supply Shortage -- An unusual shortage in materials that is (a) supported by documented proof that Contractor made every effort to obtain such materials from all available sources; (b) such shortage is due to the fact that such materials are not physically available from single or multiple sources or could have been obtained only at exorbitant prices entirely inconsistent with current and standard rates taking into account the quantities involved and the usual industry practices in obtaining such quantities; and (c) such shortages and the difficulties in obtaining alternate sources of materials could not have been known or anticipated by Contractor at the time it submitted its bid or entered the Contract. Market fluctuations in prices of materials, whether or not resulting from a Force Majeure Event, does not constitute a Critical Supply Shortage.
11. Day -- A calendar day of 24 hours measured from midnight to the next midnight.
12. Defective Work -- Work that is unsatisfactory, faulty, or deficient; or that does not conform to the Contract Documents; or that does not meet the requirements of any inspection, reference standard, test, or approval referenced in the Contract Documents.
13. Design Documents -- The Drawings, Specifications, calculations and other work product and instruments of service prepared by or on behalf of the Architect for the Project and include without limitation surveys, soils reports, design/trade packages and other documents prepared for the Project by the Architect.
14. Drawings -- That part of the Design Documents prepared by of the Engineer of Record or Architect which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor Submittals are not Drawings as so defined.
15. Engineer -- Whenever not qualified, shall mean the Agency Engineer or the Engineer authorized to act for and in behalf of the Agency, acting either directly or through properly authorized agents, such agents acting severally within the scope of the particular duties entrusted to them.

16. Engineer of Record -- The individual, partnership, corporation, joint venture, or other legal entity that prepares the Drawings. "Engineer of Record" may be used interchangeably with "Architect" in the Contract Documents.
17. Force Majeure Event -- An event that materially affects a party's performance and is one or more of the following: (1) Acts of God or other natural disasters occurring at the Site; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the Work); (4) pandemics, epidemics or quarantine restrictions; (5) strikes and other organized labor action occurring at the Site and the effects thereof on the Work, only to the extent such strikes and other organized labor action are beyond the control of Contractor and its Subcontractors, of every tier, and to the extent the effects thereof cannot be avoided by use of replacement workers; and (6) a Critical Supply Shortage. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of the Agency in its capacity as a municipal authority.
18. Hazardous Waste -- The term "Hazardous Waste" shall have the meaning provided in Section 104 of the Solid Waste Disposal Act (42 U.S.C. § 6903) as amended from time to time, or any substance or material identified as hazardous under any state or federal statute governing handling, disposal and/or cleanup of any such substance or material, whichever is more restrictive.

19. Holiday – Holidays occur on:

New Year's Day - January 1

Martin Luther King Day – Third Monday in January

President's Day – Third Monday in February

Memorial Day - Last Monday in May

Independence Day - July 4

Labor Day - First Monday in September

Veteran's Day - November 11

Thanksgiving Day - Fourth Thursday in November

Friday after Thanksgiving

Christmas Eve – December 24

Christmas Day - December 25

New Year's Eve – December 31

If any Holiday listed above falls on a Saturday, Saturday and the preceding Friday are both Holidays. If the Holiday should fall on a Sunday, Sunday and the following Monday are both Holidays.

20. Notice of Completion -- The form which may be executed by the Agency constituting final acceptance of the Project.
21. Notice to Proceed -- A written notice given by the Agency to Contractor fixing the date on which the Contractor may proceed with a Phase and when the Contract Time will commence to run.
22. Project -- The total preconstruction services and construction of which the Work to be performed under the Contract Documents, may be the whole, or a part.
23. Record Drawings -- The record set of as-builts prepared by the Contractor during the Work in accordance with the requirements of the General Conditions.
24. Recyclable Waste Materials -- Materials removed from the Site which are required to be diverted to a recycling center rather than an area landfill. Recyclable Waste Materials include, but are not limited to, asphalt, concrete, brick, concrete block, and rock.
25. Sample -- A physical example furnished by the Contractor to illustrate materials, equipment or workmanship; to establish standards by which the Work will be judged.
26. Schedule of Submittals -- A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to facilitate scheduled performance of related construction activities.
27. Shop Drawings -- All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
28. Site -- Lands or areas indicated in the Contract Documents as being furnished by the Agency upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by the Agency which are designated for the use of Contractor.
29. Specifications -- That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.

- 30. Subcontractor -- An individual or entity other than a Contractor having a contract with any other entity than the Agency for performance of any portion of the Work at the Site.
- 31. Submittal -- Written and graphic information and physical samples prepared and supplied by the Contractor demonstrating various portions of the Work.
- 32. Supplier -- A manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment used in the performance of the Work or to be incorporated in the Work.
- 33. Underground Facilities -- All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
- 34. Warranty -- A guarantee provided to the Agency by the Contractor that the Work will remain free of defects and suitable for its intended use for the period required by the Contract Documents or the longest period permitted by the law of this state, whichever is longer.
- 35. Work -- The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

1.2 Terminology.

- A. The words and terms below are not defined but, when used in the Contract Documents, have the indicated meaning.
 - 1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 - 2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 - 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. Regardless of whether “furnish,” “install,” “perform,” or “provide” is used in connection with services, materials, or equipment, an obligation of Contractor is implied.
- B. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 - Preliminary Matters

2.1 Delivery of Contract Documents.

- A. Within ten (10) Days after execution of the GMP Amendment, the Contractor shall furnish and file with the Agency the necessary performance bond, payment bond, and certificates of insurance and endorsements, if not already provided, as well as any other documents specified in the Contract Documents.

2.2 Bonds.

- A. Prior to Contractor’s commencement of Work during the Construction Phase, Contractor shall submit the bonds on the forms provided with the Contract Documents, duly executed by a responsible corporate surety admitted to transact surety business in the State of California, as defined in Code of Civil Procedure section 995.120, and listed in the United States Department of the Treasury circular entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," authorized to do business in the State of California and acceptable to the Agency conditioned upon the faithful performance by the Contractor of all requirements of the Contract Documents. Each of the bonds shall be in a sum no less than one hundred percent (100%) of the Contract Price.

2.3 Evidence of Insurance.

- A. Prior to commencing any Work, the Contractor shall submit or cause to be submitted any and all certificates of insurance and endorsements, showing that the Contractor has the required insurance, to the attention of the Agency. Such insurance is to be provided at the sole cost and expense of the Contractor. No Work shall be performed until all of the required insurance has been received and approved.

2.4 Contractor’s Failure to Perform.

- A. Should Contractor fail to comply with timelines provided above, the Agency shall retain the right to rescind the GMP Amendment. If the Agency elects to accept bonds and insurance submitted late, the Contract Time will begin to run as of the date stated in the Notice to Proceed with Construction. However, the number of Days beyond the original ten (10) Days

it took to receive the properly executed Contract and related items may be deducted from the Contract Time.

2.5 Commencement of Contract Times; Notice to Proceed.

- A. Work shall commence within ten (10) Days of the date stated in the Notice to Proceed with Construction. The Contract Time shall begin to run on the date specified in the Notice to Proceed with Construction. No Work shall be done at the Site prior to the issuance of the Notice to Proceed with Construction.

2.6 Copies of Documents.

- A. Contractor will be furnished, free of charge, five (5) copies of the Contract Documents. Additional copies may be obtained at cost of reproduction. Contractor shall maintain a clean, undamaged set of Contract Documents, including Submittals, at the Project site.

2.7 Substitution Requests, Schedule of Submittals, and Schedule.

- A. Substitution Requests. Within thirty-five (35) Days of the GMP Amendment (unless otherwise specified in the Contract Documents), Contractor shall provide all substitution requests as further described in the General Conditions.
- B. Schedule of Submittals. Within ten (10) Days after the issuance of the Notice of Proceed with Construction (unless otherwise specified in the Contract Documents), Contractor shall submit to the Agency a Schedule of Submittals that conforms with the requirements of the Contract Documents.
- C. Schedule. Within ten (10) Days after the issuance of the Notice of Proceed with Construction (unless otherwise specified in the Contract Documents), the Contractor shall submit a construction schedule that conforms with the requirements of the Contract Documents.

2.8 Preconstruction Conference; Designation of Authorized Representatives.

- A. Before any Work at the Site is started, a conference attended by the Agency, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to herein, procedures for handling Submittals and Shop Drawings, processing applications for payment, and maintaining required records. At this conference the Agency and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.9 Subcontractor Mobilization Meeting.

- A. Prior to the start of each major Subcontractor, the Contractor, Subcontractor, and Engineer shall attend a pre-start meeting to discuss the schedule, coordination, procedures, and other administrative issues.

ARTICLE 3 —Examination; General Provisions Regarding The Contract Documents

3.1 Examination of Drawings, Specifications, and Site of Work.

- A. Examination of Contract Documents; Site. Before commencing any portion of the Work, Contractor shall again carefully examine all applicable Contract Documents, the Project Site, and other information given to Contractor as to materials and methods of construction and other Project requirements. Contractor shall immediately notify the Engineer of any potential error, inconsistency, ambiguity, conflict, or lack of detail or explanation. If Contractor performs, permits, or causes the performance of any Work which is in error, inconsistent or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all resulting costs, including, without limitation, the cost of correction. In no case shall the Contractor or any Subcontractor proceed with Work if uncertain as to the applicable requirements.
- B. Additional Instructions. After notification of any error, inconsistency, ambiguity, conflict, or lack of detail or explanation, the Engineer will provide any required additional instructions, by means of drawings or other written direction, necessary for proper execution of Work.
- C. Quality of Parts, Construction and Finish. All parts of the Work shall be of the best quality of their respective kinds and the Contractor must use all diligence to inform itself fully as to the required construction and finish.
- D. Contractor's Variation from Contract Document Requirements. If it is found that the Contractor has varied from the requirements of the Contract Documents including the requirement to comply with all Applicable Laws, the Engineer may at any time, before or after completion of the Work, order the improper Work removed, remade or replaced by the Contractor at the Contractor's expense.

- 3.2 Reporting and Resolving Discrepancies. The Contract Documents are intended to be fully cooperative and complementary. Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to the Agency any conflict, error, ambiguity, or discrepancy which Contractor discovers, should have discovered, or has actual knowledge of, and shall obtain a written interpretation or clarification from the Agency before proceeding with any Work affected thereby. If, during the

performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (i) any Applicable Law, (ii) any standard, specification, manual, or code, or (iii) any instruction of any Supplier, then Contractor shall promptly submit a written Request for Information (RFI) to the Agency. Contractor shall not proceed with the Work affected thereby (except in an emergency) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in the Contract Documents, and any Work performed by Contractor before receipt of an amendment or supplement shall be at Contractor's own risk.

3.3 Amending and Supplementing Contract Documents.

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof only by Change Order or written amendment to the Contract duly executed by the parties.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized at no cost to the Agency, by one or more of the following ways:
 - 1. Agency's review of a Submittal, Shop Drawing, Sample or substitution request without exception (subject to the provisions of the Contract Documents); or
 - 2. Agency's issuance of a response to an RFI.
- C. However, no review or RFI response will reduce or modify the Contractor's obligation to fully satisfy and comply with the requirements of the Contract Documents.

3.4 Reuse of Documents.

- A. Contractor and any Subcontractor or Supplier shall not:
 - 1. Have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer of Record or its consultants, including electronic media editions; or
 - 2. Reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of the Agency and Engineer of Record and specific written verification or adaptation by Engineer of Record.
- B. The prohibitions of this Article will survive final payment or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 - Indemnification; Insurance

4.1 Indemnification.

- A. To the fullest extent permitted by law, Contractor shall immediately defend (with counsel of the Agency's choosing), indemnify and hold harmless the Agency, its officials, officers, employees, agents, and authorized volunteers, and each of them from and against:
 - 1. Any and all claims, demands, causes of action, costs, expenses, injuries, losses or liabilities, in law or in equity, of every kind or nature whatsoever, but not limited to, injury to or death, including wrongful death, of any person, and damages to or destruction of property of any person, arising out of, related to, or in any manner directly or indirectly connected with the Work or this Contract, including claims made by subcontractors for nonpayment, including without limitation the payment of all consequential damages and attorney's fees and other related costs and expenses, however caused, regardless of whether the allegations are false, fraudulent, or groundless, and regardless of any negligence of the Agency or its officials, officers, employees, agents, or authorized volunteers (including passive negligence), except such loss or damages caused by the sole negligence or willful misconduct or active negligence of the Agency or its officials, officers, employees, or authorized volunteers.
 - 2. Contractor's defense and indemnity obligation herein includes, but is not limited to damages, fines, penalties, attorney's fees and costs arising from claims under the Americans with Disabilities Act (ADA) or other federal or state disability access or discrimination laws arising from Contractor's Work during the course of construction of the improvements or after the Work is complete, as the result of defects or negligence in Contractor's construction of the improvements.
 - 3. Any and all actions, proceedings, damages, costs, expenses, fines, penalties or liabilities, in law or equity, of every kind or nature whatsoever, arising out of, resulting from, or on account of the violation of any governmental law or regulation, compliance with which is the responsibility of Contractor.
 - 4. Any and all losses, expenses, damages (including damages to the Work itself), attorney's fees, and other costs, including all costs of defense which any of them may incur with respect to the failure, neglect, or refusal of Contractor to faithfully perform the Work and all of Contractor's obligations under Contract. Such costs, expenses, and damages shall include all costs, including attorney's fees, incurred by the indemnified parties in any lawsuit to which they are a party.
- B. Contractor shall immediately defend, at Contractor's own cost, expense and risk, with the counsel of the Agency choosing, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the Agency or its

officials, officers, employees, agents, or authorized volunteers. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against the Agency or its officials, officers, employees, agents, or authorized volunteers, in any such suit, action or other legal proceeding. Contractor shall reimburse the Agency and its officials, officers, employees, agents, and authorized volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The only limitations on this provision shall be those imposed by Civil Code section 2782.

- C. The provisions of this Article shall survive the termination of this Contract howsoever caused, and no payment, partial payment, or acceptance of occupancy in whole or part of the Work shall waive or release any of the provisions of this Article. Contractor's obligation to indemnify the Agency shall not be restricted to insurance proceeds, if any, received by the Agency and its officials, officers, employees, agents, and authorized volunteers.

4.2 Insurance.

- A. General Requirements. Contractor shall obtain, and at all times during performance of the Work of Contract, maintain all of the insurance described in this Article. Contractor shall not commence Work under this Contract until it has provided evidence satisfactory to the Agency that it has secured all insurance required hereunder. Contractor shall not allow any Subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the Agency that the subcontractor has secured all insurance required under this Article. Failure to provide and maintain all required insurance shall be grounds for the Agency to terminate this Contract for cause. Contractor shall furnish the Agency with original certificates of insurance and endorsements effective coverage required by this Contract on forms satisfactory to the Agency. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms acceptable to the Agency. All certificates and endorsements must be received and approved by the Agency before Work commences.
- B. Additional Insureds; Waiver of Subrogation. Agency, its officials, officers, employees, agents and authorized volunteers shall be named as Additional Insureds on Contractor's All Risk policy and on Contractor's and its Subcontractors' policies of Commercial General Liability and Automobile Liability insurance using, for Contractor's policy/ies of Commercial General Liability insurance, ISO CG forms 20 10 and 20 37 (or endorsements providing the exact same coverage, including completed operations), and, for Subcontractors' policies of Commercial General Liability insurance, ISO CG form 20 38 (or endorsements providing the exact same coverage). Notwithstanding the minimum limits set forth in this Contract for any type of insurance coverage, all available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as Additional Insureds hereunder. All insurance coverage maintained or procured pursuant to

this Contract shall be endorsed to waive subrogation against the Agency, its officers, officials, agents, employees or volunteers or shall specifically allow Contractor - or others providing insurance evidence in compliance with these specifications - to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against the Agency, and shall require similar written express waivers and insurance clauses from each of its subcontractors. Copies of these waivers shall be submitted to the Agency prior to commencement of work.

- C. Workers' Compensation Insurance. Contractor shall provide workers' compensation insurance for all of the employees engaged in Work under this Contract, on or at the Site, and, in case of any sublet Work, the Contractor shall require the subcontractor similarly to provide workers' compensation insurance for all the latter's employees as prescribed by State law. Any class of employee or employees not covered by a subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in work under this Contract, on or at the Site, is not protected under the Workers' Compensation Statutes, the Contractor shall provide or shall cause a subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected. The Contractor is required to secure payment of compensation to his employees in accordance with the provisions of section 3700 of the Labor Code. The Contractor shall file with the Agency certificates of his insurance protecting workers. Company or companies providing insurance coverage shall be acceptable to the Agency, if in the form and coverage as set forth in the Contract Documents.
- D. Employer's Liability Insurance. Contractor shall provide Employer's Liability Insurance, including Occupational Disease, in the amount of at least one million dollars (\$1,000,000.00) per person per accident. Contractor shall provide the Agency with a certificate of Employer's Liability Insurance. Such insurance shall comply with the provisions of the Contract Documents. The policy shall be endorsed, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement and contain a Waiver of Subrogation in favor of the Agency.
- E. Commercial General Liability Insurance. Contractor shall provide "occurrence" form Commercial General Liability insurance coverage at least as broad as the most current ISO CGL Form 00 01, including but not limited to, premises liability, contractual liability, products/completed operations, personal and advertising injury which may arise from or out of Contractor's operations, use, and management of the Site, or the performance of its obligations hereunder. The policy shall not contain any exclusion contrary to this Contract including but not limited to endorsements or provisions limiting coverage for (1) contractual liability (including but not limited to ISO CG 24 26 or 21 39); or (2) cross-liability for claims or suits against one insured against another. Policy limits shall not be less than \$5,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the

general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Defense costs shall be paid in addition to the limits.

1. Such policy shall comply with all the requirements of this Article. The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Contractor from liability in excess of such coverage, nor shall it limit Contractor's indemnification obligations to the Agency, and shall not preclude the Agency from taking such other actions available to the Agency under other provisions of the Contract Documents or law.
 2. All general liability policies provided pursuant to the provisions of this Article shall comply with the provisions of the Contract Documents.
 3. All general liability policies shall be written to apply to all bodily injury, including death, property damage, personal injury, owned and non-owned equipment, blanket contractual liability, completed operations liability, explosion, collapse, under-ground excavation, removal of lateral support, and other covered loss, however occasioned, occurring during the policy term, and shall specifically insure the performance by Contractor of that part of the indemnification contained in these General Conditions relating to liability for injury to or death of persons and damage to property.
 4. If the coverage contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any aggregate limit has been paid or reserved, the Agency may require additional coverage to be purchased by Contractor to restore the required limits. Contractor may combine primary, umbrella, and as broad as possible excess liability coverage to achieve the total limits indicated above. Any umbrella or excess liability policy shall include the additional insured endorsement described in the Contract Documents.
 5. All policies of general liability insurance shall permit and Contractor does hereby waive any right of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss.
- F. Automobile Liability Insurance. Contractor shall provide Automobile Liability Insurance at least as broad as ISO CA 00 01 (Any Auto) in the amount of, at least, two million dollars (\$2,000,000) per accident for bodily injury and property damage. Such insurance shall provide coverage with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by Contractor or for which Contractor is responsible, in a form and with insurance companies acceptable to the Agency. All policies of automobile insurance shall permit and Contractor does hereby waive

any right of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss.

G. Builder's Risk ["All Risk"].

1. It is Contractor's responsibility to maintain or cause to be maintained Builder's Risk ["All Risk"] extended coverage insurance on all work, material, equipment, appliances, tools, and structures that are or will become part of the Work and subject to loss or damage by fire, and vandalism and malicious mischief, in an amount to cover 100% of the replacement cost. The Agency accepts no responsibility for the Work until the Work is formally accepted by the Agency. The Contractor shall provide a certificate evidencing this coverage before commencing performance of the Work.
2. The named insureds shall be Contractor, all Subcontractors of any tier (excluding those solely responsible for design work), Suppliers, and the Agency, its elected officials, officers, employees, agents and authorized volunteers, as their interests may appear. Contractor shall not be required to maintain property insurance for any portion of the Work following acceptance by the Agency.
3. Policy shall be provided for replacement value on an "all risk" basis. There shall be no coinsurance penalty provision in any such policy. Policy must include: (1) coverage for any ensuing loss from faulty workmanship, nonconforming work, omission or deficiency in design or specifications; (2) coverage against machinery accidents and operational testing; (3) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the Project; (4) transit coverage, including ocean marine coverage (unless insured by the supplier), with sub-limits sufficient to insure the full replacement value of any key equipment item; and (5) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the Site. Such insurance shall be on a form acceptable to the Agency to ensure adequacy and sublimit.
4. In addition, the policy shall meet the following requirements:
 - a. Insurance policies shall be so conditioned as to cover the performance of any extra work performed under the Contract.
 - b. Coverage shall include all materials stored on site and in transit.
 - c. Coverage shall include Contractor's tools and equipment.
 - d. Insurance shall include boiler, machinery and material hoist coverage.

H. Professional Liability Insurance. All architects, engineers, consultants or design professionals retained by Contractor shall also procure and maintain, for a period of five (5)

years following completion of the Contract, errors and omissions liability insurance with a limit of not less than \$2,000,000 per occurrence. This insurance shall name the Agency, its directors, officials, officers, employees, agents and volunteers as additional and insureds with respect to Work performed, and shall otherwise comply with all requirements of this Section. Defense costs shall be paid in addition to the limits.

