



City Council Report

915 I Street, 1st Floor
Sacramento, CA 95814

www.cityofsacramento.org

File ID: 2017-00802

June 6, 2017

Consent Item 03

Title: Memorial Auditorium Improvement Project (