- I. Contractor's Pollution Liability Coverage. Environmental Impairment Liability Insurance shall be written on a Contractor's Pollution Liability form or other form acceptable to the Agency providing coverage for liability arising out of sudden, accidental and gradual pollution and remediation. The policy limit shall be no less than \$2,000,000 dollars per claim and in the aggregate. All activities contemplated in this Contract shall be specifically scheduled on the policy as "covered operations." The policy shall provide coverage for the hauling of waste from the Project site to the final disposal location, including non-owned disposal sites.
- J. Contractor shall require all tiers of Subcontractors working under this Contract to provide the insurance required under this Article unless otherwise agreed to in writing by the Agency. Contractor shall make certain that any and all Subcontractors hired by Contractor are insured in accordance with this Contract. If any Subcontractor's coverage does not comply with the foregoing provisions, Contractor shall indemnify and hold the Agency harmless from any damage, loss, cost, or expense, including attorneys' fees, incurred by the Agency as a result thereof.
- K. Notwithstanding the minimum limits set forth in this Contract for any type of insurance coverage, if Contractor maintains higher limits than the minimums shown above, the Agency requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Agency.
- L. Form and Proof of Carriage of Insurance.
 - 1. Any insurance carrier providing insurance coverage required by the Contract Documents shall be admitted to and authorized to do business in the State of California unless waived, in writing, by the Agency's Risk Manager. Carrier(s) shall have an A.M. Best rating of not less than an A:VII. Insurance deductibles or self-insured retentions must be declared by the Contractor. At the election of the Agency the Contractor shall either 1) reduce or eliminate such deductibles or self-insured retentions, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses. If umbrella or excess liability coverage is used to meet any required limit(s) specified herein, the Contractor shall provide a "follow form" endorsement satisfactory to the Agency indicating that such coverage is subject to the same terms and conditions as the underlying liability policy.

2. Each insurance policy required by this Contract shall be endorsed to state that: (1) coverage shall not be suspended, voided, reduced or cancelled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Agency; and (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the Agency, its officials, officers, agents, employees, and volunteers.
3. The Certificate(s) and policies of insurance shall contain or shall be endorsed to contain the covenant of the insurance carrier(s) that it shall provide no less than thirty (30) days written notice be given to the Agency prior to any material modification or cancellation of such insurance. In the event of a material modification or cancellation of coverage, the Agency may terminate the Contract or stop the Work in accordance with the Contract Documents, unless the Agency receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. Contractor shall not take possession, or use the Site, or commence operations under this Contract until the Agency has been furnished original Certificate(s) of Insurance and certified original copies of endorsements or policies of insurance including all endorsements and any and all other attachments as required in this Article. The original endorsements for each policy and the Certificate of Insurance shall be signed by an individual authorized by the insurance carrier to do so on its behalf.
4. The Certificate(s) of Insurance, policies and endorsements shall so covenant and shall be construed as primary, and the Agency's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.
5. Agency reserves the right to adjust the monetary limits and types of insurance coverages during the term of this Contract including any extension thereof if, in the Agency's reasonable judgment, the amount or type of insurance carried by the Contractor becomes inadequate.
6. Contractor shall report to the Agency, in addition to the Contractor's insurer, any and all insurance claims submitted by the Contractor in connection with the Work under this Contract.
7. Products/completed operations coverage shall extend a minimum of three years after the project completion. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using subcontractors, the policy must include work performed "by or on behalf" of the insured. Policy shall contain no language that would invalidate or remove the insurer's duty to defend or indemnify for claims or suits expressly excluded from coverage. Policy shall

specifically provide for a duty to defend on the part of the insurer. The Agency, its officers, officials, agents employees, and volunteers shall be included as insureds under the policy.

ARTICLE 5 - Contractor Responsibilities; Regulatory Requirements

5.1 Applicable Laws.

- A. Contractor shall give all notices required by and shall comply with all Applicable Laws applicable to the performance of the Work. Except where otherwise expressly required by Applicable Laws, neither the Agency nor the Engineer shall be responsible for monitoring Contractor's compliance with any Applicable Laws. If Contractor performs any Work knowing or having reason to know that it is contrary to Applicable Laws, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work.

5.2 Permits and Licenses.

- A. Agency will apply and pay for the review of necessary encroachment permits for Work within the public rights-of-way. All other necessary permits and licenses necessary for prosecution of the Work shall be secured and paid for by Contractor, including, but not limited to, permits, licenses and fees required by agencies with authority in the jurisdiction in which the Work will be located, unless otherwise expressly provided by the Contract Documents. The Contractor shall arrange and pay for all off-site inspection of the Work related to permits and licenses, including certification, required by the Contract Documents or by governing authorities, except for such off-site inspections delineated as the Agency's responsibility pursuant to the Contract Documents. Before acceptance of the Work, the Contractor shall submit all licenses, permits, certificates of inspection and required approvals to the Agency.

5.3 Taxes.

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid in accordance with the Applicable Laws of the place of the Project which are applicable during the performance of the Work. In accordance with Revenue and Taxation Code section 107.6, the Contract Documents may create a possessory interest subject to personal property taxation for which Contractor will be responsible.

5.4 Traffic Control.

- A. Traffic control plans, if required, shall be prepared at Contractor's expense. Traffic control shall be performed at Contractor's expense in accordance with the requirements of the Agency and/or the local agency with jurisdiction. Costs for traffic control plans,

implementation of traffic control, or traffic signal services required by the Agency shall be included in the Contractor's Bid.

- B. All warning signs and safety devices used by the Contractor to perform the Work shall conform to the requirements contained in the State of California, Department of Transportation's current edition of "Manual of Traffic Controls for Construction and Maintenance Work Zones" or to the requirements of the local agency. The Contractor shall also be responsible for all traffic control required by the agency having jurisdiction over the Project on the intersecting streets. Contractor must submit a traffic control plan to the agency having jurisdiction over the Project for approval prior to starting Work.
- C. Contractor's representative on the Site responsible for traffic control shall produce evidence that he or she has completed training acceptable to the California Department of Transportation for safety through construction zones. All of the streets in which the Work will occur shall remain open to traffic and one lane of traffic maintained at all times unless otherwise directed by the agency of jurisdiction. Businesses and residences adjacent to the Work shall be notified forty-eight (48) hours in advance of closing of driveways. The Contractor shall make every effort to minimize the amount of public parking temporarily eliminated due to construction in areas fronting businesses. No stockpiles of material will be allowed in traveled right-of-ways after working hours unless otherwise approved by the Engineer.

5.5 Safety.

- A. Contractor shall be solely responsible for all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety laws. Contractor shall comply with all Applicable Laws relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Applicable Laws.
- B. Contractor shall maintain emergency first aid treatment for his employees which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 *et seq.*), and California Code of Regulations, Title 8, Industrial Relations Division 1, Department of Industrial Relations, Chapter 4. The Contractor shall ensure the availability of emergency medical services for its employees in accordance with California Code of Regulations, Title 8, Section 1512. The Contractor shall submit an Illness and Injury Prevention Program and

a Project Site specific safety program to the Agency prior to beginning Work. Contractor shall maintain a confined space program that meets or exceeds the Agency's standards. Contractor needs to make themselves aware of the Agency's safety policies and procedures, and shall meet or exceed all Agency standards in areas where the Agency must enter to perform inspections.

5.6 Hazardous Waste.

- A. Agency shall not be responsible for any Hazardous Waste brought to the site by the Contractor. If the Contractor: (i) introduces and/or discharges a Hazardous Waste onto the site in a manner not specified by the Contract Documents; and/or (ii) disturbs a Hazardous Material identified in the Contract Documents, the Contractor shall hire a qualified remediation contractor at Contractor's sole cost to eliminate the condition as soon as possible. Under no circumstance shall the Contractor perform Work for which it is not qualified. The Agency, in its sole discretion, may require the Contractor to retain at Contractor's cost an independent testing laboratory.
- B. If Contractor encounters Hazardous Waste which may cause foreseeable injury or damage, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such material or substance (except in an emergency situation); and (iii) notify the Agency (and promptly thereafter confirm such notice in writing). Agency shall contract for any services required to directly remove and/or abate Hazardous Waste, if required, and shall not require the Contractor to subcontract for such services. The Work in the affected area shall not thereafter be resumed except by written agreement of the Agency and Contractor.
- C. Contractor shall indemnify and hold harmless the Agency from and against claims, damages, losses and expenses, arising from a Hazardous Waste on the Project Site, if such Hazardous Waste exceeded OSHA Permissible Exposure Levels or levels which would classify the material as a state of California or federal hazardous waste, and was either i) shown on the Contract Documents or information available to bidders; or (ii) brought to the site by Contractor. Nothing in this paragraph shall obligate the Contractor to indemnify the Agency in the event of the sole or active negligence or willful misconduct of the Agency, its officers, agents, or employees.

5.7 Sanitary Facilities.

- A. Contractor shall provide sanitary temporary toilet buildings and hand washing facilities for the use of all workers. All toilets and hand washing facilities shall comply with Applicable Laws. Toilets shall be placed inside sealed secondary containment devices installed on a flat, level surface. Accumulated liquids in the secondary containment devices shall be properly removed and legally disposed without spillage onto the ground. Toilets shall be kept supplied with toilet paper and shall have workable door fasteners. Toilets and hand

washing facilities shall be serviced no less than once weekly and shall be present in a quantity of not less than 1 per 20 workers as required by Cal/OSHA regulations. The toilets and hand washing facilities shall be maintained in a sanitary condition at all times. Use of toilet and hand washing facilities in the Work under construction shall not be permitted. Any other sanitary facilities required by Cal/OSHA shall be the responsibility of the Contractor.

5.8 Dust Control.

- A. Contractor, at its expense, shall maintain all excavations, embankments, haul roads, permanent access roads, plant sites, waste disposal areas, borrow areas, and all other work areas free from dust. Industry accepted methods of dust control suitable for the area involved, such as sprinkling, chemical treatment, light bituminous treatment or similar methods, will be permitted.

5.9 Air Pollution Control.

- A. Contractor shall comply with all air pollution control rules, regulations, ordinances and statutes. All containers of paint, thinner, curing compound, solvent or liquid asphalt shall be labeled to indicate that the contents fully comply with the applicable material requirements.
- B. Without limiting the foregoing, Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the Air Quality Management District with jurisdiction over the Project and/or California Air Resources Board (CARB). Contractor shall specifically be aware of the application of these limits and requirements to "portable equipment", which definition includes any item of equipment with a fuel-powered engine. Contractor shall indemnify the Agency against any fines or penalties imposed by the air quality management district, CARB, or any other governmental or regulatory agency for its violations of Applicable Laws as well as those of its Subcontractors or others for whom Contractor is responsible under its indemnity obligations provided for in the Contract Documents.

5.10 Water Quality Management and Compliance.

- A. Storm, surface, ground, nuisance, or other waters may be encountered at various times during construction of the Work. The Contractor hereby acknowledges that it has investigated the risk arising from such waters, has prepared its Bid accordingly, and assumes any and all risks and liabilities arising therefrom.
- B. Contractor shall keep itself and all Subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may

impact, or be implicated by the performance of the Work including, without limitation, all applicable provisions regulating discharges of storm water; the Federal Water Pollution Control Act (33 U.S.C. § 13000 et seq.); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); and any and all regulations, policies, or permits issued pursuant to any such authority. These include, but are not limited to California State Water Resources Control Board Order Number 2009-0009-DWQ (NPDES Permit No. CAS000002), as amended by Order Numbers 2010-0014-DWQ, 2012-0006-DWQ, and any subsequent amendment to or renewal thereof, State Water Resources Control Board Order No. 2013-0001-DWQ (NPDES Order No. CAS000004), Santa Ana Regional Water Quality Control Board No. R8-2010-0036 (NPDES No. CAS618036), and any amendment or renewal thereof.

- C. Contractor shall comply with all conditions of the State Water Resources Control Board National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity ("Construction General Permit") for all construction activity which results in the disturbance of in excess of one acre of total land area or which is part of a larger common area of development or sale. Contractor shall comply with the lawful requirements of the Agency, and any other applicable municipality, drainage district, or other local agency with jurisdiction over the location where the Work is to be conducted, regarding discharges of storm water to separate storm drain systems or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.
- D. Failure to comply with the Construction General Permit, laws, regulations, and ordinances listed in this Article is a violation of federal and state law. Notwithstanding any other indemnity contained in these Contract Documents, Contractor agrees to indemnify and hold harmless the Agency, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, fees, costs, expenses, or losses or liabilities of any kind or nature which the Agency, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the Construction General Permit, laws, regulations, and ordinances listed above, arising out of or in connection with the Work, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the Agency, its officials, officers, agents, employees or authorized volunteers. The Agency reserves the right to defend any enforcement action or civil action brought against the Agency for Contractor's failure to comply with any applicable water quality law, regulation, or policy. Contractor hereby agrees to be bound by, and to reimburse the Agency for the costs associated with, any settlement reached between the Agency and any relevant enforcement entity.

5.11 Environmental Quality Protection.

- A. Contractor shall comply with all requirements of applicable federal, state, and local environmental rules and regulations. Any infractions of said rules and regulations by the Contractor during the term of the Contract, which result in penalties, will be the responsibility of the Contractor. The Agency operates under a number of environmental permits issued by various agencies. If due to an action, inaction, or negligence by the Contractor, the Agency becomes subject to non-compliance penalties, the cost of such penalties shall be borne by the Contractor.
- B. Contractor shall exercise care to preserve the natural landscape and vegetation, and shall conduct operations so as to prevent unnecessary destruction, scarring, or defacing of the natural surroundings in the vicinity of the Work. Movement of crews and equipment within the rights-of-way and over routes provided for access to the Work shall be performed in a manner to prevent damage to property. When no longer required, construction roads shall be restored to original contours. Upon completion of the Work, and following removal of construction facilities and required cleanup, land used for construction purposes and not required for the completed installation shall be scarified and regraded, as required, so that all surfaces are left in a condition that will facilitate natural revegetation, provide for proper drainage, and prevent erosion.
- C. If, in the performance of the Work, evidence of the possible occurrence of any Federally listed threatened or endangered plant or animal is discovered, the Contractor shall notify the Agency immediately, giving the location and nature of the findings. Written confirmation of the evidence, location and nature of the findings shall be forwarded to Agency within two (2) Days. The Contractor shall immediately cease all construction activities in the immediate area of the discovery to the extent necessary to protect the endangered plant or animal. If directed by the Agency, Contractor will refrain from working in the immediate area, suspend the Work in its entirety, or alter its performance to ensure full compliance with all applicable permits, laws and regulations. Any Agency directed changes to the Work as a result of a siting will be pursuant to the Contract Documents. Any costs or delays incurred by Agency or the Contractor due to unreasonable or false notification of an endangered plant or animal will be borne by the Contractor.
- D. If, in the performance of the Work, Contractor should unearth cultural resources (for example, human remains, animal bones, stone tools, artifacts and/or midden deposits) through excavation, grading, watering or other means, the Contractor shall notify the construction/archeological monitor and/or the Agency immediately, giving the location and nature of the findings. Written confirmation of the evidence, location and nature of the findings shall be forwarded to the construction/archeological monitor and/or Agency within two (2) Days. Contractor shall immediately cease all construction activities in the immediate area of the discovery to the extent necessary to protect the cultural resource. If

directed by the Agency, Contractor will refrain from working in the immediate area, suspend the Work in its entirety, or re-sequence and/or alter its performance to ensure full compliance with all applicable permits, laws and regulations. Should the presence of cultural resources be confirmed, the Contractor will assist the Agency and the construction/archeological monitor in the preparation and implementation of a data recovery plan. The Contractor shall provide such cooperation and assistance as may be necessary to preserve the cultural resources for removal or other disposition. Any Agency directed changes to the Work as a result of the cultural resource will be pursuant to the Contract Documents. Should Contractor, without permission, injure, destroy, excavate, appropriate, or remove any cultural resource on or adjacent to the Site, it will be subject to disciplinary action, arrest and penalty under applicable law. Contractor shall be principally responsible for all costs of mitigation and/or restoration of cultural resources related to the unauthorized actions identified above. Contractor shall be required to pay for unauthorized damage and mitigation costs to cultural resources (historical and archeological resources) as a result of unauthorized activities that damage cultural resources and shall indemnify Agency pursuant to the Contract Documents.

5.12 Noise Restrictions.

- A. Contractor shall use only such equipment on the Work and in such state of repair so that the emission of sound therefrom is within the noise tolerance level of that equipment as established by Cal/OSHA. Contractor shall comply with the most restrictive of the following: (1) local sound control and noise level rules, regulations and ordinances and (2) the requirements contained in these Contract Documents, including hours of operation requirements. No internal combustion engine shall be operated on the Project without a muffler of the type recommended by the manufacturer. Should any muffler or other control device sustain damage or be determined to be ineffective or defective, the Contractor shall promptly remove the equipment and shall not return said equipment to the job until the device is repaired or replaced. Said noise and vibration level requirements shall apply to all equipment on the job or related to the job, including but not limited to, trucks, transit mixers or transit equipment that may or may not be owned by the Contractor.

5.13 Diversion of Recyclable Waste Material.

- A. In compliance with the applicable Agency's waste reduction and recycling efforts, Contractor shall divert all Recyclable Waste Materials to appropriate recycling centers as required for compliance with the local jurisdiction's waste diversion ordinances. Contractor will be required to submit weight tickets and written proof of diversion with its monthly progress payment requests. Contractor shall complete and execute any certification forms required by the Agency or other applicable agencies to document Contractor's compliance with these diversion requirements. All costs incurred for these waste diversion efforts shall be the responsibility of the Contractor.

5.14 Workers; Contractor's Supervision.

- A. Contractor shall be an independent contractor for the Agency and not an employee. Contractor understands and agrees that it and all of its employees shall not be considered officers, employees, or agents of the Agency and are not entitled to benefits of any kind normally provided employees of the Agency, including but not limited to, state unemployment compensation or workers' compensation. Contractor assumes full responsibility for the acts and omissions of its employees or agents related to the Work.
- B. By executing the Contract, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all Subcontractors, sub-subcontractors and consultants to comply with the same. Each person executing this Contract on behalf of Contractor verifies that he or she is a duly authorized officer of Contractor and that any of the following shall be grounds for the Agency to terminate the Contract for cause: (1) failure of the Contractor or its Subcontractors, sub-subcontractors or consultants to meet any of the requirements provided for in this Article; (2) any misrepresentation or material omission concerning compliance with such requirements; or (3) failure to immediately remove from the Work any person found not to be in compliance with such requirements.
- C. Contractor shall at all times enforce strict discipline and good order among its employees. Contractor shall not employ on the Project any unfit person or any one not skilled in the Work assigned to him or her. Any person in the employ of the Contractor whom the Agency may deem incompetent or unfit shall be dismissed from the Work and shall not be employed on this Project.
- D. Contractor shall continuously keep at the Project site, a competent and experienced full-time Project superintendent acceptable to the Agency. Superintendent must be able to proficiently speak, read and write in English and shall have the authority to make decisions on behalf of the Contractor. Contractor shall continuously provide efficient supervision of the Project.

5.15 Labor.

A. Hours of Work.

- 1. As provided in Article 3 (commencing at section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, Contractor stipulates that eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the Contractor or by any subcontractor on any subcontract under this Contract upon the Work or upon any part of the Work contemplated by this Contract is limited and restricted to eight (8) hours

during any one calendar day and 40 hours during any one calendar week, except as hereinafter provided. Notwithstanding the provisions herein above set forth, work performed by employees of Contractor in excess of eight (8) hours per day, and 40 hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

2. Contractor and every Subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed in connection with the Work or any part of the Work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of the Agency and to the Division of Labor Law Enforcement, Department of Industrial Relations of the State of California.
 3. Contractor shall pay to the Agency a penalty of twenty-five dollars (\$25.00) for each worker employed in the execution of this Contract by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and 40 hours in any one calendar week in violation of the provisions of Article 3 (commencing at section 1810), Chapter 1, Part 7, Division 2 of the Labor Code.
 4. Any work necessary to be performed after regular working hours, or on Saturdays and Sundays or other holidays, shall be performed without additional expense to the Agency.
 5. It shall be unlawful for any person to operate, permit, use, or cause to operate any of the following at the Project Site, other than between the hours of 7:00 a.m. to 5:00 p.m., Monday through Friday, with no Work allowed on Holidays, unless otherwise approved by the Agency:
 - a. Powered Vehicles
 - b. Construction Equipment
 - c. Loading and Unloading Vehicles
 - d. Domestic Power Tools
- B. Payroll Records; Labor Compliance.
1. Pursuant to Labor Code section 1776, Contractor and all Subcontractors shall maintain weekly certified payroll records, showing the names, addresses, Social Security numbers, work classifications, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by them in connection with the Work under this Contract.

Contractor shall certify under penalty of perjury that records maintained and submitted by Contractor are true and accurate. Contractor shall also require Subcontractor(s) to certify weekly payroll records under penalty of perjury.

2. In accordance with Labor Code section 1771.4, the Contractor and each Subcontractor shall furnish the certified payroll records directly to the Department of Industrial Relations ("DIR") on the specified interval and format prescribed by the DIR, which may include electronic submission. Contractor shall comply with all requirements and regulations from the DIR relating to labor compliance monitoring and enforcement. The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.
3. Any stop orders issued by the DIR against Contractor or any Subcontractor that affect Contractor's performance of Work, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay subject to any applicable liquidated damages and shall not be compensable by the Agency. Contractor shall defend, indemnify and hold the Agency, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the DIR against Contractor or any Subcontractor.
4. The payroll records described herein shall be certified and submitted by the Contractor at a time designated by the Agency. The Contractor shall also provide the following:
 - a. A certified copy of the employee's payroll records shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
 - b. A certified copy of all payroll records described herein shall be made available for inspection or furnished upon request of the DIR.
5. Unless submitted electronically, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement ("DLSE") of the DIR or shall contain the same information as the forms provided by the DLSE.
6. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency, the Agency, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor awarded the Contract or performing the Contract shall not be marked or obliterated.

7. In the event of noncompliance with the requirements of this Article, the Contractor shall have ten (10) Days in which to comply subsequent to receipt of written notice specifying in what respects the Contractor must comply with this Article. Should noncompliance still be evident after such 10-day period, the Contractor shall pay a penalty of one hundred dollars (\$100.00) to the Agency for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payment then due.
8. The responsibility for compliance with this Article shall rest upon the Contractor.

C. Prevailing Rates of Wages.

1. Contractor is aware of the requirements of Labor Code sections 1720 *et seq.* and 1770 *et seq.*, as well as California Code of Regulations, Title 8, Section 16000 *et seq.* ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since this Project involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall obtain a copy of the prevailing rates of per diem wages at the commencement of this Contract from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at www.dir.ca.gov. In the alternative, the Contractor may view a copy of the prevailing rate of per diem wages which are on file at the Agency and shall be made available to interested parties upon request. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification, or type of worker needed to perform work on the Project available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the Project site. Contractor shall defend, indemnify and hold the Agency, its officials, officers, employees and authorized volunteers free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.
2. Contractor shall forfeit as a penalty to the Agency not more than Two Hundred Dollars (\$200.00), pursuant to Labor Code section 1775, for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate as determined by the Director of the DIR for such work or craft in which such worker is employed for any public work done under the Contract by it or by any Subcontractor under it. The difference between such prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.

3. Contractor shall post, at appropriate conspicuous points on the Project Site, a schedule showing all determined general prevailing wage rates and all authorized deductions, if any, from unpaid wages actually earned.
- D. Public Works Contractor Registration. Pursuant to Labor Code sections 1725.5 and 1771.1, the Contractor and its Subcontractors must be registered with the DIR prior to the execution of a contract to perform public works. By entering into this Contract, Contractor represents that it is aware of the registration requirement and is currently registered with the DIR. Contractor shall maintain a current registration for the duration of the Project. Contractor shall further include the requirements of Labor Code sections 1725.5 and 1771.1 in any subcontract and ensure that all Subcontractors are registered at the time this Contract is entered into and maintain registration for the duration of the Project. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.
- E. Employment of Apprentices. Contractor and all Subcontractors shall comply with the requirements of Labor Code sections 1777.5 and 1777.6 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. Knowing violations of Labor Code section 1777.5 will result in forfeiture not to exceed one hundred dollars (\$100.00) for each calendar day of non-compliance pursuant to Labor Code section 1777.7.
- F. Nondiscrimination/Equal Employment Opportunity. Pursuant to Labor Code section 1735 and other applicable provisions of law, the Contractor and its Subcontractors shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, or any other classifications protected by law on this Project. The Contractor will take affirmative action to insure that employees are treated during employment or training without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, or any other classifications protected by law.
- G. Debarment of Contractors and Subcontractors. Contractors or Subcontractors may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Labor Code section 1777.1 or 1777.7. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is

paid, or may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the Agency. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

5.16 Subcontracts.

- A. Contractor agrees to bind every Subcontractor to the terms of the Contract Documents as far as such terms are applicable to Subcontractor's portion of the Work. Contractor shall be as fully responsible to the Agency for the acts and omissions of its Subcontractors and of persons either directly or indirectly employed by its Subcontractors, as Contractor is for acts and omissions of persons directly employed by Contractor. Nothing contained in these Contract Documents shall create any contractual relationship between any Subcontractor and the Agency. The Agency reserves the right to accept all Subcontractors. The Agency's acceptance of any Subcontractor under this Contract shall not in any way relieve Contractor of its obligations in the Contract Documents. Prior to substituting any Subcontractor listed in the Bid Forms, Contractor must comply with the requirements of the Subletting and Subcontracting Fair Practices Act pursuant to California Public Contract Code section 4100 et seq.

5.17 Progress Meetings.

- A. Contractor shall schedule and hold regular progress meetings at least weekly and at other times as requested by Engineer or as required by progress of the Work. The Contractor and Agency shall attend each meeting. Contractor may at its discretion request attendance by representatives of its Suppliers, manufacturers, and other Subcontractors. The Agency will preside at the progress meetings and will arrange for keeping and distributing the minutes. The purpose of the meetings is to review the progress of the Work, maintain coordination of efforts, discuss changes in scheduling, and resolve other problems which may develop. During each meeting, the Contractor shall present any issues which may impact its progress with a view to resolve these issues expeditiously.

5.18 Submittals

- A. Schedule of Submittals. Within five (5) Days after the Notice to Proceed with the Construction Phase (unless otherwise specified in the Contract Documents), Contractor will prepare and deliver a Schedule of Submittals to the Agency that has been fully integrated with the progress schedule and identifies each Submittal required by the Contract Documents as well as the date on which Contractor will deliver each Submittal to the Agency. Each Submittal must be delivered to the Agency at least thirty (30) Days prior to the date the material or equipment is scheduled to be incorporated into the Work. The Contractor is responsible for any schedule delays resulting from the Submittal process.

B. Submittal Procedures.

1. Contractor will follow the following procedures for each Submittal, Shop Drawing and Sample required by the Contract Documents:
 - a. Submittals must be transmitted electronically.
 - b. Transmittals will be sequentially numbered. Contractor to mark revised Submittals with original number and sequential alphabetic suffix.
 - c. Each Submittal will identify the Project, Contractor, Subcontractor and Supplier, pertinent Drawing and detail number, and Specification Section number appropriate to Submittal.
 - d. By transmitting a Submittal, Contractor certifies it has reviewed and approved each Submittal, verified products required, field dimensions, adjacent construction Work, and that coordination of information is according to requirements of the Work and Contract Documents.
 - e. Identify variations in Contract Documents and product or system limitations that may differ and/or be detrimental to successful performance of completed Work.
 - f. When Submittal is revised for resubmission, Contractor shall promptly address the Agency's comments and resubmit. Contractor shall identify changes made since previous submission.
 - g. Agency's review of Shop Drawings shall not relieve Contractor from responsibility for deviations from the Contract Documents unless Contractor has, in writing, called the Agency's attention to such deviations at time of submission and the Agency has taken no exception to the deviation. The Agency's review of Shop Drawings shall not relieve Contractor from responsibility for errors in Shop Drawings.
 - h. Submittals not required by the Contract Documents or requested by the Agency will not be acknowledged or processed.
 - i. Incomplete Submittals will not be reviewed by the Agency. Delays resulting from incomplete Submittals are not the responsibility of the Agency.
 - j. Contractor shall not be entitled to any extension of the Contract Times as a result of the Submittal process.
 - k. Contractor shall allow a minimum of 20 working days for review of Submittals unless otherwise specified in the Contract Documents.

2. Where a Submittal, Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to the Agency review and approval of the pertinent submittal will be performed at the risk and sole expense and responsibility of Contractor.
- C. Schedule Milestone for Submittals. Contractor must submit all Submittals required by the Contract Documents in accordance with the Schedule of Submittals. If Contractor fails to submit the Submittals in accordance with the Schedule of Submittals, Contractor will be solely liable for any delays or impacts caused by the delayed Submittal, whether direct or indirect. Contractor will be liable for the time calculated from the date the Submittal is due until the date a compliant Submittal is made. A compliant Submittal will be one that is complete and satisfies the requirements of the Contract Documents.
- 5.19 Shop Drawings and Sample Submittal Procedures.
- A. Before submitting each Shop Drawing or Sample, Contractor shall have:
1. Reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 2. Determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
 3. Determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 4. Determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
- B. With each Submittal, Contractor shall give the Agency specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample Submittal and, in addition, a specific notation made on each Shop Drawing or Sample submitted to the Agency for review and approval of each such variation.
- C. Shop Drawings.
1. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show the Agency the services, materials, and equipment Contractor proposes to provide

and to enable the Agency to review the information for assessing conformance with information given and design concept expressed in Contract Documents.

2. When required by individual Specification sections, provide Shop Drawings signed and sealed by a professional engineer responsible for designing components shown on Shop Drawings. Shop Drawings must include signed and sealed calculations to support design in a form suitable for submission to and approval by authorities having jurisdiction.
 3. Shop Drawings for steel structures shall consist of shop details, erection and other working Drawings showing details, dimensions, sizes of members and other information necessary for the complete fabrication and erection of the metal work.
 4. Shop Drawings of concrete structures shall consist of such detailed drawings as may reasonably be required for the successful prosecution of the Work and which are not included in the Drawings furnished by the Engineer. These may include drawings for false work, bracing, centering and form work, masonry layout diagrams, and diagrams for bent reinforcement.
 5. Contractor shall make revisions and provide additional information when required by authorities having jurisdiction.
- D. Samples. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as required to enable the Agency to review the submittal for assessing conformance with information given and design concept expressed in Contract Documents. Samples should be of appropriate size and detail to assess functional, aesthetic, color, texture, patterns and finish selection.
- E. Agency's Review.
1. Agency will review Shop Drawings and Samples in accordance with the Schedule of Submittals. The Agency's review and acceptance will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
 2. Agency review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
 3. Agency's review and acceptance shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless the Agency has given

written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample.

- F. Resubmittal Procedures. Contractor shall make corrections required by the Agency and shall return corrected Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by the Agency on previous Submittals.

5.20 Record ("As-Built") Drawings.

- A. Contractor shall maintain one record set of Contract Documents at the Site or digitally in an acceptable format. On these, it shall mark all Project conditions, locations, configurations, and any other changes or deviations which may vary from the information represented in the original Contract Documents, including buried or concealed construction and utility features which are revealed during the course of construction. Special attention shall be given to recording the horizontal and vertical location of all buried utilities that differ from the locations indicated, or which were not indicated on the Drawings. For all Projects involving the installation of any pipeline, Contractor shall survey and record the top of the pipe at a minimum of every 100 linear feet, and at each bend, recording both the horizontal and vertical locations. Drawings shall be supplemented by any detailed sketches as necessary or directed to fully indicate the Work as actually constructed. Any required as-built drawings of civil engineering elements of the Work shall be prepared by a registered civil engineer.
- B. These master Record Drawings of the as-built conditions, including all revisions made necessary by Addenda and Change Orders, shall be maintained up-to-date during the progress of the Project. Red ink shall be used for alterations and notes. Notes shall identify relevant Change Orders by number and date. Record Drawings shall be accessible to the Engineer at all times during the construction period. Failure on the Contractor's part to keep Record Drawings current could result in withholding partial payment.
- C. Upon completion of the Project and as a condition of final acceptance, the Contractor shall finalize and deliver a complete set of Record Drawings to the Engineer. The information submitted by the Contractor will be assumed to be correct, and the Contractor shall be responsible for, and liable to the Agency, for the accuracy of such information, and for any errors or omissions which may or may not appear on the Record Drawings.

5.21 Layout and Field Engineering.

- A. Contractor shall utilize a properly licensed surveyor to perform all layout surveys required for the control and completion of the Work and all necessary surveys to compute quantities of Work performed.

5.22 Separate Contracts and Cooperation.

- A. Separate Contracts. Agency reserves the right to let other contracts in connection with this Work or on the Project site. Contractor shall permit other contractors reasonable access and storage of their materials and execution of their work and shall properly connect and coordinate its Work with theirs. To ensure proper execution of its subsequent Work, Contractor shall immediately inspect work already in place and shall at once report to the Engineer any problems with the Work in place or discrepancies with the Contract Documents.
- B. Cooperation. Contractor shall ascertain to its own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by the Agency in prosecution of the Project to the end that Contractor may perform this Contract in the light of such other contracts, if any. Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy at site of the Project. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on the Project. If simultaneous execution of any contract for the Project is likely to cause interference with performance of some other contract or contracts, the Engineer shall decide which Contractor shall cease Work temporarily and which contractor shall continue or whether work can be coordinated so that contractors may proceed simultaneously. Agency shall not be responsible for any damages suffered or for extra costs incurred by Contractor resulting directly or indirectly from award, performance, or attempted performance of any other contract or contracts on the Project Site.

5.23 Work Site.

- A. Limitation of Use of Site and Other Areas. Rights-of-way, easements, or rights-of-entry for the Work will be provided by the Agency. Unless otherwise specified in the Special Provisions, the Contractor shall make arrangements, pay for, and assume all responsibility for acquiring, using, and disposing of additional work areas and facilities temporarily required. The Contractor shall indemnify and hold the Agency harmless from all claims for damages caused by such actions. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Applicable Laws, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to Agency or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
- B. Site Maintenance. During the progress of the Work, Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to Applicable Laws. The Contractor shall furnish trash bins for all debris from construction. All debris shall be placed in trash bins daily. Forms and false-work that are to be re-used shall be stacked

neatly concurrently with their removal. Forms and false-work that are not to be re-used shall be disposed of concurrently with their removal.

- C. Cleaning. Prior to Completion of the Work, Contractor shall clean the Site and make it ready for utilization by the Agency. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

5.24 Utility Usage.

- A. All temporary utilities, including but not limited to electricity, water, gas, and telephone, used on the Work shall be furnished and paid for by Contractor. Contractor shall provide necessary temporary distribution systems, including meters, if necessary, from distribution points to points on the Work where the utility is needed. Upon completion of the Work, Contractor shall remove all temporary distribution systems. Contractor shall provide necessary and adequate utilities and pay all costs for water, electricity, gas, oil, and sewer charges required for completion of the Work, including but not limited to startup and testing required in the Contract Documents. All permanent meters installed shall be listed in the Contractor's name until the Work is accepted. For Work to be performed in existing Agency facilities, Contractor may use the Agency's existing utilities, provided such use is reasonable under the circumstances. If Contractor uses the Agency utilities, it will not need to compensate the Agency for reasonably consumption of utilities, but Contractor will be responsible for any excessive, unreasonable or wasteful utility usage. Amounts due the Agency under this section may be deducted from progress payments.

5.25 Protection of Work and Property.

- A. Contractor shall digitally record video and take photographs of the Project site and adjacent improvements in a manner and quality that clearly depicts the existing condition of the Project Site and adjacent improvements immediately prior to the start of Work (minimum 1080p video and 4MP photo). All videos and photographs shall be date and time stamped. The Contractor shall submit the video and photos in digital format on a memory stick before the commencement of Work, along with a map outlining the route and locations of the videos and/or photographs. The Contractor shall be responsible for all damages to persons or property that occur as a result of the Work. Contractor shall be responsible for the proper care and protection of all materials delivered and Work performed until completion and final acceptance by the Agency. All Work shall be solely at the Contractor's risk.
- B. Contractor shall adequately protect adjacent property from settlement or loss of lateral support as necessary. Contractor shall comply with all applicable safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the Project site where Work is being performed. Contractor shall erect and properly maintain at all times,

as required by field conditions and progress of work, all necessary safeguards, signs, barriers, lights, and watchmen for protection of workers and the public, and shall post danger signs warning against hazards created in the course of construction. Contractor shall provide such heat, covering, and enclosures as are necessary to protect all Work, materials, equipment, appliances, and tools against damage by weather conditions.

- C. Contractor shall take adequate precautions to protect existing sidewalks, curbs, pavements, utilities, and other adjoining property and structures, and to avoid damage thereto, and Contractor shall repair any damage thereto caused by the Work operations. Contractor shall:
1. Enclose the working area with a substantial barricade, and arrange work to cause minimum amount of inconvenience and danger to the public.
 2. Provide substantial barricades around any shrubs or trees indicated to be preserved.
 3. Deliver materials to the Site over a route designated by the Agency.
 4. Confine Contractor's apparatus, the storage of materials, and the operations of its workers to limits required by law, ordinances, permits, or directions of the Agency. Contractor shall not unreasonably encumber the Site with its materials.
 5. Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by a civil engineer or land surveyor acceptable to the Agency, at no cost to the Agency.
 6. Ensure that existing facilities, fences and other structures are all adequately protected and that, upon completion of all Work, all facilities that may have been damaged are restored to a condition acceptable to the Agency.
 7. Preserve and protect from injury all buildings, pole lines and all directional, warning and mileage signs that have been placed within the right-of-way.
 8. At the completion of work each day, leave the Work and the Site in a clean, safe condition.
 9. Comply with any stage construction and/or traffic handling plans. Access to residences and businesses shall be maintained at all times, except with the Agency's written approval. Any request for approval to reduce or restrict access to residences and business must be submitted to the Agency at least seven (7) Days in advance, and the Agency may issue or withhold approval in its sole discretion.
- D. These precautionary measures will apply continuously and not be limited to normal working hours. Full compensation for the work involved in the protection and preservation of life,

safety and property as above specified shall be considered as included in the prices paid for the various contract items of Work, and no additional allowance will be made therefor.

- E. Should damage to persons or property occur as a result of the Work, Contractor shall promptly notify the Agency, in writing. Contractor shall be responsible for proper investigation, documentation, including video or photography, to adequately memorialize and make a record of what transpired. The Agency shall be entitled to inspect and copy any such documentation, video, or photographs. Contractor shall maintain all investigation documentation including video and/or photographs for a minimum of four (4) years following completion of the Project.

5.26 Emergencies.

- A. In emergencies affecting the safety or protection of persons or the Work or Property at the Site or adjacent thereto, the Contractor, without special instruction or authorization from the Agency or the Engineer, is obligated to act to prevent threatened damage, injury or loss. The Contractor shall give the Engineer prompt written notice if the Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby.

5.27 California Air Resources Board Regulations.

- A. To the extent applicable, Contractor, shall comply, and shall ensure all Subcontractors comply, with all requirements of the most current version of the California Air Resources Board ("CARB") including, without limitation, all applicable terms of Title 13, California Code of Regulations Division 3, Chapter 9 and all pending amendments ("Regulation").
- B. Throughout Project, and for three (3) years thereafter, Contractor shall make available for inspection and copying any and all documents or information associated with Contractor's and subcontractors' fleet including, without limitation, the CRCs, fuel/refueling records, maintenance records, emissions records, and any other information the Contractor is required to produce, keep or maintain pursuant to the Regulation upon two (2) calendar days' notice from Agency.
- C. Contractor shall be solely liable for any and all costs associated with complying with the Regulation as well as for any and all penalties, fines, damages, or costs associated with any and all violations, or failures to comply with the Regulation. Contractor shall defend, indemnify and hold harmless the Agency, its officials, officers, employees and authorized volunteers free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Regulation.

ARTICLE 6 - Materials; Inspection

6.1 Access to Work.

- A. Agency, Engineer, their consultants and other representatives and personnel, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs.

6.2 Materials.

- A. Except as otherwise specifically stated in the Contract Documents, Contractor shall provide and pay for all materials, labor, tools, equipment, water, lights, power, transportation, superintendence, temporary constructions of every nature, and all other services and facilities whatsoever necessary to execute and complete this Contract within the Contract Time. Unless otherwise specified, all materials, parts, and equipment furnished by the Contractor in the Work shall be new, the best of their respective kinds and grades as noted and/or specified, and workmanship shall be of good quality.
- B. No materials, supplies, or equipment for Work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by the seller or Supplier. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in the Work and agrees upon completion of all work to deliver the Project, to the Agency free from any claims, liens, or charges.
- C. Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of the Work and shall be stored properly and protected as required by the Contract Documents. Contractor shall be entirely responsible for damage or loss by weather or other causes to materials or Work. Materials shall be stored on the Project Site in such manner so as not to interfere with any operations of the Agency or any independent contractor.
- D. Contractor shall verify all measurements, dimensions, elevations, and quantities before ordering any materials or performing any Work, and the Agency shall not be liable for Contractor's failure to so. No additional compensation, over and above payment for the actual quantities at the prices set out in the Bid Schedule, will be allowed because of differences between actual measurements, dimension, elevations and quantities and those indicated on the Plans and in the Specifications. Any difference therein shall be submitted to the Engineer for consideration before proceeding with the Work.

6.3 Test and Inspections.

A. Inspection of Work.

1. If the Contract Documents, the Engineer, or any instructions, laws, ordinances, or public authority requires any part of the Work to be tested or approved, Contractor shall provide the Engineer at least two (2) Days' notice of its readiness for observation or inspection. If inspection is by a public authority other than the Agency, Contractor shall promptly inform the Agency of the date fixed for such inspection. Required certificates of inspection (or similar) shall be secured by Contractor. Costs for Agency testing and inspection shall be paid by the Agency. Costs of tests for Work found not to be in compliance shall be paid by the Contractor.
2. If Contractor gives notice of an inspection pursuant to the Contract Documents, the Agency will provide inspection during normal working hours from 7:00 a.m. to 3:30 p.m. Monday through Friday. Requested inspections before or after this time will be charged to the Contractor as reimbursable inspection time. Inspections on weekends requires two (2) Days' notice for review and approval. Upon written request and approval the 8.5 hour working day may be changed to other limits.
3. Contractor shall pay for the cost of any minimum "show up" costs of a materials testing technician that was called for by the Contractor but ultimately the Contractor work was not ready for the inspection. Any such costs shall be deducted from any amounts due to the Contractor.
4. If any Work is done or covered up without the required testing or approval, the Contractor shall uncover or deconstruct the Work, and the Work shall be redone after completion of the testing at the Contractor's cost in compliance with the Contract Documents.
5. Where inspection and testing are to be conducted by an independent laboratory or agency, materials or samples of materials to be inspected or tested shall be selected by such laboratory or agency, or by the Agency, and not by Contractor. Unless otherwise stated and as provided by the Contract Documents, the Agency shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents. All tests or inspections of materials shall be made in accordance with the commonly recognized standards of national organizations.
6. Reexamination of Work may be ordered by the Agency. If so ordered, Work must be uncovered or deconstructed by Contractor. If Work is found to be in accordance with the Contract Documents, the Agency shall pay the costs of reexamination and reconstruction. If such work is found not to be in accordance with the Contract Documents, Contractor shall pay all costs.

B. Testing of Materials.

1. In advance of manufacture of materials to be supplied by Contractor which must be tested or inspected, Contractor shall notify the Agency so that the Agency may arrange for testing at the source of supply. Any materials which have not satisfactorily passed such testing and inspection shall not be incorporated into the Work.
2. If the manufacture of materials to be inspected or tested will occur in a plant or location greater than sixty (60) miles from the Agency, the Contractor shall pay for any excessive or unusual costs associated with such testing or inspection, including but not limited to excessive travel time, standby time and required lodging.
3. Unless otherwise specified in the Special Provisions, all initial testing and a reasonable amount of retesting will be performed under the direction of the Engineer, and at no expense to the Contractor. The Contractor shall notify the Engineer in writing, at least 15 days in advance, of its intention to use materials for which tests are specified, to allow sufficient time to perform the tests. The notice shall name the proposed Supplier and source of material. If the notice of intent to use is sent before the materials are available for testing or inspection, or is sent so far in advance that the materials on hand at the time will not last but will be replaced by a new lot prior to use on the Work, it will be the Contractor's responsibility to re-notify the Engineer when samples which are representative may be obtained.
4. A Certificate of Compliance shall be furnished to the Engineer prior to the use of any material or assembled material for which these Specifications so require or if so required by the Engineer. The Engineer may waive the materials testing requirements and accept a Certificate of Compliance. Material test data may be required by the Engineer to be included with the Submittal. Materials used on the basis of a Certificate of Compliance may be sampled and tested at any time. The submission of a Certificate of Compliance shall not relieve the Contractor of responsibility for incorporating material into the Work which conforms to the requirements of the Contract Documents, and any material not conforming to the requirements will be subject to rejection by the Engineer whether in place or not.
5. Copies of mill certificates of composition and quality of all component materials (reinforcing steel, structural steel, lumber, etc.) incorporated in the construction of the Work shall be provided to the Agency at the time of delivery. Agency shall retain the right to reject any raw material not provided with a mill certificate at the time of delivery.
6. If, after incorporating such materials into the Work, it is found that sources of supply that have been approved do not furnish a uniform product, or if the product from any source proves unacceptable at any time, the Contractor shall furnish approved material from other approved sources. If any product proves unacceptable after improper storage,

handling or for any other reason it shall be rejected, not incorporated into the Work, and shall be removed from the Project Site all at the Contractor's expense.

6.4 Requests for Substitutions.

- A. For the purposes of this provision, the term "substitution" shall mean the substitution of any material, method or service substantially equal to or better in every respect to that indicated in the Contract Documents or otherwise referenced herein.
- B. Pursuant to Public Contract Code section 3400(b), the Agency may make a finding that is described in the Notice Inviting Bids that designates certain products, things, or services by specific brand or trade name.
- C. Unless specifically designated in the Special Conditions, whenever any material, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such specifications shall be deemed to be used for the purpose of facilitating the description of the material, process, or article desired and shall be deemed to be followed by the words "or equal." Contractor may, unless otherwise stated, offer for substitution any material, process, or article which may be substantially equal to or better in every respect to that so indicated or specified in the Contract Documents. However, the Agency has adopted uniform standards for certain materials, processes, and articles.
- D. Contractor shall submit substitution requests, together with substantiating data, for substitution of any "or equal" material, process, or article no later than thirty-five (35) Days after award of Contract. Provisions regarding submission of substitution requests shall not in any way authorize an extension of time for the performance of this Contract. If a substitution request is rejected by the Agency, the Contractor shall provide the material, method or service specified herein. The Agency shall not be responsible for any costs incurred by the Contractor associated with substitution requests. The burden of proof as to the equality of any material, process, or article shall rest with the Contractor. The Engineer has the complete and sole discretion to determine if a material, process, or article is substantially equal to or better than that specified and to approve or reject all substitution requests.
- E. Substantiating data as described above shall include, at a minimum, the following information:
 - 1. A signed affidavit from the Contractor stating that the material, process, or article proposed as a substitution is substantially equal to or better than that specified in every way except as may be listed on the affidavit.

2. Illustrations, specifications, catalog cut sheets, and any other relevant data required to prove that the material, process, or article is substantially equal to or better than that specified.
 3. A statement of the cost implications of the substitution being requested, indicating whether and why the proposed substitution will reduce or increase the amount of the contract.
 4. Information detailing the durability and lifecycle costs of the proposed substitution.
- F. Failure to submit all the required substantiating data detailed above in a timely manner so that the substitution request can be adequately reviewed may result in rejection of the substitution request. The Engineer is not obligated to review multiple submittals related the same substitution request resulting from the Contractor's failure to initially submit a complete package.
 - G. Time limitations within this Article shall be strictly complied with and in no case will an extension of time for completion of the contract be granted because of Contractor's failure to provide substitution requests at the time and in the manner described herein.
 - H. Contractor shall bear the costs of all the Agency work associated with the review of substitution requests.
 - I. If substitution requests approved by the Engineer require that Contractor furnish materials, methods or services more expensive than that specified, the increased costs shall be borne by Contractor.

ARTICLE 7 - Subsurface And Physical Conditions; Utilities

7.1 Soils Investigations.

- A. Reports and Drawings. If applicable, Agency has provided to Contractor those reports known to the Agency of explorations and tests of subsurface conditions at or contiguous to the site; and those drawings known to the Agency of physical conditions relating to existing surface or subsurface structures at the site (except Underground Facilities).
- B. Limited Reliance by Contractor on Technical Data Authorized. Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, which were expressly not created or obtained to evaluate or assist in the evaluation of constructability, and are not Contract Documents. Contractor shall make its own interpretation of the "technical data" and shall be solely responsible for any such interpretations. Except for reliance on the accuracy of such "technical data," Contractor may not rely upon or make any claim against the Agency, Agency's Representative, or Engineer of Record, or any of

their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including without limitation any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
2. other data, interpretations, opinions, conclusions and information contained in such reports or shown or indicated in such drawings; or
3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

7.2 Ownership of Site Materials Found.

- A. The title to water, soil, rock, gravel, sand, minerals, timber and any other materials developed or obtained in the excavation or other operations of Contractor or any of its Subcontractors in the performance of the Contract, and the right to use said items in carrying out the Contract, or to dispose of same, is hereby expressly reserved by the Agency. Neither Contractor nor any of its Subcontractors nor any of their representatives or employees shall have any right, title, or interest in said materials, nor shall they assert or make any claim thereto. Contractor will, as determined by the Agency, be permitted to use in the Work without charge, any such materials which meet the requirements of the Contract Documents, provided the Agency shall have the right to use or consume these materials without payment to a third party.

7.3 Existence of Utilities at the Work Site.

- A. Existing Utilities. The location of known existing utilities and pipelines are shown on the Drawings in their approximate locations. However, nothing herein shall be deemed to require the Agency to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the site of the project can be inferred from the presence of other visible facilities, such as buildings, cleanouts, meter and junction boxes, on or adjacent to the Site of the Project. The Agency will assume the responsibility for the timely removal, relocation, or protection of existing main or trunk line utility facilities located on the Project site if such utilities are not identified by the Agency in the Contract Documents or which cannot reasonably be inferred from the presence of other visible facilities.
- B. Utility Location.
1. It shall be the Contractor's responsibility to determine the exact location and depth of all utilities, including service connections, which the Contractor believes may affect or be

affected by the Contractor's operations, by taking all reasonable steps necessary including, but not limited to, calling Underground Service Alert to locate utilities in accordance with the procedures described in Government Code 4216 et seq. The Contractor shall not be entitled to additional compensation nor time extensions for work necessary to avoid interferences nor for repair to damaged utilities if the Contractor does not expose all such existing utilities as required by this Article. The locating of utilities shall be in conformance with Government Code section 4216 et seq. except for the Agency's utilities located on the Agency's property and not on public right-of-way.

2. A "High Priority Subsurface Installation" is defined in Government Code section 4216 (j) as "high-pressure natural gas pipelines with normal operating pressures greater than 415kPA gauge (60psig) or greater than six inches nominal pipe diameter, petroleum pipelines, pressurized sewage pipelines, high-voltage electric supply lines, conductors, or cables that have a potential to ground of greater than or equal to 60kv, or hazardous materials pipelines that are potentially hazardous to workers or the public if damaged."
3. A "Subsurface Installation" is defined in Government Code section 4216 (s) as "any underground pipeline, conduit, duct, wire, or other structure, except nonpressurized sewer lines, nonpressurized storm drains, or other nonpressurized drain lines."
4. Pursuant to Government Code section 4216.2 the Contractor shall contact the appropriate regional notification center at least two (2) working days but not more than 14 Days before performing any excavation. The date of the notification shall not count as part of the two-working-day notice. Before notifying the appropriate regional notification center, the Contractor shall delineate the area to be excavated. The Contractor shall request that the utility owners conduct a utility survey and mark or otherwise indicate the location of their service. The Contractor shall furnish to the Engineer written documentation of its contact(s) with the regional notification center prior to commencing excavation at such locations.
5. After the utility survey is completed, the Contractor shall commence "potholing" or hand digging to determine the actual location of the pipe, duct, or conduit and in accordance with Government Code section 4216.4 if the excavation within the "tolerance zone" of a subsurface installation. The Engineer shall be given notice prior to commencing potholing operations. The Contractor shall uncover all piping and conduits, to a point one (1) foot below the pipe, where crossings, interferences, or connections are shown on the Drawings, prior to trenching or excavating for any pipe or structures, to determine actual elevations. New pipelines shall be laid to such grade as to clear all existing facilities, which are to remain in service for any period subsequent to the construction of the run of pipe involved.
6. The Contractor's attention is directed to the requirements of Government Code section 4216.2 (c) which provides: "When the excavation is proposed within 10 feet of a high

priority subsurface installation, the operator of the high priority subsurface installation shall notify the excavator of the existence of the high priority subsurface installation to set up an onsite meeting prior to the legal excavation start date and time or at a mutually agreed upon time to determine actions or activities required to verify the location and prevent damage to the high priority subsurface installation. As part of the meeting, the excavator shall discuss with the operator the method and tools that will be used during the excavation and the information the operator will provide to assist in verifying the location of the subsurface installation. The excavator shall not begin excavating until after the completion of the onsite meeting.” The Contractor shall notify the Engineer in advance of this meeting.

- C. Utility Relocation and Repair. If interferences occur at locations other than those indicated in the Contract Documents with reasonable accuracy, the Contractor shall notify the Engineer in writing. The Engineer will supply a method for correcting said interferences in accordance with the responsibilities of this Article and Government Code section 4215. Care shall be exercised by the Contractor to prevent damage to adjacent existing facilities and public or private works; where equipment will pass over these obstructions, suitable planking shall be placed. If high priority subsurface installations are damaged and the operator cannot be contacted, the Contractor shall call 911 emergency services. Temporary or permanent relocation or alteration of utilities desired by the Contractor for its own convenience shall be the Contractor’s responsibility and it shall make arrangements and bear all costs for such work
- D. Construction at Existing Utilities. Where the Work to be performed crosses or otherwise interferes with water, sewer, gas, or oil pipelines; buried cable; or other public or private utilities, the Contractor shall perform construction in such a manner so that no damage will result to either public or private utilities. It shall be the responsibility of the Contractor to determine the actual locations of, and make accommodations to maintain, all utilities. Before any utility is taken out of service, permission shall be obtained by the Contractor from the owner. The owner, any impacted resident or business owner and the Agency will be advised of the nature and duration of the utility outage as well as the Contractor’s plan for providing temporary utilities if required by the owner. The Contractor shall be liable for all damage which may result from its failure to maintain utilities during the progress of the Work, and the Contractor shall indemnify Agency as required by the Contract Documents from all claims arising out of or connected with damage to utilities encountered during construction; damages resulting from disruption of service; and injury to persons or damage to property resulting from the negligent, accidental, or intentional breaching of utilities.

7.4 Trenches.

- A. Trenches Five Feet or More in Depth. Contractor shall submit to the Agency at the preconstruction meeting, a detailed plan showing the design of shoring, bracing, sloping or

other provisions to be made for worker protection from hazards of caving ground during the excavation of any trench or trenches five feet or more in depth. If such plan varies from shoring system standards established by the Construction Safety Orders of the California Code of Regulations, Department of Industrial Relations, the plan shall be prepared by a California registered civil or structural engineer. The plan shall not be less effective than the shoring, bracing, sloping, or other provisions of the Construction Safety Orders, as defined in the California Code of Regulations. The Contractor shall designate in writing the "competent person" as defined in Title 8, California Code of Regulations, who shall be present at the Work Site each day that trenching/excavation is in progress. The "competent person" shall prepare and provide daily trenching/excavation inspection reports to the Engineer. Contractor shall also submit a copy of its annual California Occupational Safety and Health Administration (Cal/OSHA) trench/excavation permit.

B. Excavations Deeper than Four Feet.

1. If the Work involves excavating trenches or other excavations that extend deeper than four (4) feet below the surface, Contractor shall promptly within three (3) Days, and before the excavation is further disturbed, notify the Agency in writing of any of the following conditions:
 - a. Material that the Contractor believes may be hazardous waste, as defined in section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
 - b. Subsurface or latent physical conditions at the site differing from those indicated by information made available to Contractor prior to the GMP Amendment.
 - c. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract
2. Agency shall promptly investigate the conditions, and if it finds that the conditions do so materially differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the Work, shall issue a Change Order under the procedures described in Article 9.1 Change Orders and Time Extensions.
3. In the event that a dispute arises between the Agency and the Contractor as to whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract.

Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the parties.

ARTICLE 8 - Prosecution Of The Work

8.1 Contractor's Means and Methods.

- A. Contractor is solely responsible for the means and methods utilized to perform the Work. Contractor shall perform all Work in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor warrants that all employees and Subcontractors shall have sufficient skill and experience to perform the Work assigned to them. Contractor represents that it, its employees and Subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Work, and that such licenses and approvals shall be maintained throughout the term of this Contract. Contractor shall perform the Work in full compliance with all applicable state, federal and local laws and to the all jurisdictions having authority over the Project.

8.2 Construction Schedule.

- A. General Requirements. The schedule shall be prepared in a critical path method format and in an electronic scheduling program acceptable to the Agency and as specified in the Contract Documents. Contractor shall deliver the schedule and all updates to the Agency in both paper and electronic form. The electronic versions shall be in the format and include all data used to prepare the schedule.
- B. Schedule. The receipt or approval of any schedules by the Agency shall not in any way relieve the Contractor of its obligations under the Contract Documents. The Contractor is fully responsible to determine and provide for any and all staffing and resources at levels which allow for good quality and timely completion of the Project. Contractor's failure to incorporate all elements of Work required for the performance of the Contract or any inaccuracy in the schedule shall not excuse the Contractor from performing all Work required for a completed Project within the specified Contract Time. If the required schedule is not received by the time the first payment under the Contract is due, Contractor shall not be paid until the schedule is received, reviewed and accepted by the Agency.
- C. Schedule Contents. The schedule shall indicate the beginning and completion dates of all phases of construction; critical path for all critical, sequential time related activities; and "float time" for all "slack" or "gaps" in the non-critical activities. The schedule shall include appropriate time allowances and constraints for Submittals, items of interface with Work performed by others, and specified construction, start-up and performance tests. All float shall be owned by the Project. Schedules indicating early or late completion shall not

modify or have any effect on the Contract Time, regardless of whether the schedules are reviewed and/or accepted by the Agency.

- D. Schedule Updates. Contractor shall continuously update its construction schedule. Contractor shall submit an updated and accurate construction schedule to the Agency: (1) prior to the start of construction, if there are any changes to the initial schedule; (2) with each progress payment request; and (3) whenever requested to do so by the Agency. The Agency may withhold progress payments or other amounts due under the Contract Documents if Contractor fails to submit an updated and accurate construction schedule. Upon the Agency's request, Contractor shall submit any schedules or updates to the Agency in the native electronic format of the software used to create the schedule. Contractor shall also submit schedules showing a two-week detailed look-ahead at weekly meetings conducted with the Agency. The two-week look-ahead schedule shall clearly identify all staffing and other resources which in the Contractor's judgment are needed to complete the Work within the Contract Time, and it shall clearly state the number of staff to be used on each daily segment of the Work.
- E. Acceptance. Acceptance of the schedules by the Agency will not impose on responsibility for accuracy, for sequencing, scheduling, or progress of the Work, or compliance with the Contract Documents. Acceptance will not interfere with or relieve Contractor from Contractor's full responsibility therefor.

8.3 Time for Completion and Liquidated Damages.

- A. Time for Completion. The Construction Phase shall commence: (1) on the date stated in the Notice to Proceed with Construction, or (2) if the Notice to Proceed with Construction does not specify a commencement date, then on the date of the Notice to Proceed with Construction and, in both cases, shall be completed by the GCD. The Agency is under no obligation to consider early completion of the Project; and the GCD shall not be amended by the Agency's receipt or acceptance of the Contractor's proposed earlier completion date. Any difference in time between the Contractor's early completion and the GCD shall be considered a part of the Project float. Contractor shall not be entitled to compensation, and the Agency will not compensate Contractor, for delays which impact early completion. Contractor shall not, under any circumstances, receive additional compensation from the Agency (including but not limited to indirect, general, administrative or other forms of overhead costs) for the period between the time of earlier completion proposed by the Contractor and the GCD.
- B. Liquidated Damages. If the Work is not completed by the GCD, it is understood that the Agency will suffer damage. In accordance with Government Code section 53069.85 and Public Contract Code section 7102, being impractical and infeasible to determine the amount of actual damage, it is agreed that Contractor shall pay to the Agency as fixed and liquidated damages, and not as a penalty, the sum stipulated in the Contract for each

calendar day of delay until the Work is fully completed. Contractor and its surety shall be liable for any liquidated damages. Any money due or to become due the Contractor may be retained to cover liquidated damages.

- C. Inclement Weather. Contractor shall abide by the Agency's determination of what constitutes inclement weather. Time extensions for inclement weather shall only be granted when the Work stopped during inclement weather is on the critical path of the Project schedule.
- D. Extension of Time. Contractor's entitlement to an extension of the GCD is limited to an Agency-caused extension of the critical path, reduced by the Contractor's concurrent delays, and established by a proper time impact analysis. No time extension shall be allowed unless, and then only to the extent that, the Agency-caused delay extends the critical path beyond the GCD. The Agency shall ascertain the facts and extent of delay and grant extension of time for completing the Work when, in its judgment, the facts justify such an extension. Contractor shall not be entitled to an adjustment of the GCD for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor. If approved, the increase in time required to complete the Work shall be added to the GCD.
- E. Force Majeure. If a delay to the critical path results from a Force Majeure Event, the Contractor will be entitled to a time extension but will not receive an adjustment to the Contract Price or any other compensation. Such a non-compensable adjustment shall be Contractor's sole and exclusive remedy for such delays.
- F. No Damages for Reasonable Delay. Agency's liability to Contractor for delays for which the Agency is responsible shall be limited to only an extension of time unless such delays were unreasonable under the circumstances. In no case shall the Agency be liable for any costs which are borne by the Contractor in the regular course of business, including, but not limited to, home office overhead and other ongoing costs. Damages caused by unreasonable Agency delay shall be based on actual costs only, no proportions or formulas shall be used to calculate any delay damages.
- G. Procedure for Time Extensions and Delay Damages. Contractor shall not be entitled to any extension of time unless Contractor properly notices the delay and adjustment to compensation and requests a Change Order in accordance with Article 9.1 Change Orders and Time Extensions. Contractor's failure to timely and fully comply with the Change Order procedures in the Contract Documents shall constitute a waiver of Contractor's right to a time extension.

8.4 Contractor's Responsibility for Work.

- A. Responsibility for, and security of, all Work and materials related to Contractor's Work is the responsibility of Contractor until final acceptance of the Contractor's Work by the Agency. The Agency shall not be held responsible for the care or protection of any material or parts of the Work prior to final acceptance. Contractor shall take every necessary precaution against injury or damage to any part thereof by the action of the elements or from any cause whether arising from the execution or non-execution of the Work and all loss or damage shall be borne by Contractor. The Contractor shall rebuild, repair, restore and make good at its own expense all injuries or damages to any portion of the Work before its completion and acceptance. In the event of damage proximately caused by an Act of God, as defined by Section 7105 of the Public Contract Code, the Agency will pay for repair or restoration to damaged Work in excess of 5% of the total Bid.

8.5 Occupancy.

- A. Agency reserves the right to occupy or utilize any portion of the Work at any time before completion, and such occupancy or use shall not constitute acceptance of any part of Work covered by this Contract. This use shall not relieve the Contractor of its responsibilities under the Contract.

8.6 Securities for Money Withheld.

- A. Pursuant to section 22300 of the Public Contract Code of the State of California, Contractor may request the Agency to make retention payments directly to an escrow agent or may substitute securities for any money withheld by the Agency to ensure performance under the contract. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with the Agency or with a state or federally chartered bank as the escrow agent who shall return such securities to Contractor upon satisfactory completion of the contract. Deposit of securities with an escrow agent shall be subject to a written agreement substantially in the form provided in section 22300 of the Public Contract Code.

8.7 The Agency's Right to Suspend/Terminate the Contract.

- A. Suspension of Work by the Agency.
1. Agency in its sole and absolute discretion for any reason or no reason whatsoever may at any time, with or without cause, suspend performance of all or any part of the Work by giving not less than five (5) Days written notice to the Contractor. Such notice of suspension of Work will designate the amount and type of plant, labor, and equipment to be committed to the Project during the period of suspension. Contractor shall use its best

efforts to utilize its plant, labor, and equipment in such a manner as to minimize costs associated with suspension.

2. Upon receipt of any such notice, Contractor shall, unless the notice requires otherwise:
(1) immediately discontinue Work on the date and to the extent specified in the notice;
(2) place no further orders or subcontracts for material, services, or facilities with respect to suspended Work other than to the extent required in the notice; (3) promptly make every reasonable effort to obtain suspension upon terms satisfactory to the Agency of all orders, subcontracts, and rental agreements to the extent they relate to performance of Work suspended; and (4) continue to protect and maintain the Work including those portions on which Work has been suspended.
3. Agency shall not be liable for any additional costs, damages or anticipated profits incurred by Contractor or its Subcontractors and the Contract Price shall not be increased during the period of suspension, except the actual costs incurred by Contractor, excluding overhead and profit for (a) the purpose of safeguarding the Work and material and equipment in transit or at the Site during the period of suspension, (b) Contractor's or its Subcontractor's rented equipment which are maintained at the Site, or (c) other reasonable and unavoidable costs of shutting down the Work, or reassembling personnel and equipment resulting directly from such suspension. Contractor shall be granted an extension of the Contract Time equal to the number of days performance of Work is suspended; provided, however, that no actual costs or extension of Contract Time shall be granted if the suspension results from Contractor's non-compliance with the requirements of the Contract.

B. Termination for Cause by the Agency.

1. In the sole estimation of the Agency, if the Contractor refuses or fails to prosecute the Work or any separable part thereof with such diligence as will insure its completion within the time specified by the Contract Documents, or any extension thereof, or fails to complete such Work within such time, or if the Contractor should be adjudged a bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or the Contractor or any of its subcontractors should violate any of the provisions of this Contract, the Agency may serve written notice upon the Contractor and its surety of the Agency's intention to terminate this Contract. This notice of intent to terminate shall contain the reasons for such intention to terminate this Contract, and a statement to the effect that the Contractor's right to perform this Contract shall cease and terminate upon the expiration of ten (10) Days unless such violations have ceased and arrangements satisfactory to the Agency have been made for correction of said violations.
2. After expiration of the ten (10) Day period, the Agency may terminate the Contract by providing a Notice of Termination to the Contractor. The Agency may take over and

complete the Work by any method it may deem appropriate, including enforcement of the Project performance bond. If the Agency takes over the Work, the Agency may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plant, and other property belonging to the Contractor as may be on the Site.

3. Contractor shall not be entitled to receive any further payment hereunder as a result of such termination. Contractor and its surety shall be liable to the Agency for any excess costs or other damages incurred by the Agency to complete the Work, including professional services and expenses, reasonable overhead, profit, and attorneys' fees. This payment obligation shall survive completion of the Project and termination or expiration of this Contract.

C. Termination for Convenience by the Agency:

1. Agency may terminate performance of the Work called for by the Contract Documents in whole or, from time to time, in part, upon ten (10) Days written notice if the Agency determines that a termination is in the Agency's interest. The Contractor shall terminate all or any part of the Work upon delivery to the Contractor of a Notice of Termination specifying that the termination is for the convenience of the Agency, the extent of termination, and the effective date of such termination.
2. After receipt of Notice of Termination, and except as directed by the Agency, the Contractor shall, regardless of any delay in determining or adjusting any amounts due under this termination for convenience clause, immediately proceed with the following obligations: (1) stop Work as specified in the Notice; (2) complete any Work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents; (3) leave the property upon which the Contractor was working and upon which the facility (or facilities) forming the basis of the Contract Document is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety; (4) terminate all subcontracts to the extent that they relate to the portions of the Work terminated; and (5) place no further subcontracts or orders, except as necessary to complete the continued portion of the Contract.
3. In case of such termination for the Agency's convenience, the Contractor shall be entitled to receive payment for Work actually completed by Contractor in conformity with this Contract prior to Contractor's receipt of Agency's Notice and costs incurred by reason of such termination. Any documentation substantiating costs incurred by the Contractor solely as a result of the Agency's exercise of its right to terminate this Contract pursuant to this clause, which costs the Contractor is authorized under the Contract documents to incur, shall: (1) be submitted to and received by the Agency no later than 30 Days after the effective date of the Notice of Termination; (2) describe the costs incurred with particularity; and (3) be conspicuously identified as "Termination Costs occasioned by the

Agency's Termination for Convenience." If the Agency rejects any costs, Contractor shall be deemed to waive the rejected costs unless Contractor files a Claim within thirty (30) Days of the rejection pursuant to Article 9.2.

4. Contractor shall be entitled to receive only the amounts payable under this Article, and Contractor specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits. The provisions in this Article are in addition to and not in limitation of any other rights or remedies available to the Agency.
5. Termination of the Contract shall not relieve surety of its obligation for any just claims arising out of or relating to the Work performed.
6. Notwithstanding any other provision of this Article, when immediate action is necessary to protect life and safety or to reduce significant exposure or liability, the Agency may immediately order Contractor to cease Work on the Project until such safety or liability issues are addressed to the satisfaction of the Agency or the Contract is terminated.
7. If the Agency terminates Contractor for cause, and if it is later determined that the termination was wrongful, such default termination shall automatically be converted to and treated as a termination for convenience. In such event, Contractor shall be entitled to receive only the amounts payable under this Article, and Contractor specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits.

8.8 Defective Work.

A. Agency May Correct Defective Work.

1. If Contractor fails to correct Defective Work, or to remove and replace rejected Work as required by the Agency, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, the Agency may, after seven (7) Days written notice to Contractor, correct, or remedy any such deficiency.
2. In connection with such corrective or remedial action, the Agency may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which the Agency has paid Contractor but which are stored elsewhere. Contractor shall allow the Agency, and the agents, employees, other contractors, and consultants of each of them, access to the Site to enable the Agency to exercise the rights and remedies to correct the Defective Work.

3. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by the Agency correcting the Defective Work will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and the Agency shall be entitled to an appropriate decrease in the Contract Price. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of defective Work.
4. If the Change Order is executed after all payments under the Contract have been paid by the Agency and the Project retention is held in an escrow account as permitted by the Contract Documents, Contractor will promptly alert the escrow holder, in writing, of the amount of retention to be paid to the Agency. If the Change Order is executed after release of the Project retention, an appropriate amount will be paid by Contractor to the Agency. Contractor shall not be allowed an extension of the Contract Time because of any delay in the performance of the Work attributable to the Agency correcting Defective Work.

B. Acceptance of Defective Work.

1. If, instead of requiring correction or removal and replacement of defective Work, the Agency prefers to accept it, the Agency may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to the Agency's evaluation of and determination to accept such defective Work and for the diminished value of the Work. If any acceptance of Defective Work occurs prior to release of the Project retention, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and the Agency shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work and all costs incurred by the Agency. If the acceptance of defective occurs after release of the Project retention, an appropriate amount will be paid by Contractor to the Agency.

8.9 Completion and Acceptance of Work.

- A. Final Inspection. Upon written notice from Contractor that the entire Work is complete, the Engineer will promptly make a final inspection with the Agency and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.
- B. Final Acceptance. The acceptance of the Work on behalf of the Agency will be made by the Engineer. Such acceptance by the Agency shall not constitute a waiver of defects. After Contractor has, in the opinion of the Engineer, satisfactorily completed all corrections

identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, Record Documents, and other documents required by the Contract Documents, the Agency shall execute a Notice of Completion, constituting final acceptance and completion of the Project, except as may be expressly noted.

8.10 Guarantee of Work.

- A. Neither the final payment nor any provision in the Contract Documents shall relieve Contractor of responsibility for faulty materials or workmanship. Contractor hereby guarantees that materials and Work shall be completed in conformance with the Contract Documents and that the materials and Work provided will fulfill the requirements of this guarantee. Contractor hereby agrees to repair or replace, at the discretion of the Agency, any or all Work that may prove to be defective in its workmanship, materials furnished, methods of installation or fail to conform to the Contract Document requirements together with any other Work which may be damaged or displaced by such defect(s) within a period of one (1) year (or as otherwise indicated in the Contract Documents or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) from the date of the Notice of Completion of the Project without any expense whatever to the Agency, ordinary wear and tear and unusual abuse and neglect excepted. Contractor shall be required to promptly repair or replace defective equipment or materials, at Contractor's option. The Contractor shall remedy at its expense any damage to Agency-owned or controlled real or personal property. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor.
- B. For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one (1) year period, commencing with the date of acceptance of such corrected Work. The reinstatement of the one (1) year warranty shall apply only to that portion of Work that was corrected. Contractor shall perform such tests as the Agency may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Contract Documents. In the event of Contractor's failure to comply with the above-mentioned conditions within ten (10) Days after being notified in writing of required repairs, to the reasonable satisfaction of the Agency, the Agency shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the Agency for any expenses incurred hereunder immediately upon demand.

- C. In addition to the warranty set forth in this Article, Contractor shall obtain for the Agency all warranties that would be given in normal commercial practice and assign to the Agency any and all manufacturer's or installer's warranties for equipment or materials not manufactured by Contractor and provided as part of the Work, to the extent that such third-party warranties are assignable and extend beyond the warranty period set forth in this Article. Contractor shall furnish the Agency with all warranty and guarantee documents prior to final acceptance of the Project by the Agency as required.
- D. When specifically indicated in the Contract Documents or when directed by the Engineer, the Agency may furnish materials or products to the Contractor for installation. In the event any act or failure to act by Contractor shall cause a warranty applicable to any materials or products purchased by the Agency for installation by the Contractor to be voided or reduced, Contractor shall indemnify the Agency from and against any cost, expense, or other liability arising therefrom, and shall be responsible to the Agency for the cost of any repairs, replacement or other costs that would have been covered by the warranty but for such act or failure to act by Contractor.
- E. The Agency shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage. The Contractor shall within ten (10) Days after being notified commence and perform with due diligence all necessary work to remedy the failure, defect, or damage. If the Contractor fails to promptly remedy any defect or damage, the Agency shall have the right to replace, repair or otherwise remedy the defect, or damage at the Contractor's expense.
- F. In the event of any emergency constituting an immediate hazard to health, safety, property, or licensees, when caused by Work of the Contractor not in accordance with the Contract requirements, the Agency may undertake at Contractor's expense, and without prior notice, all Work necessary to correct such condition.
- G. This Article shall not limit Agency's rights under this Contract or with respect to latent defects, gross mistakes, or fraud. Nothing in the warranty or in the Contract Documents shall be construed to limit the rights and remedies available to the Agency at law or in equity, including, but not limited to, Code of Civil Procedure section 337.15.

ARTICLE 9 - Change Orders; Dispute Resolution

9.1 Change Orders and Time Extensions.

- A. Change Orders. All changes to the Contract, including compensation increases and time extensions, shall be through a written Change Order in accordance with this Article. The Agency, without invalidating the Contract, may order changes in the Work consisting of additions, deletions or other revisions, and Contractor's compensation and the time for completion shall be adjusted accordingly. Whenever any change is made as provided for

herein, such change shall be considered and treated as though originally included in the Contract, and shall be subject to all terms, conditions, and provisions of the original Contract. Contractor shall not be entitled to claim or bring suit for damages, whether for loss of profits or otherwise, on account of any decrease or omission of any item or portion of Work to be done. No dispute, disagreement, or failure of the parties to reach agreement on the terms of the Change Order shall relieve the Contractor from the obligation to proceed with performance of the Work, including Additional Work, promptly and expeditiously. Any alterations, extensions of time, Additional Work, or any other changes may be made without securing consent of the Contractor's surety or sureties.

- B. Agency Directive. The Agency may direct changes in the Work by delivering a written directive. To the extent the work directive results in a change to compensation or time, Contractor must timely request a Change Order and comply with all Change Order procedures in accordance with this Article. Notwithstanding issuance of a work directive, Contractor's failure to timely request a Change Order shall constitute a waiver by Contractor of any adjustment to compensation or time extension for Work performed under the directive. The Agency shall not be liable to Contractor for Work performed or omitted by Contractor in reliance on verbal orders.
- C. Contractor's Notice of Change/Delay. If Contractor intends to initiate a Change Order Request, then Contractor shall provide the Agency with written notice of the underlying facts and circumstances that gave rise to the proposed change within the following times:
1. If due to unknown subsurface or latent physical conditions, within three (3) days from the discovery date or prior to the alterations of the conditions, whichever is earlier.
 2. If due to a Force Majeure Event, as soon as reasonably practicable under the conditions, which shall be no longer than three (3) days from the date the Contractor discovers that the Force Majeure Event gives rise to a change, unless that the conditions are such that notice within three (3) days is not possible or practicable.
 3. If due to any other matter that may involve an adjustment to the GCD or the Contract Price, within seven (7) Days from the discovery date.

To be considered valid and complete, the notice of change/delay shall include a general statement of the circumstances giving rise to the notice of change/delay and a reasonable order of magnitude estimate of the additional costs and/or time. If the circumstances give rise to both a cost adjustment and time extension, Contractor shall submit the notice of change and notice of delay concurrently.

- D. Request for Change in Compensation and/or Extension of Time. Contractor shall submit a Change Order Request for any adjustment to Contractor's compensation and/or any extension of time. The Change Order Request shall be made prior to incurring any expense

and within fourteen (14) Days from either Contractor's notice of change/delay or the Agency's directive ordering the change. For any costs or information that cannot be determined at the time Contractor submits the Change Order Request, Contractor shall submit to the Agency notice of the costs or information and all supporting documentation within five (5) Days of when the costs or other information become subject to determination. The Change Order Request shall include all of the following information (unless inapplicable to the change):

1. A detailed description of the circumstances giving rise to the request;
2. A complete itemized cost proposal, including itemized pricing for first tier Subcontractors;
3. Supporting documentation for all costs;
4. A time impact analysis showing the impact of the delay to the critical path to completion;
5. If any added costs or information cannot be determined at the time of the Change Order Request, the reason the costs or information cannot be determined at the time; and
6. Certification to the accuracy of the Change Order Request under penalty of perjury.

The time impact analysis shall be in the critical path method format and shall show the sequencing of all critical and non-critical new activities and/or activity revisions affected by the delay, with logic ties to all affected existing activities noted on the schedule. The Agency may demand, and Contractor shall provide, any additional information supporting the Change Order Request, including but not limited to native electronic format version of schedules and time impact analyses. Contractor shall provide the requested additional information within five (5) Days of the request.

- E. Agency's Final Decision on Change Order; Ordered Changes. If the Agency denies the Change Order Request or disagrees with the proposal submitted by Contractor, it will notify the Contractor, and the Agency will provide its opinion of the appropriate price and/or time extension. If no agreement can be reached, the Agency shall have the right to order the Work performed on a time and materials basis or to issue a unilateral Change Order setting forth the Agency's determination of the reasonable additions or savings in costs and time attributable to the extra or deleted work. The Agency shall also have the right to order changes in the Work to be performed promptly by the Contractor on a time and materials basis or to issue a unilateral Change Order setting forth the Agency's determination of the reasonable additions or savings in costs and time attributable to the extra or deleted work. The Agency's determination shall become final and binding if the Contractor fails to submit a claim in writing in accordance with Article 9.2 to the Agency within fourteen (14) Days of the issuance of the unilateral Change Order, disputing the terms of the unilateral Change Order and providing such supporting documentation for its position as the Agency may reasonably require.

F. Contractor's Waiver of Further Relief.

1. Contractor recognizes and acknowledges that timely submission of a formal written notice of change/delay and Change Order Request, whether or not the circumstances of the change may be known to the Agency or available to the Agency through other means, is not a mere formality but is of crucial importance to the ability of the Agency to promptly identify, prioritize, evaluate and mitigate the potential effects of changes. Any form of informal notice, whether verbal or written (including, without limitation, statements in requests for information, statements in Submittals, statements at any job meeting or entries on monthly reports, daily logs or job meeting minutes), that does not strictly comply with the formal requirements of this Article, shall accordingly be insufficient.
2. Contractor's Failure To Provide A Complete And Timely Notice Of Change/Delay And/Or Change Order Request, Or To Comply With Any Other Requirement Of This Article, Shall Constitute A Waiver By Contractor Of The Right To A Contract Adjustment On Account Of Such Circumstances And A Waiver Of Any Right To Further Recourse Or Recovery By Reason Of Or Related To Such Change By Means Of The Claims Dispute Resolution Process Or By Any Other Legal Process Otherwise Provided For Under Applicable Laws.

G. Change Order Format. A Change Order signed by the Contractor indicates the Contractor's agreement therewith, including any adjustment in compensation or extension of time, and the full and final settlement of all costs (direct, indirect and overhead) related to the Work authorized by the Change Order. The Agency may designate the forms to be used for notices, requests, and Change Orders. If so designated, Contractor may only use such forms. Contractor shall not reserve a right to assert impact costs, extended job site costs, extended overhead, constructive acceleration and/or actual acceleration beyond what is stated in the Change Order. No Claims shall be allowed for impact, extended overhead costs, constructive acceleration and/or actual acceleration due to a multiplicity of changes and/or clarifications. The Contractor may not change or modify the Agency's Change Order form in an attempt to reserve additional rights.

H. Determining Adjustments to Compensation.

1. Limitation on Costs. Contractor shall not be entitled to any compensation for Work subject to a Change Order except as expressly set forth in this Article. The mark-up added in instances of Additional Work shall constitute the entire amount of profit, any mark-ups, any field or home office overhead costs, including personnel, equipment or office space, any materials, or any costs of equipment idle time for such Work.
2. Lump Sum Change Orders. Whenever possible, any changes affecting compensation shall be in a lump sum mutually agreed by the Contractor and the Agency.

3. Time and Materials Change Orders. The Agency may direct the Contractor to proceed with the Additional Work with payment to be made on the basis of actual cost of the labor and materials required to complete the Additional Work. If the Project is federally funded, a time and materials Change Order shall only be issued after a determination that no other Change Order is suitable and the Change Order shall include a ceiling price that the Contractor exceeds at its own risk.
4. Federally Funded Projects. For any change in price to the Contract, general and administrative expenses shall be negotiated and must conform to the cost principles set forth under at 2 C.F.R. Part 200, subpart E (if applicable to the Project), and profit shall be negotiated as a separate element of the cost. To establish a fair and reasonable profit, consideration must be given to the complexity of the Additional Work to be performed, the risk borne by the Contractor, the Contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
5. Allowed Costs. Estimates for lump sum quotations and accounting for time-and-material work shall be limited to direct expenditures necessitated specifically by the change and shall be segregated as follows:
 - a. Labor. The costs of labor will be the actual cost for wages prevailing locally for each craft or type of worker at the time the work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from federal, state or local laws, as well as assessment or benefits required by lawful collective bargaining agreements. The use of a labor classification which would increase the cost will not be permitted unless the Contractor establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental. Estimated labor hours must only include hours for those workmen and working foremen directly involved in performing the change order work. Supervision above the level of working foremen (such as general foremen, superintendent, project manager, etc.) is considered to be included in the markup percentages as outlined below. Note that no separate allowances for warranty expense will be allowed as a direct cost of a change order. Costs attributed to warranty expenses will be considered to be covered by the markup. Labor burden allowable in Change Orders shall be defined as employer's net actual cost of payroll taxes (FICA, Medicare, SUTA, FUTA), net actual cost for employer's cost of union benefits (or other usual and customary fringe benefits if the employees are not union employees), and net actual cost to employer for worker's compensation insurance taking into consideration adjustments for experience modifiers, premium discounts, dividends, rebates, expense constants, assigned risk pool costs, net cost reductions due to policies with deductibles for self-insured losses, assigned risk rebates, etc.

Contractor shall reduce their standard payroll tax percentages to properly reflect the effective cost reduction due to the estimated impact of the annual maximum wages subject to payroll taxes. An estimated percentage for labor burden may be used for pricing change orders. However, the percentage used for labor burden to price Change Orders will be examined at the conclusion of the Project and an adjustment to the approved Change Orders will be processed if it is determined that the actual labor burden percentage should have been more or less than the estimated percentage used.

- b. Materials. The cost of materials reported shall be at the lowest current price at which such materials are locally available in the quantities involved, plus sales tax, freight and delivery. Materials costs shall be based upon Supplier or manufacturer's invoice.
 - c. Tool and Equipment Use. Regardless of ownership, the rates to be used in determining equipment use shall not exceed listed rates prevailing locally at equipment rental agencies, or distributors, at the time the work is performed. The Contractor shall furnish cost data supporting the establishment of the rental rate. The rental rate to be applied for use of each items of equipment shall be the rate resulting in the least total cost to the Agency for the total period of use. The Agency shall make the final determination as to an equitable rental rate for the equipment. No payment will be made for the use of small tools, which have a replacement value of \$1,000 or less. The rental time to be paid for equipment shall be the time the equipment is in productive operation on the Additional Work being performed. Rental time will not be allowed while equipment is inoperative due to breakdowns. All equipment shall, in the opinion of the Agency, be in good working condition and suitable for the purpose for which the equipment is to be used. Equipment with no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer. Before construction equipment is used on any Additional Work, the Contractor shall plainly stencil or stamp an identifying number thereon at a conspicuous location, and shall furnish to the Agency, in duplicate, a description of the equipment and its identifying number. When hourly rates are listed, any part of an hour less than 30 minutes of operation shall be considered to be 1/2-hour of operation, and any part of an hour greater than 30 minutes will be considered one hour of operation. When daily rates are listed, any part of a day less than 4 hours operation shall be considered to be 1/2-day of operation.
6. Allowed Mark-up. The allowed mark-up for any and all overhead (including supervision and home and field office costs) and profit on work added to the Contract shall be determined in accordance with the following provisions:
- a. "Net Cost" is defined as the actual costs of labor, materials and tools and equipment only, excluding overhead and profit. The costs of applicable insurance and bond

premium will be reimbursed to the Contractor and Subcontractors at cost only, without mark-up. Contractor shall provide the Agency with documentation of the costs, including but not limited to payroll records, invoices, and such other information as the Agency may reasonably request.

- b. For Work performed by the Contractor's forces the allowed mark-up shall not exceed the percentage included in the CMAR's Cost Proposal Form in Attachment 10 and shall be calculated by multiplying that percentage against Contractor's Net Cost.
- c. For Work performed by a Subcontractor, the added cost for overhead and profit shall not exceed the percentage included in the CMAR's Cost Proposal Form in Attachment 10 and shall be calculated by multiplying that percentage against Subcontractor's Net Cost.
- d. For Work performed by a sub-subcontractor, the added cost for overhead and profit shall not exceed the percentage included in the CMAR's Cost Proposal Form in Attachment 10 and shall be calculated by multiplying that percentage against sub-subcontractor's Net Cost.
- e. No additional mark-up will be allowed for lower tier subcontractors, and in no case shall the added cost for overhead and profit payable by the Agency exceed twenty-five percent (25%) of the Net Cost as defined herein, of the party that performs the Work.

7. Documentation of Time-and-Material Costs.

- a. T&M Daily Sheets. Contractor must submit timesheets, materials invoices, records of equipment hours, and records of rental equipment hours to the Agency's for an approval signature each day that Work is performed on a time-and-material basis. The Engineer's signature on time sheets only serves as verification that the Work was performed and is not indicative of the Agency's agreement to Contractor's entitlement to the cost.
- b. T&M Summary Sheet. Contractor shall submit a T&M Summary Sheet, which shall include total actual costs, within five (5) Days following completion of Additional Work on a time-and-material basis. Contractor's total actual cost shall be presented in a summary table in an electronic spreadsheet file by labor, material, equipment, and any other costs, along with documentation supporting the costs. Contractor's failure to submit the T&M Summary Sheet within five (5) Days of completion of the Additional Work will result in Contractor's waiver for any reimbursement of any costs associated with the Additional Work.

8. Excluded Costs. The following costs or any other home or field office overhead costs, all of which are to be considered administrative costs covered by the Contractor's mark-up, shall not be allowed costs and shall not be included in any lump sum proposals or time-and-materials invoices:
- a. Overhead Cost. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, timekeepers, clerks, and other personnel employed by Contractor whether at the Site or in Contractor's principal office or any branch office, material yard, or shop for general administration of the Work;
 - b. Office Expenses. Expenses of Contractor's principal and branch offices;
 - c. Capital Expenses. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Additional Work and charges against Contractor for delinquent payments;
 - d. Negligence. Costs due to the negligence of Contractor or any Subcontractor or Supplier, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including without limitation the correction of Defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property;
 - e. Small Tools. Cost of small tools valued at less than \$1,000 and that remain the property of Contractor;
 - f. Administrative Costs. Costs associated with the preparation of Change Orders (whether or not ultimately authorized), cost estimates, or the preparation or filing of Claims;
 - g. Anticipated Lost Profits. Expenses of Contractor associated with anticipated lost profits or lost revenues, lost income or earnings, lost interest on earnings, or unpaid retention;
 - h. Home Office Overhead. Costs derived from the computation of a "home office overhead" rate by application of the *Eichleay, Allegheny*, burden fluctuation, or other similar methods;
 - i. Special Consultants and Attorneys. Costs of special consultants or attorneys, whether or not in the direct employ of Contractor, employed for services specifically related to the resolution of a Claim, dispute, or other matter arising out of or relating to the performance of the Additional Work.

- j. Other. Other overhead or general expense costs of any kind and the cost of any item not specifically and expressly included in the Contract Documents; including but not limited to: submittals, drawings, field drawings, shop drawings, including submissions of drawings; field inspection; general superintendence; computer services; reproduction services; salaries of project engineer, superintendent, timekeeper, storekeeper, and secretaries; janitorial services; small tools, incidentals and consumables; temporary on-site facilities (offices, telephones, high speed internet access, plumbing, electrical power, lighting; platforms, fencing, water); surveying; estimating; protection of work; handling and disposal fees; final cleanup; other incidental work; related warranties; insurance and bond premiums.

9.2 Procedure for Resolving Claims.

- A. Prerequisites. Contractor shall timely comply with any and all requirement of the Contract Documents pertaining to notices and requests for changes to the GCD or Contract Price, including but not limited to all requirements of Article 9.1, as a prerequisite to filing any claim governed by this Article. The failure to timely submit a notice of delay or notice of change, or to timely request a change to the time for completion or Contractor's compensation, or to timely provide any other notice or request required herein shall constitute a waiver of the right to further pursue the claim under the Contract or at law.
- B. Intent. Effective January 1, 1991, Section 20104 et seq., of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Article is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code. This Article shall be construed to be consistent with all applicable law, including but not limited to these statutes.
- C. Claims. For purposes of this Article, "Claim" means a separate demand by the Contractor for:
 - 1. An adjustment to the time for completion including, without limitation, for relief from damages or penalties for delay assessed by the Agency;
 - 2. Payment by the Agency of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract, payment for which is not otherwise expressly provided or to which the Contractor is not otherwise entitled; or
 - 3. An amount the payment of which is disputed by the Agency.

A "Claim" does not include any demand for payment for which the Contractor has failed to provide notice, request a Change Order, or otherwise failed to follow any procedures contained in the Contract Documents.

- D. Filing Claims. Claims governed by this Article may not be filed unless and until the Contractor completes any and all requirements of the Contract Documents pertaining to notices and requests for changes to the GCD or Contract Price, and Contractor's request for a change has been denied in whole or in part. Claims governed by this Article must be filed no later than thirty (30) Days after a request for change has been denied in whole or in part or after any other event giving rise to the Claim. The Claim shall be submitted in writing to the Agency and shall include on its first page the following words in 16 point capital font: "THIS IS A CLAIM." The Claim shall include the all information and documents necessary to substantiate the Claim, including but not limited to those identified below. Nothing in this Article is intended to extend the time limit or supersede notice requirements otherwise provided by Contract Documents. Failure to follow such contractual requirements shall bar any Claims or subsequent proceedings for compensation or payment thereon.
- E. Documentation. Contractor shall submit all Claims in the following format:
1. Summary description of Claim including basis of entitlement, merit and amount of time or money requested, with specific reference to the Contract Document provisions pursuant to which the Claim is made
 2. List of documents relating to Claim:
 - a. Specifications
 - b. Drawings
 - c. Clarifications (Requests for Information)
 - d. Schedules
 - e. Other
 3. Chronology of events and correspondence
 4. Narrative analysis of Claim merit
 5. Analysis of Claim cost, including calculations and supporting documents
 6. Time impact analysis in the form required by the Contract Documents or, if the Contract Documents do not require a particular format, CPM format, if an adjustment of the GCD is requested

- F. Agency's Response. Upon receipt of a Claim pursuant to this Article, the Agency shall conduct a reasonable review of the Claim and, within a period not to exceed 45 Days, shall provide the Contractor a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the Claim will be processed and made within 60 Days after the Agency issues its written statement.
1. If the Agency needs approval from its governing body to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the Claim, and the Agency's governing body does not meet within the 45 Days or within the mutually agreed to extension of time following receipt of a Claim sent by registered mail or certified mail, return receipt requested, the Agency shall have up to three (3) Days following the next duly publicly noticed meeting of the Agency's governing body after the 45-Day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.
 2. Within 30 Days of receipt of a Claim, the Agency may request in writing additional documentation supporting the Claim or relating to defenses or Claims the Agency may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the Agency and the Contractor. The Agency's written response to the Claim, as further documented, shall be submitted to the Contractor within 30 Days (if the Claim is less than \$50,000, within 15 Days) after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.
- G. Meet and Confer. If Contractor disputes the Agency's written response, or the Agency fails to respond within the time prescribed, the Contractor may so notify the Agency, in writing, either within 15 Days of receipt of the Agency's response or within 15 Days of the Agency's failure to respond within the time prescribed, respectively, and demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, the Agency shall schedule a meet and confer conference within 30 Days for settlement of the dispute.
- H. Mediation. Within 10 business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, the Agency shall provide the Contractor a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 Days after the Agency issues its written statement. Any disputed portion of the Claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with the Agency and the Contractor sharing the associated costs equally. The public entity and Contractor shall mutually agree to a

mediator within 10 business days after the disputed portion of the Claim has been identified in writing, unless the parties agree to select a mediator at a later time.

1. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.
 2. For purposes of this Article, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this Article.
 3. Unless otherwise agreed to by the Agency and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.
 4. The mediation shall be held no earlier than the date the Contractor completes the Work or the date that the Contractor last performs Work, whichever is earlier. All unresolved Claims shall be considered jointly in a single mediation, unless a new unrelated Claim arises after mediation is completed.
- I. Procedures After Mediation. If following the mediation, the Claim or any portion remains in dispute, the Contractor must file a Claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code prior to initiating litigation. For purposes of those provisions, the running of the period of time within which a Claim must be filed shall be tolled from the time the Contractor submits his or her written Claim pursuant to subdivision (a) until the time the Claim is denied, including any period of time utilized by the meet and confer conference.
- J. Civil Actions. The following procedures are established for all civil actions filed to resolve Claims of \$375,000 or less:
1. Within 60 Days, but no earlier than 30 Days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of this Contract. The mediation process shall provide for the selection within 15 Days by both parties of a disinterested third person as mediator, shall be commenced within 30 Days of the submittal, and shall be concluded within 15 Days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.

2. If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

K. Government Code Claim Procedures.

1. This Article does not apply to tort claims and nothing in this Article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.5 of Title 1 of the Government Code.
2. In addition to any and all requirements of the Contract Documents pertaining to notices of and requests for adjustment to the Contract Time, Contract Price, or compensation or payment for Additional Work, disputed Work, construction claims and/or changed conditions, the Contractor must comply with the claim procedures set forth in Government Code Section 900, et seq. prior to filing any lawsuit against the Agency.
3. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to adjustment of the Contract Time or Contract Price for Additional Work, disputed Work, construction claims, and/or changed conditions have been followed by Contractor. If Contractor does not comply with the Government Code claim procedure or the prerequisite contractual requirements, Contractor may not file any action against the Agency.
4. A Government Code claim must be filed no earlier than the date the Work is completed or the date the Contractor last performs Work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved Claims known to Contractor or that should reasonably be known to Contractor excepting only new unrelated Claims that arise after the Government Code claim is submitted.

- L. Non-Waiver. The Agency's failure to respond to a Claim from the Contractor within the time periods described in this Article or to otherwise meet the time requirements of this Article shall result in the Claim being deemed rejected in its entirety, and shall not constitute a waiver of any rights under this Article.

ARTICLE 10 - Measurement; Payment

10.1 Cost Breakdown. Contractor shall furnish on forms approved by the Agency within ten (10) Days of the Notice to Proceed with Construction, a schedule of values allocating the entire Contract Price to the various portions of the Work and prepared in such a form and supported by such data to substantiate its accuracy as the Engineer may require. This schedule of values, unless objected to by the Engineer, shall be used as a basis for reviewing the Contractor's applications for payment. Contractor shall submit the schedule of values prior to submitting its first application for payment, and the Agency will not issue any payment until it receives and approves the schedule of values.

10.2 Progress Estimates and Payment.

- A. By the tenth (10th) Day of the following calendar month, Contractor shall submit to Engineer a payment request which shall set forth in detail the value of the Work done for the period beginning with the date Work was first commenced and ending on the end of the calendar month for which the payment request is prepared. Contractor shall include any amount earned for authorized Change Orders. Contractor shall certify under penalty of perjury, that all cost breakdowns and periodic estimates accurately reflect the Work on the Project.
- B. From the total thus computed, a deduction shall be made in the amount of five percent (5%) for retention, except where the Agency has adopted a finding that the Work done under the Contract is substantially complex, and then the amount withheld as retention shall be the percentage specified in the Contract Documents. The amount computed, less the amount withheld for retention and any amounts withheld as set forth below, shall be the amount of the Contractor's payment request.
- C. Agency may withhold a sufficient amount or amounts of any payment or payments otherwise due to Contractor, as in its judgment may be necessary to cover:
 - 1. Payments which may be past due and payable for just claims against Contractor or any Subcontractors for labor or materials furnished in and about the performance of work on the Project under this Contract.
 - 2. Defective Work not remedied.
 - 3. Failure of Contractor to make proper payments to his Subcontractor or for material or labor.
 - 4. Completion of the Contract if there is a reasonable doubt that the Work can be completed for balance then unpaid.
 - 5. Damage to another contractor or a third party.

6. Amounts which may be due the Agency for claims against Contractor.
 7. Failure of Contractor to keep the Record Drawings up to date.
 8. Failure to provide update on construction schedule as required herein.
 9. Site cleanup.
 10. Failure to comply with Contract Documents.
 11. Liquidated damages.
 12. Legally permitted penalties.
- D. Agency may apply such withheld amount or amounts to payment of such claims or obligations at its discretion with the exception of subsections (C)(1), (3), and (5) of this Article, which must be retained or applied in accordance with applicable law. In so doing, the Agency shall be deemed the agent of Contractor and any payment so made by the Agency shall be considered as a payment made under contract by the Agency to Contractor and the Agency shall not be liable to Contractor for such payments made in good faith. Such payments may be made without prior judicial determination of claim or obligations. The Agency will render Contractor a proper accounting of such funds disbursed on behalf of Contractor.
- E. Upon receipt, the Engineer shall review the payment request to determine whether it is undisputed and suitable for payment. If the payment request is determined to be unsuitable for payment, it shall be returned to Contractor as soon as practicable but not later than seven (7) Days after receipt, accompanied by a document setting forth in writing the reasons why the payment request is not proper. The Agency shall make the progress payment within 30 Days after the receipt of an undisputed and properly submitted payment request from Contractor, provided that a release of liens and claims has been received from the Contractor pursuant to Civil Code section 8132. The number of days available to the Agency to make a payment without incurring interest pursuant to this paragraph shall be reduced by the number of Days by which the Engineer exceeds the seven (7) Day requirement.
- F. A payment request shall be considered properly executed if funds are available for payment of the payment request and payment is not delayed due to an audit inquiry by the financial officer of the Agency.
- G. Agency shall have the right to adjust any estimate of quantity and to subsequently correct any error made in any estimate for payment.

10.3 Final Acceptance and Payment

- A. Following the Agency's acceptance of the Work, the Contractor shall submit to the Agency a detailed Project accounting as detailed in the Contract.
- B. When the Work has been accepted there shall be paid to Contractor a sum equal to the Contract Price less any amounts previously paid Contractor and less any amounts withheld by the Agency from Contractor under the terms of the Contract. The final five percent (5%), or the percentage specified in the Notice Inviting Bids where the Agency has adopted a finding of substantially complete, shall not become due and payable until as required by Public Contract Code section 7107. If the Contractor has placed securities with the Agency as described herein, the Contractor shall be paid a sum equal to one hundred percent (100%) of the Contract Price less any amounts due the Agency under the terms of the Contract.
- C. Unless Contractor advises the Agency in writing prior to acceptance of the final five percent (5%) or the percentage specified in the Contract Documents where the Agency has adopted a finding of completion, or the return of securities held as described herein, said acceptance shall operate as a release to the Agency of all claims and all liability to Contractor for all things done or furnished in connection with this Work and for every act of negligence of the Agency and for all other claims relating to or arising out of this Work. If Contractor advises the Agency in writing prior to acceptance of final payment or return of the securities that there is a dispute regarding the amount due the Contractor, the Agency may pay the undisputed amount contingent upon the Contractor furnishing a release of all undisputed claims against the Agency with the disputed claims in stated amounts being specifically excluded by Contractor from the operation of the release. No payments, however, final or otherwise, shall operate to release Contractor or its sureties from the faithful performance bond, labor and material payment bond, or from any other obligation under this Contract.
- D. In case of termination of the Contract any unpaid balance shall be and become the sole and absolute property of the Agency to the extent necessary to repay the Agency any excess in the cost of the Work above the Contract Price.
- E. Final payment shall be made no later than 60 Days after the date of acceptance of the Work by the Agency or the date of occupation, beneficial use and enjoyment of the Work by the Agency including any operation only for testing, start-up or commissioning accompanied by cessation of labor on the Work, provided that a release of liens and claims has been received from the Contractor pursuant to Civil Code section 8136. In the event of a dispute between the Agency and the Contractor, the Agency may withhold from the final payment an amount not to exceed 150% of the disputed amount.
- F. Within ten (10) Days from the time that all or any portion of the retention proceeds are received by Contractor, Contractor shall pay each of its Subcontractors from whom

retention has been withheld each Subcontractor's share of the retention received. However, if a retention payment received by Contractor is specifically designated for a particular Subcontractor, payment of the retention shall be made to the designated Subcontractor if the payment is consistent with the terms of the subcontract.

ARTICLE 11 - Miscellaneous

11.1 Patents.

- A. Contractor shall hold and save the Agency, officials, officers, employees, and authorized volunteers harmless from liability of any nature or kind of claim therefrom including costs and expenses for or on account of any patented or unpatented invention, article or appliance manufactured, furnished or used by Contractor in the performance of this Contract.

11.2 Document Retention & Examination

- A. In accordance with Government Code section 8546.7, records of both the Agency and the Contractor shall be subject to examination and audit by the State Auditor General for a period of three (3) years after final payment. Contractor shall make available to the Agency any of the Contractor's other documents related to the Project immediately upon request of the Agency. In addition to the State Auditor rights above, the Agency shall have the right to examine and audit all books, estimates, records, contracts, documents, bid documents, subcontracts, and other data of the Contractor (including computations and projections) related to negotiating, pricing, or performing the modification in order to evaluate the accuracy and completeness of the cost or pricing data at no additional cost to the Agency, for a period of four (4) years after final payment.

11.3 Notice.

- A. All notices shall be in writing and either served by personal delivery or mailed to the other party. Written notice to the Contractor shall be addressed to Contractor's principal place of business unless Contractor designates another address in writing for service of notice. Notice to the Agency shall be addressed to the Agency as designated in the Notice Inviting Bids unless the Agency designates another address in writing for service of notice. Notice shall be effective upon receipt or five (5) Days after being sent by first class mail, whichever is earlier. Notice given by facsimile shall not be effective unless acknowledged in writing by the receiving party.

11.4 Notice of Third Party Claims

- A. Pursuant to Public Contract Code section 9201, the Agency shall provide the Contractor with timely notification of the receipt of any third-party claims relating to the Contract. The Agency is entitled to recover reasonable costs incurred in providing such notification.

11.5 State License Board Notice

- A. Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

11.6 Assignment of Contract

- A. Contractor shall not assign, transfer, convey, sublet or otherwise dispose of the rights or title of interest of any or all of this contract without the prior written consent of the Agency. Any assignment or change of Contractor's name of legal entity without the written consent of the Agency shall be void. Any assignment of money due or to become due under this Contract shall be subject to a prior lien for services rendered or material supplied for performance of Work called for under the Contract Documents in favor of all persons, firms, or corporations rendering such services or supplying such materials to the extent that claims are filed pursuant to the Civil Code, the Code of Civil Procedure or the Government Code.

11.7 Change In Name And Nature Of Contractor's Legal Entity.

- A. Should a change be contemplated in the name or nature of the Contractor's legal entity, the Contractor shall first notify the Agency in order that proper steps may be taken to have the change reflected on the Contract and all related documents. No change of Contractor's name or nature will affect the Agency's rights under the Contract, including but not limited to the bonds.

11.8 Prohibited Interests

- A. No Agency official or representative who is authorized in such capacity and on behalf of Agency to negotiate, supervise, make, accept, or approve, or to take part in negotiating, supervising, making, accepting or approving any engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the project, shall be or become directly or indirectly interested financially in the Contract.

11.9 Controlling Law

- A. Notwithstanding any subcontract or other contract with any Subcontractor, Supplier, or other person or organization performing any part of the Work, this Contract shall be governed by the law of the State of California excluding any choice of law provisions.

11.10 Jurisdiction; Venue

- A. Contractor and any Subcontractor, Supplier, or other person or organization performing any part of the Work agrees that any action or suits at law or in equity arising out of or related to the bidding, award, or performance of the Work shall be maintained in the Superior Court of Sonoma County, California, and expressly consent to the jurisdiction of said court, regardless of residence or domicile, and agree that said court shall be a proper venue for any such action.

11.11 Cumulative Remedies.

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

11.12 Survival of Obligations.

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

11.13 Headings.

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

11.14 Assignment of Antitrust Actions

- A. In accordance with §7103.5(b) of the California Public Contract Code, Contractor and Subcontractors must conform to the following requirements:
 - 1. In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, Contractor or Subcontractor offer and agree to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under §4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with §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.

2. This assignment must be made and become effective at the time the awarding body tenders to Contractor, without further acknowledgment by the parties.

11.15 Other Legal Provisions.

- A. Contractor shall give all notices and comply with all federal, state and local laws, ordinances, rules and regulations bearing on conduct of work as indicated and specified by their terms. References to specific laws, rules or regulations in this Contract are for reference purposes only, and shall not limit or affect the applicability of provisions not specifically mentioned. If Contractor observes that drawings and specifications are at variance therewith, he shall promptly notify Agency in writing and any necessary changes shall be adjusted as provided for in this Contract for changes in Work. If Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to Agency, he shall bear all costs arising therefrom.
- B. Contractor shall be responsible for familiarity with the Americans with Disabilities Act ("ADA") (42 U.S.C. § 12101 et seq.). The Work will be performed in compliance with ADA laws, rules and regulations. Contractor shall comply with the Historic Building Code, including, but not limited to, as it relates to the ADA, whenever applicable.
- C. Contractor acknowledges and understands that, pursuant to Public Contract Code section 20676, sellers of "mined material" must be on an approved list of sellers published pursuant to Public Resources Code section 2717(b) in order to supply mined material for this Contract.
- D. No Agency official or representative who is authorized in such capacity and on behalf of Agency to negotiate, supervise, make, accept, or approve, or to take part in negotiating, supervising, making, accepting or approving any engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the Work, shall be or become directly or indirectly interested financially in the Contract.
- E. All provisions of law required to be inserted in the Contract or Contract Documents pursuant to any Applicable Laws shall be and are inserted herein. If through mistake, neglect, oversight, or otherwise, any such provision is not herein inserted or

inserted in improper form, upon the application of either party, the Contract or Contract Documents shall be changed by Agency, at no increase in Contract Price or extension in Contract Times, so as to strictly comply with the Applicable Laws and without prejudice to the rights of either party hereunder.

Attachment 2

Scope Of Services

1. Pre-Construction Phase Services.

During the Pre-Construction Phase, CMAR shall perform management and coordination services, plan and specification constructability reviews, provide value-engineering reviews and recommendations and other reviews as necessary to verify that the drawings and specifications are clear and reasonably accurate to minimize the need for changes during the Construction Phase of the Project, including, but not limited to, the following:

1.1 General Services. CMAR shall:

(a) Attend regular meetings during Project development between the Architect, the Agency, Agency site personnel, and any other applicable consultants of the Agency as required to discuss the Project, including budget, scope and schedule.

(b) Assist Architect with the making of a written record of all meetings, conferences, discussions and decisions made between or among the Agency, Architect and CMAR.

(c) Assist the Architect with making formal presentations to the governing board of Agency.

(d) Prepare and update the preliminary Project schedule.

(e) Prepare and update the components of the GMP and shall be primarily in control of ensuring that the Project can and is constructed for no more than that amount.

(f) Provide review and comment upon geotechnical / soils investigation and report;

(g) Provide review and comment upon the survey of the Project site;

(h) Provide review and comment upon any environmental impact report ("EIR") or other required California Environmental Quality Act ("CEQA") documents with Agency's CEQA consultant.

1.2 Design-Assist Subcontractors. CMAR may utilize the services of the design-assist Subcontractors to perform Pre-Construction Services. CMAR acknowledges that compensation for such design-assist subcontractors are included in the Pre-Construction Services Fee. CMAR

shall be responsible for all Work performed by design-assist Subcontractors. CMAR may utilize design-assist Subcontractors to perform Construction Work so long as the Construction Cost provided by such design-assist Subcontractors are reasonable and consistent with the rates that the Agency would have received had the CMAR bid that Construction Work.

1.3 Preconstruction Services & Target GMP. The Agency has set an estimated construction cost for the Project of \$16,768,329 which shall be the target GMP for the Project ("Target GMP"). CMAR shall perform all Pre-Construction Services such that the GMP Proposal shall not include a GMP that exceeds the Target GMP. If, at any time, during the Project CMAR determines that the final GMP will exceed the Target GMP, CMAR shall inform the Agency in writing.

1.4 Preconstruction Schedule and Phasing Plan. Within fifteen (15) Days of the Agency's issuance of a Notice to Proceed for Pre-Construction Services, CMAR shall prepare a preconstruction schedule to guide the design team through to the solicitation of Subcontractor bids. That schedule shall show the multiphase and interrelations of design, Value Engineering (as defined below), Constructability Review (as defined below), and estimating. CMAR shall also prepare a full construction schedule for the Project detailing the phasing and construction activities. CMAR shall further investigate, recommend and prepare a schedule for the Agency's purchase of materials and equipment requiring long lead time procurement, and coordinate the schedule with the early preparation of portions of the Contract Documents by the Architect.

1.5 Review of Construction Documents. CMAR shall review the Construction Documents completed by the Architect and have a complete understanding of the Project design and scope. CMAR will work cooperatively with the Architect to develop a progressive design, with the CMAR role to provide input on value engineering, schedule impacts, constructability, and materials of construction, construction methods, and costs to help refine the Project to meet the needs of Agency as described in subsequent sections. It is the intent to provide design input early and appropriately to avoid schedule delays and re-design. This includes without limitation the following:

(a) Provide recommendations on site use and improvements, selection of materials, building systems and equipment and methods of Project delivery;

(b) Provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction of the Project and subparts thereof, and factors relating to cost including, but not limited to, construction costs of alternate designs of materials, preliminary budgets and possible economics that could be achieved through alternate methods or substitutions;

- (c) Provide interim design phase estimates to establish and maintain the Project budget and scheduled costs; and
- (d) Provide plan review.

1.6 Labor/Materials Marketplace Survey. CMAR shall survey the existing labor and materials marketplace conditions in the locality of the Project to ascertain the availability of suitable labor and materials necessary to complete Project construction as outlined in the scope of work. Within thirty (30) Days of the date indicated in the Project Milestone Schedule attached as Attachment 6 for the Agency to issue a Notice to Proceed for Pre-Construction Services, the CMAR shall complete the labor/materials marketplace survey and provide the Agency with a written evaluation of the extent of available and suitable labor/materials and whether the CMAR anticipates that the extent of available and suitable labor/materials will impact the costs/time for completion of Project construction. If the CMAR concludes that the extent of available and suitable labor/materials may have an adverse impact on costs/time for completion of Project construction, the CMAR's written evaluation shall include recommendations for measures to mitigate such potential adverse impacts to costs/time. CMAR must continually review the Construction Documents to identify long lead procurement items (manufactured/fabricated items, equipment, materials and supplies) for the Project. Long lead items should be identified in the bid packages and Project schedule prepared by CMAR. If authorized by the Agency, CMAR will ensure that it procures long-lead items prior to bidding bid packages. CMAR shall track progress of the manufacturing or fabricating these long lead items and advise the Agency of any problems or possible delays in delivery. Agency reserves the right to procure any and all the materials and equipment required for the Project.

1.7 Value Engineering. CMAR's review of Construction Documents shall include Value Engineering. "Value Engineering" or "VE" as used herein shall mean an organized effort to analyze the functions of systems, equipment, facilities, services, and supplies depicted in Construction Documents prepared by Architect for the Project to identify equipment, materials or systems which provide for comparable function at reduced initial or life-time cost consistent with required performance, reliability, quality, and safety for similar types of projects. Value Engineering is intended to enable a contractor to construct the Project more efficient and economically consistent with the Project's goals and objectives, without sacrificing quality. The following Value Engineering obligations, including the preparation of the VE Report (as defined below) shall be performed after the Architect's completion of 50% Construction Documents.

- (a) Value Engineering Requirements. In performing Value Engineering, the CMAR shall, without limitation, do the following:

(i) Identify all documents necessary for CMAR to fully understand the background and decisions that have influenced the design.

(ii) Coordinate with the Agency and Architect to obtain any further documentation necessary to develop this understanding.

(iii) Review relevant meeting minutes, master plans, Agency design guidelines, Construction Documents and all other necessary documents related to the Project.

(iv) Analyze and understand key functional issues governing the Project, Project design, and Project systems so that CMAR understands how to best approach Value Engineering.

(v) Develop an understanding of the Agency's key criteria, objectives, and budgetary constraints with respect to the development of the Project.

(vi) Coordinate with the Agency and the Architect as necessary in the performance of Value Engineering to ensure that CMAR's recommendations are consistent with the Agency's criteria, objectives, and budgetary constraints.

(vii) Consider all ways to provide function within the Project at a lesser initial or life-cycle-cost representing improved value to the Agency without sacrificing quality.

(viii) Coordinate with the Architect to ensure that any recommendation is compliant with any authority having jurisdiction over the Project.

(b) Value Engineering Report. If, upon completing its review of the Construction Documents, CMAR believes that Work of the Project depicted in the Construction Documents, construction processes/procedures, specified materials/equipment or other aspects of the Construction Documents can be modified to reduce Construction Costs and/or the time for achieving Final Completion of the Project and/or to extend life-cycle and/or to reduce maintenance/operations costs, without diminution in the quality of materials/equipment/workmanship, scope or intended purposes of the Project, CMAR shall identify the same in writing (the "VE Report") for review and acceptance by Agency.

(i) VE Report Requirements. At a minimum, CMAR shall include the following in the VE Report:

(1) Recommendation Narrative. A narrative describing the difference between the existing Construction Documents and any change to the Construction Documents, the comparative advantages and disadvantages of each, to the extent applicable, a

justification if an item's function is being altered, and the effect of the change on system and facility performance.

(2) Changes to Construction Documents. A list and analysis of design criteria or specifications that must be changed if the Agency accepts the recommendation.

(3) Hard Costs. A detailed estimate of the impact on Project cost of the recommendation, if accepted and implemented by the Agency.

(4) Soft Costs / Maintenance Costs. A description and estimate of costs the Agency may incur in implementing the recommendation, including, without limitation, design costs, additional testing and inspections, and ongoing maintenance costs.

(5) Life Cycle Costs. A prediction of any effects the proposed recommendation may have on life cycle cost.

(6) Schedule Impacts. The effect the recommendation may have on design or construction schedules. CMAR shall include the amount of Days the Project would expected to extended or reduced based upon the change, which shall be broken down by each individual task related to that scope of work (e.g., shop drawing submittals, lead times for the procurement of materials and supplies, construction, etc.).

(ii) VE Report Presentation / Meeting. After the submittal of the VE Report, and upon the Agency's request, CMAR shall meet with the Agency to present the VE Report to the Agency and respond to any questions concerning the recommended changes in the VE Report.

(iii) Agency Review / Acceptance.

(1) Prior to authorizing Architect's performance of next phase design services, the Agency shall review the VE Report and decide whether to accept in writing any changes to the Construction Documents.

(2) Upon Agency's acceptance of change(s) to the Construction Documents, the CMAR shall send written direction to the Architect to incorporate those changes into the Construction Documents.

(3) Upon Architect's notice that it has incorporated the changes into the Construction Documents, CMAR shall review the modified Construction Documents to ensure that the Agency accepted changes are incorporated into the Construction Documents. If the CMAR determines that the Architect has not incorporated into the

Construction Documents the changes accepted by the Agency, CMAR shall advise the Agency in writing of the changes that were not included in the modified Construction Documents, and shall assist the Agency in ensuring that the Architect incorporates those modifications.

(4) If Architect disputes or otherwise recommends the denial of any recommendation from a VE Report, the Agency shall present a summary of the dispute to the Parties, and, within ten (10) days, each Party shall provide, in writing, to the Agency its statement of its position regarding the dispute to the Agency. Agency shall thereafter issue a written decision, which will be binding on the Parties.

1.8 Constructability Review. Concurrently with CMAR's review of the Construction Documents as to Value Engineering, CMAR shall perform Constructability Review(s). "Constructability Review(s)" or "CR(s)" as used herein shall mean a systematic review of the Design and Construction Documents to ensure that the Construction Documents delineate clear and feasible construction techniques, including, without limitation, making certain that the requirements of the construction work are clear, the Construction Documents are coordinated, and that they assist the contractor in subcontractor bidding, construction and project administration to result in reduced impacts to the Project. The purpose of the Constructability Review is to eliminate flaws in the Construction Documents, eliminate issues that may cause other impacts, and to ultimately enable CMAR to bid, coordinate, schedule, sequence and construct the Project efficiently, and without time and scheduling impacts. The following Constructability Review obligations, including the preparation of the CR Report (as defined below) shall be performed after the Architect's completion of 50% Construction Documents.

(a) Constructability Review Requirements. In performing Constructability Review, CMAR shall, without limitation, do the following:

(1) Review the Design and Construction Documents and all other necessary documents related to the Project, including, without limitation, geotechnical reports, soils reports, and hazardous materials reports, to fully understand the Project, Project scope, and the Project site and to enable the CMAR to identify issues regarding constructability and associated risks arising from the current Construction Documents. The Constructability Review shall include the review of every element encountered by the general contractor during construction of the Project, including, without limitation whatsoever: material delivery, storage, site clearing, utilities work (location, interconnection, existing utilities, etc.), excavation, SWPPP requirements, field office locations, demolition, depiction of existing conditions, required equipment, required permits, coordination of the trades, verifying design elements, visual depictions, site access, traffic control, foundation of piers, etc.

(2) Identify existing conditions which may present construction problems and make recommendations regarding the project footprint, including, without limitation, Project limits within the Project site.

(3) Perform a field inspection to familiarize itself with the Project site and to enable it to provide detailed comments to the Construction Documents during the Constructability Review.

(4) Review the project budget for the current phase of design to determine whether the Project can be constructed within budget constraints and in light of risks identified during Constructability Review.

(5) Review the Construction Documents and propose an appropriate Project duration, sequencing, phasing, and the separation of subcontracts into categories of the work and trade bid packages.

(6) Coordinate with Agency and Architect as necessary in the performance of the Constructability Review.

(b) Constructability Report. At the conclusion of the Constructability Review for each phase of design, CMAR shall prepare a report ("CR Report") and submit the CR Report to the Agency. Each CR shall include all findings and recommendations made as a result of the CR, and shall identify any and all risks or impacts arising from any issues identified therein.

(i) Constructability Report Requirements. At a minimum, CMAR shall include the following in the CR Report:

(1) Issue / Risk Narrative. A narrative identifying each issue and the impact or risk associated with that issue. The narrative shall also include recommendations to avoid the risk or impact by making changes to the Construction Documents.

(2) Coordination. Identify any areas in which the drawings or specifications are not coordinated.

(3) Changes to Construction Documents. A list and analysis of design criteria or specifications that could be changed based on any identified issue.

(4) Budget Review. A narrative describing CMAR's review of the budget, and discussing whether the current budget for the Project is sufficient or achievable in light of the issues identified.

(5) Planning Review. A narrative describing CMAR's proposed Project duration, sequencing, phasing, and the separation of subcontracts into categories of the work and trade bid packages.

(ii) CR Report Presentation / Meeting. After the submittal of the CR Report, and upon Agency's request, CMAR shall meet with the Agency to present the CR Report to the Agency and respond to any questions concerning any issues raised in the CR Report.

(iii) Agency Review / Acceptance.

(1) Prior to authorizing Architect's performance of next phase design services, Agency shall issue the CR Report to Architect and, in its discretion, may instruct Architect to address the issues raised in the CR report.

(2) Architect shall then address any issues identified in the CR Report. Upon the Architect's notice that it has addressed all issues, CMAR shall review the modified Construction Documents to ensure that the issues in the CR have been addressed. If the CMAR determines that the Architect has not addressed any issue identified in the CR Report, the CMAR shall advise the Agency in writing of the unaddressed issues and shall assist the Agency in ensuring that the Architect addresses those issues.

(3) If the Architect objects to addressing any issue raised in the CR Report, CMAR shall meet and coordinate with the Architect to determine the proper resolution of the objection and shall issue a written recommendation to the Agency as to whether Architect should address the issue. The Agency shall thereafter issue a written decision, which will be binding on the Architect.

(iv) Confirm Modifications to Construction Documents. If Agency accepts CMAR's comments, including the value-engineering and/or constructability review comments, CMAR shall review the construction documents to confirm that those comments are properly incorporated into the final construction documents.

1.9 Budget of Project Costs. After the Architect's completion of 50% Construction Documents and 90% Construction Documents, CMAR shall prepare, or update and refine, the budget of the GMP based on the most recent set of Construction Documents. CMAR shall also advise the Agency and the Architect if it appears that the total construction costs may exceed the GMP established by the Agency and shall make recommendations for corrective action. CMAR will further provide input to the Agency and Architect relative to value of construction, means and methods for construction, duration of construction of various building methods and constructability. In each budget of the GMP, CMAR shall include values of scopes of work

subdivided into component parts in sufficient detail to serve as the basis for progress payments during construction.

1.10 Construction Planning and Bidding. CMAR shall, in consultation with Agency and Architect, develop an overall strategy for bidding and constructing the Project taking into account factors affecting time for completing construction of the Project or the costs of constructing the Project, and which shall include and be consistent with the Subcontractor Procurement Process. CMAR shall conduct interviews and participate in meetings and conferences with the Architect, Agency's staff and others as necessary to develop a bidding and construction strategy consistent with Agency's Project objectives. CMAR shall submit its written recommended bidding and construction strategy to the Agency for review and approval. CMAR shall not solicit bids or procure Subcontractors for the Construction Phase unless and until CMAR has submitted, and Agency has approved in writing, the bidding and construction strategy.

1.11 Development Of Bid Packages. Based upon its review of Construction Documents (including any Agency accepted Value Engineering Reports and Constructability Review Reports), CMAR shall develop written bid package descriptions suitable for bidding by subcontractors. At least eight (8) Days prior to the date indicated in the Project Milestone Schedule attached as Attachment 6 for the CMAR to solicit bids or proposals, the bid packages developed by CMAR shall be submitted to Agency for review and acceptance by Agency. Agency will complete review of the bid packages and provide CMAR with comments, requested modifications and similar matters relating to the proposed bid packages. Notwithstanding the foregoing provisions or any other provisions of this Contract, the review of bid packages by Agency and acceptance of bid packages by Agency: (a) shall not relieve CMAR of its responsibility under this Contract for developing bid packages which shall incorporate all work, labor, materials, equipment and services necessary to construct the Project depicted in the Contract Documents for bidding by subcontractors; or (b) be deemed the assumption of responsibility by the Agency for the completeness, accuracy or sufficiency of any bid package or the totality of the bid packages developed by the CMAR. CMAR shall modify the Bid Packages as necessary to obtain the Agency's acceptance of the entirety of each Bid Package and the entirety to all bid packages. Costs for work, labor, materials or services indicated in the Construction Documents issued for bidding by subcontractors which are not incorporated into a bid package shall be the sole responsibility of CMAR.

1.12 Bidding for Subcontractor Work. CMAR shall solicit and procure subcontractors pursuant to the Subcontractor Procurement Process attached to this Contract as Attachment 3.

1.13 The GMP Proposal.

(a) After CMAR completes the Subcontractor Procurement Process in Attachment 3 and/or at a time mutually agreed to by the Parties in a writing signed by both Parties, CMAR shall submit a proposal to the Agency (the “GMP Proposal”) for management and construction of the Project as part of the Construction Phase for a Guaranteed Maximum Price. The GMP for the Construction Services shall be developed consistent with all requirements of the Contract Documents, including, without limitation, the components of the GMP set forth in the Contract.

(b) CMAR shall include with the GMP Proposal a written statement of its basis for the GMP, which shall include the following:

(i) A list of the Construction Documents, including, among other things, the Drawings and Specifications used as the basis for the GMP;

(ii) A list of the assumptions, exceptions, and clarifications made by CMAR in the preparation of the Proposal, which list is intended to supplement the information contained in the Construction Documents;

(iii) CMAR’s proposed GMP for the Construction Services, including a statement of the estimated cost and a schedule of values organized by trade categories, allowances, and other items that comprise the GMP that shall, once agreed upon, become the Schedule of Values for the Project;

(iv) A list of all first-tier Subcontractors performing work that is equal to or greater than one-half of one-percent of the GMP;

(v) All documents necessary to substantiate CMAR’s compliance with the Subcontractor Procurement Process;

(vi) The guaranteed final completion date of the Project (“Guaranteed Completion Date” or “GCD”); and

(vii) Any other information required by the Agency.

1.14 Review of the Proposal.

(a) Upon receipt of CMAR’s Proposal, Agency may enter into negotiations with CMAR on the GMP to achieve a GMP mutually acceptable to the Parties. The determination of the GMP shall be by written amendment duly executed by the Parties (“GMP Amendment”). Unless otherwise expressly stated by the Parties in writing, the GMP Amendment shall not modify

any portion of this Contract except establishing or confirming the GMP and GMP for the Construction Phase.

(b) If the Parties are unable to reach an agreement on CMAR's Proposal, CMAR shall complete the Pre-Construction Services, if not yet completed. Agency shall pay CMAR only for the compensation agreed to for the Pre-Construction Services. All deliverables including without limitation Work Product, documents, engineering, budget costs, preliminary design, schedule and data developed by CMAR during the Pre-Construction Phase shall become the exclusive property of the Agency and shall be provided to Agency within ten (10) Days of Agency's notice to CMAR that Agency does not intend to move forward with a GMP and/or the Construction Phase.

1.15 Terms for Early Purchases of Equipment.

(a) Early Purchase Item(s). The term "Early Purchase Item(s)" means the material(s) and equipment that CMAR identifies in writing to Agency as those long lead time items that CMAR shall purchase before the issuance of a Notice to Proceed for Construction Services.

(b) Early Purchase Price (Total Purchase Price). The term "Early Purchase Price" means the individual cost for any one (1) Early Purchase Item, and the term "Total Early Purchase Price" means the "Total Cost" of the Early Purchase Items identified above.

(c) Notice & Evidence of Order. After CMAR identifies which items are long lead time items that CMAR intends to purchase before the issuance of a Notice to Proceed for Construction Services, the Agency shall approve, in writing, such early purchases and direct CMAR to make those purchases ("Early Purchase Notice"). Within THREE (3) calendar days of the issuance of the Early Purchase Notice, Contractor shall provide the Agency with a purchase order, bill of sale, bill of lading, invoice, or any other document identifying Contractor and/or its subcontractor as the title owner to Early Purchase Item(s) ("Purchase Documentation").

(d) Proof of Receipt of Early Purchase Item. Upon delivery of the Early Purchase Item(s) to CMAR, whether at the Project site or off-site, CMAR shall provide the Agency with verifiable documentation of the receipt of any Early Purchase Item(s) in the form of photographs specifically identifying:

- (i) The Early Purchase Item(s);
- (ii) The serial number(s) of each Early Purchase Item(s); and/or
- (iii) Other indicia authenticating the Early Purchase Item(s).

(e) Total Compensation. Agency shall pay CMAR for the Early Purchase Item(s) an amount not to exceed the Total Early Purchase Price. Agency shall pay CMAR for the Early Purchase Item(s) on the terms set forth below (each, a “Early Purchase Payment”):

(i) Upon Proof of Purchase (50%). Agency shall pay CMAR Fifty-Percent (50%) of the Early Purchase Price for each Early Purchase Item identified in the Purchase Documentation, upon the Agency’s receipt of the Purchase Documentation.

(ii) Upon Delivery (25%). Agency shall pay CMAR Twenty-Five Percent (25%) of the Early Purchase Price for each Early Purchase Item identified in the Purchase Documentation, upon delivery of the Early Purchase Item(s) to the Project site, or, if stored off-site, upon delivery of the Early Purchase Item(s) to the location for off-site storage.

(f) Upon Installation (20%). After the issuance of a Notice to Proceed for Construction Services the Agency shall pay CMAR Twenty Percent (20%) of the Early Purchase Price for each Early Purchase Item identified in the Purchase Documentation when:

(i) CMAR completes installation of the Early Purchase item;

(ii) The installation is approved by the Agency and/or Architect; and

(iii) The Agency approves the Application for Payment of documenting the complete installation of the Early Purchase Item(s).

(g) Retention. Agency shall retain Five Percent (5%) of the amount owed to CMAR from each Early Purchase Payment. Retention shall be released when the Contractor achieves completion of the Project consistent with the terms of the Contract Documents.

(h) Schedule of Values. When Contractor prepares its Schedule of Values for construction of the Project, Contractor shall include a line item(s) for each Early Purchase Item consistent with the Contract Documents.

(i) Storage and Related Requirements. Contractor’s obligations to store the Early Purchase Item(s) shall comply with all requirements for storage of equipment and materials the Contract Documents and shall ensure that all policies of insurance protecting property shall cover the Early Purchase Item(s).

(j) No Adjustment to the Contract Price or Contract Time. CMAR expressly agrees and acknowledges that this process for the early purchase of equipment and materials herein is a contractual mitigation measure to avoid increased costs and to avoid delay(s) to the

construction of the Project. Agency's consent to this process hereunder shall in no way entitle the Contractor to an increase in the GMP or an extension of the GCD after the issuance of the Notice to Proceed for construction of the Project, unless otherwise permitted, and consistent with the requirements of, the Contract Documents.

2. Construction Phase Services.

CMAR agrees that it shall provide the Construction Services and shall be responsible for the construction of the Project and provision of the Construction Phase Services, in accordance with the Contract Documents, include without limitation the Contract and General Conditions (Attachment 1). CMAR shall provide administrative, management and related services necessary to manage, schedule, sequence and coordinate the work during the Construction Phase of the Project so that the Agency's Project objectives (including without limitation, budgetary and time objectives) are achieved and that the work is completed in strict conformity with the requirements of Contract Documents.

ATTACHMENT 3

SUBCONTRACTOR PROCUREMENT PROCESS

- 1.** Subcontractor Bid Packages. CMAR shall prepare separate and specific Subcontractor bid packages that include all scope(s) of construction Work included in the Plans and Specifications.
- 2.** Public Notice. CMAR shall provide notice of bidding for Subcontractors in accordance with the publication requirements applicable to the Agency's competitive selection process to solicit Subcontractors in compliance with statutory requirements and the Agency's process.
- 3.** Agency Review of Bid Packages and Notice. At least fourteen (14) Days prior to the bidding of Subcontractor bid packages, CMAR shall provide Agency with a copy of the written notice it will publish (including newspaper advertising) to solicit Subcontractors. Agency reserves the right to request that CMAR reasonably revise its published notice.
- 4.** Three Bona Fide Bids. CMAR is required to receive at least three (3) bona fide bids from Subcontractors for all scopes of Work on the Project that constitute more than three percent (3%) of the total Project scope of Work. Prior to the CMAR seeking bids, Agency may, in its sole discretion, and upon CMAR's written request, authorize CMAR to utilize a different minimum number of bona fide bids from Subcontractors.
- 5.** Open-Book / Bid Opening. CMAR shall invite the Agency to attend all bid opening(s) for the Project and shall within 48 hours of the bid opening(s) provide copies or access to all bid documents provided by all Subcontractors.
- 6.** Missing Scopes of Work in Subcontractor Bids ("Bid Levelling"). When CMAR has received all Subcontractor bids, CMAR shall identify all scope(s) of Construction Services for which CMAR did not receive a bid and provide a written justification as to why the scope(s) of Construction Services was either not included in a Subcontractor bid or was not bid on ("Unbid Work"). After Agency reviews the CMAR's justification, the Parties shall meet and confer and Agency shall reasonably determine, in its sole discretion, whether to:
 - 6.1** Direct the CMAR to rebid the Unbid Work; or
 - 6.2** If CMAR requests, allow the CMAR to self-perform the Unbid Work. If CMAR self-performs the Unbid Work, CMAR shall provide substantiation for the pricing for the Unbid Work that CMAR intends to self-perform. The Parties shall negotiate in good faith to determine a reasonable price for the Unbid Work that CMAR intends to self-perform. Agency reserves the right to seek its own pricing of that Work to verify the value of CMAR's proposed pricing.

7. Low Bid; Best Value. CMAR shall award subcontracts to subcontractors with the lowest responsive, responsible bid unless Agency allows CMAR to award by best value.

8. Self-Performing Construction Work. If CMAR intends to propose to self-perform portion(s) of the construction Work, it must:

8.1 a. Receive Agency's prior written approval.

8.2 b. Provide its pricing (its bid) to Agency 48 hours prior to CMAR's receipt of Subcontractor bids for those portion(s) of the Work.

8.3 c. Receive a minimum number of two (2) bona fide bids from Subcontractors for scope(s) of Work that the CMAR is bidding to self-perform, not including the CMAR's pricing/bid.

9. Finalizing GMP. After CMAR completes this Subcontractor Procurement Process and the Agency approves the Subcontractor bids and self-performed construction Work, if any, CMAR shall prepare a GMP Proposal that includes the proposed GMP consistent with the requirements of the Contract Documents.

ATTACHMENT 4
SPECIAL CONDITIONS

[RESERVED]

ATTACHMENT 5
KEY PERSONNEL

1. Key Personnel. The following individuals are CMAR's key personnel, none of whom can be replaced unless approved by Agency as provided herein (such approval not to be unreasonably withheld or delayed):

Project Executive	
Project Manager	
Cost Estimator	
Superintendent	

2. Project Representatives

- 2.1. CMAR's Representative. CMAR hereby designates [***INSERT NAME***], or his or her designee, to act as its representative for the performance of this Contract ("CMAR's Representative"). CMAR's Representative shall have full authority to represent and act on behalf of the CMAR for all purposes under this Contract. CMAR's Representative shall supervise and direct all work on the Project, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the work pursuant to this Contract. If, for whatever reason, the CMAR's Representative is replaced and this section is not revised, or no such representative is designated, CMAR's Representative shall be read as applying to CMAR.
- 2.2. Agency's Representative. Agency hereby designates [***INSERT NAME***] or his or her designee, as the person to act as its representative for the performance of this Contract ("Agency's Representative"). The Agency's Representative shall be authorized to act as liaison between Agency and CMAR in the administration of this Contract and all work on the Project. Agency's Representative shall have the power to act on behalf of the Agency for all purposes under this Contract, including for the purpose of approving the design. Agency may designate new and/or different individuals to act as Agency's Representative from time to time upon written notice to CMAR. If, for whatever reason, the Agency's Representative is replaced and this section is not revised, or no such representative is designated, Agency's Representative shall be read as applying to Agency.

ATTACHMENT 6
PROJECT MILESTONE SCHEDULE

The following is the milestone schedule for the Project:

Event	Completion Date

ATTACHMENT 7
CONSTRUCTION PHASE FEE RESPONSIBILITY MATRIX

[Begins on the Following Page]

ATTACHMENT 8
PERFORMANCE & PAYMENT BOND

[Begins on the Following Page]

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, Zero Waste Sonoma ("Agency") has awarded to [***INSERT NAME***], ("CMAR") an agreement for [***INSERT NAME***] (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the CMAR is more particularly set forth in the Contract Documents for the Project dated [***INSERT NAME***], (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the CMAR is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, the Agency and [***INSERT NAME***] as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the Agency in the sum of _____ dollars, (\$_____), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the CMAR, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one (1) year guarantee of all materials and workmanship; and shall indemnify and save harmless the Agency, its officers and agents, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees including reasonable attorney's fees, incurred by Agency in enforcing such obligation.

The obligations of Surety hereunder shall continue so long as any obligation of CMAR remains. Nothing herein shall limit the Agency's rights or the CMAR or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

Whenever CMAR shall be, and is declared by the Agency to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the Agency's option:

- (1) Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or
- (2) Obtain a Bid or Bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible Bidder, arrange for a Contract between such Bidder, the Surety and the Agency, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the GMP, including other costs and damages for which Surety may be liable. The term "balance of the GMP" as used in this paragraph shall mean the total amount payable to CMAR by the Agency under the Contract and any modification thereto, less any amount previously paid by the Agency to the CMAR and any other set offs pursuant to the Contract Documents.
- (3) Permit the Agency to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the GMP, including other costs and damages for which Surety may be liable. The term "balance of the GMP" as used in this paragraph shall mean the total amount payable to CMAR by the Agency under the Contract and any modification thereto, less any amount previously paid by the Agency to the CMAR and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the Agency may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the CMAR.

Surety shall not utilize CMAR in completing the Project nor shall Surety accept a Bid from CMAR for completion of the Project if the Agency, when declaring the CMAR in default, notifies Surety of the Agency's objection to CMAR's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

CMAR

By: _____
President

Surety

By: _____
Attorney-in-Fact

The rate of premium on this bond is _____ per thousand. The total amount of premium charges, \$_____.

(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety) _____

(Name and Address of Agent or Representative for service of process in California, if different from above) _____

(Telephone number of Surety and Agent or Representative for service of process in California)

NOTE: A copy of the Power-of-Attorney to local representatives of the bonding company must be attached hereto.

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual

☐ Corporate Officer

Title(s)

☐ Partner(s)

☐

Limited

☐

General

☐ Attorney-In-Fact

☐ Trustee(s)

☐ Guardian/Conservator

☐ Other: _____

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document

Number of Pages

Date of Document

Signer is representing:

Name Of Person(s) Or Entity(ies)

Signer(s) Other Than Named Above

PAYMENT BOND (LABOR AND MATERIALS)

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, Zero Waste Sonoma ("Agency") has awarded to [***INSERT NAME***], ("Principal") a contract ("Contract") for [***INSERT NAME***] (hereinafter referred to as the "Project").

WHEREAS, said Principal is required to furnish a bond in connection with said Contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and [***INSERT NAME***] as Surety, are held and firmly bound unto the Agency in the penal sum of _____ dollars (\$_____) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 9100 of the Civil Code, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the Work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the CMAR and his subcontractors pursuant to Section 18663 of the Revenue and Taxation Code, with respect to such Work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by the Agency in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Section 9100 of the Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement

herein above described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such Contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of Contract between the owner or Agency and original CMAR or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 9100 of the Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned and the provisions of Sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the ____ day of _____ 20____ the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

(Corporate Seal of Principal, if corporation)

Principal

By: _____
President

(Seal of Surety)

Surety

By: _____
Attorney-in-Fact

(Attached Attorney-In-Fact Certificate and Required Acknowledgements)

NOTE: A copy of the Power-of-Attorney to local representatives of the bonding company must be attached hereto.

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

☐ Individual

☐ Corporate Officer

Title(s)

☐ Partner(s)

☐

Limited

☐

General

☐ Attorney-In-Fact

☐ Trustee(s)

☐ Guardian/Conservator

☐ Other: _____

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document

Number of Pages

Date of Document

Signer is representing:

Name Of Person(s) Or Entity(ies)

Signer(s) Other Than Named Above

ATTACHMENT 9
HOURLY RATE SCHEDULE FOR EXTRA WORK

[ATTACH RATE SCHEDULE**]**

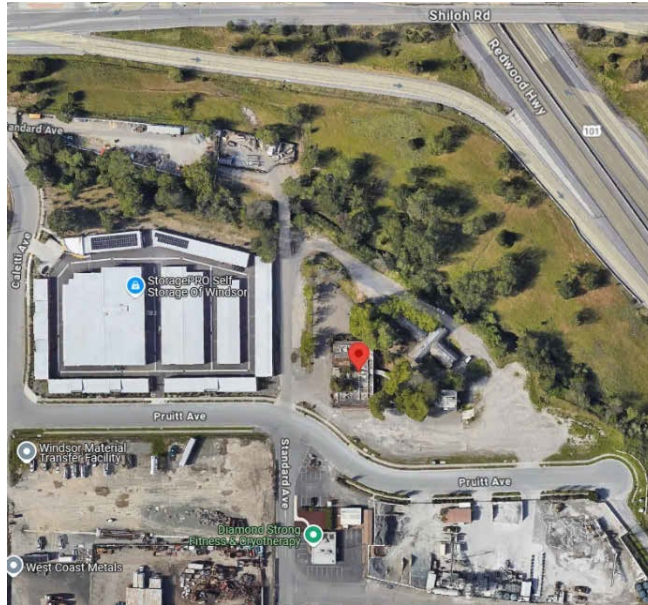
ATTACHMENT 10
CMAR'S COST PROPOSAL FORM

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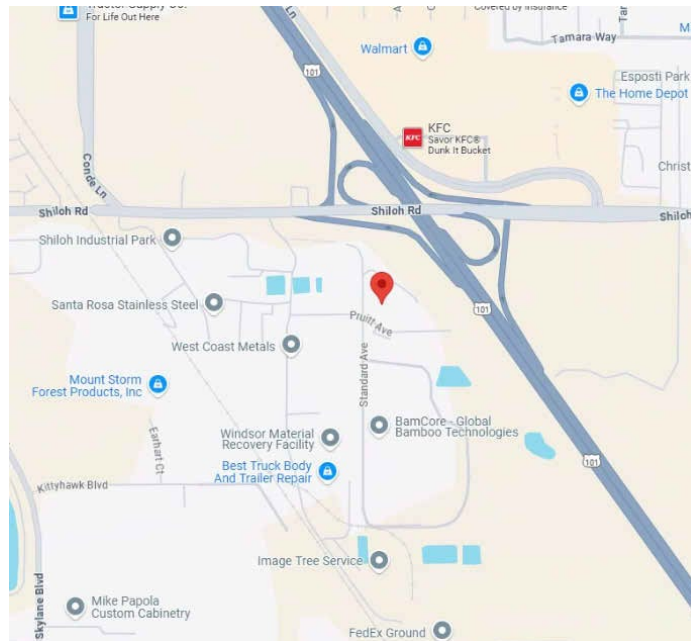
ATTACHMENT 11
CERTIFICATIONS

[Begins on the Following Page]

EXHIBIT C
PROJECT SCOPE



Aerial of Project Site Location 1



Map Location: 5885 Pruitt Ave, Windsor 1



Rendering of New HHWF 1

Project Scope

The project consists of the assistance with the design and the oversight and management of construction of a new household hazardous waste (HHW) facility located at 585 Pruitt Avenue, Windsor, California, intended to serve residents of northern Sonoma County. The project includes:

- Construction of a new one-story Household Hazardous Waste (HHW) facility.
- Exterior hazardous waste and recyclable materials storage areas designed for safe handling and regulatory compliance.
- Covered public drop-off area for the receipt of household hazardous waste from customers.
- Covered roll-off bin collection and staging area to support material handling and transportation.
- Associated site improvements, including utility connections, grading, drainage, paving, landscaping, lighting, and site security, as required.
- Site circulation improvements to accommodate customer vehicles, collection vehicles, and facility operations.

- All supporting infrastructure necessary for a fully functional, code-compliant, and operational HHW facility.

EXHIBIT D
PROJECT SCHEDULE

Zero Waste Sonoma HHW Facility R8



Status	Reporting	Task Name	Start Date	End Date	Duration	Predecessors	Notes
	★	Zero Waste Sonoma Household Hazardous Waste Facility	11/21/24	11/14/26	1039d		Complete the project before July 10, 2026
Overwrite	★	Overall Activities	11/21/24	11/14/26	11d		
Complete	★	Notice to Proceed	11/21/24	11/21/24	1d		
Complete	★	Kickoff Meeting	12/06/24	12/06/24	1d		
	★	Design	12/06/24	03/10/27	69d		Provide construction ready, permitted PS&ES by the end of 2026
	★						
	★	40% Concept Design	12/06/24	02/14/25	51d		
	★						
	★	60% Scheme Design	02/14/25	04/03/25	20d		
Complete	★	100% Scheme Design	04/03/25	04/17/25	14d		
	★						
	★	CMAR Selection	07/23/26	01/15/26	17d		
	★	CMAR RFP Released	07/23/26	09/02/26	34d		
	★	Evaluate CMAR Proposals	09/09/26	09/24/26	12d	41	
	★	CMAR Selection & Award	09/25/26	10/15/26	19d	23 FF, 42	
	★	Design Development	02/16/26	10/21/26	177d		
Complete	★	Authorization to Proceed to Design Development	02/16/26	02/16/26	1d	40	
Complete	★	60% Design Development	02/17/26	04/16/26	94d		
	★	100% Design Development	07/23/26	10/21/26	66d		
	★	Prepare 100% DD Package	07/23/26	09/02/26	30d	41 SS	
	★	Consult to 100% DD Drawings to COAR	09/02/26	09/02/26	1d	56 FF -5d	
	★	COAR Review of 100% DD	09/03/26	09/16/26	10d	56	
	★	Pickup COAR Comments	09/17/26	10/07/26	15d	57	
	★	Submit 100% DD Package to ZWB	10/07/26	10/07/26	0	58	
	★	QA/QC Review of 100% DD Package	10/08/26	10/21/26	10d	62 FF	
	★	Page Flip with ZWB	10/16/26	10/16/26	1d	62 FS -5d	
	★	ZWB 100% DD Review & Approval	10/08/26	10/21/26	10d	59	
	★	Pre-Application and Referral	08/22/26	11/19/26	60d		Town's Pre-Application & Referral Phases (Planning Department)
	★	Pre-App submit to Town of Windsor	08/27/26	09/17/26	15d		
	★	Submit REVIEW APPLICATION to Town of Windsor	09/27/26	09/27/26	0	56 FS +1d	
	★	Town of Windsor Review	09/28/26	09/17/26	15d	65	
	★	Town of Windsor - Referral Phase	09/18/26	11/19/26	45d	66	
	★	Design & Construction Package	10/21/26	04/12/27	123d		
	★	Construction Documents	10/21/26	09/10/27	209d		
	★	Authorization to Proceed to Construction Documents	10/21/26	10/21/26	0	62	
	★	60% Construction Documents	10/22/26	01/13/27	60d		
	★	Prepare 60% CDs	10/22/26	12/02/26	30d	91	
	★	Consult to 60% CD Drawings to COAR	12/02/26	11/23/26	1d	90 FF -5d	
	★	COAR Review of 60% CDs	12/03/26	12/09/26	5d	93	
	★	Pickup COAR Comments	12/10/26	12/23/26	10d	96	
	★	Submit 60% CD Package to ZWB	12/23/26	12/23/26	0	96	
	★	QA/QC Review of 60% CD Package	12/03/26	01/13/27	10d	100 FF	
	★	Page Flip with ZWB	01/07/27	01/07/27	1d	100 FS -5d	
	★	ZWB 60% CD Review & Approval	12/04/26	01/13/27	15d	97	
	★	Authorization to proceed to 90% CDs	01/13/27	01/13/27	0	100	
	★	90% Internal Progress Set - Construction Documents	01/14/27	02/11/27	41d		
	★	Prepare 90% CDs	01/14/27	02/10/27	20d	101	
	★	Consult to 90% CD Drawings to COAR	02/10/27	02/09/27	1d	103 FF -5d	
	★	COAR Review of 90% CDs	02/11/27	02/17/27	5d	103	
	★	Pickup COAR Comments	02/18/27	03/03/27	10d	106	
	★	Submit 90% CD Package to ZWB	03/03/27	03/03/27	0	106	
	★	Page Flip with ZWB	03/11/27	03/11/27	1d	107 FS -5d	
	★	Authorization to Proceed to Plan Check (100% CDs)	03/11/27	03/11/27	0	108	

	Status	Reporting	Task Name	Start Date	End Date	Duration	Predecessors	Notes
110		☆	[-] Building Department Submittals (100% Construction Documents)	03/12/27	06/10/27	109d	62	
111		☆	Pick up COAR and ZWS comments	03/12/27	03/25/27	10d	109	
112		★	Submit Plans to Building Department	03/25/27	03/25/27	0	111	
113		☆	Building Department Review	03/29/27	05/06/27	30d	112	
114		☆	Pick up Building Department Comments	05/07/27	05/20/27	10d	113	
115		★	2nd Submittal to Building Department	05/20/27	05/20/27	0	114	
116		☆	Building Department 2nd Review	05/21/27	07/01/27	30d	115	
117		☆	Pick up Building Department and Bid Set Comments	07/02/27	07/15/27	10d	116, 122	
118		★	Submit 100% CD to Building Department	07/15/27	07/15/27	0	117	
119		☆	Receive Permitted Set	07/19/27	08/10/27	18d	118	
120		★	[-] Bidding	03/29/27	07/29/27	90d		
121		☆	Bid Period	03/29/27	05/06/27	30d	112	
122		☆	Bid Analysis	05/07/27	05/27/27	15d	121	
123		☆	Incorporate Bid changes into Permit Set	07/19/27	07/29/27	10d	122, 118	
124		★	[-] Construction	05/29/27	11/14/28	383d		
125		☆	Mobilization	05/29/27	06/10/27	10d	122	
126		☆	Demo & Deconstruction	06/11/27	07/22/27	30d	125, 89	
127		☆	Construction	08/11/27	10/17/28	310d	126, 119	
128		☆	Post-Construction Activities	10/19/28	11/14/28	20d	127	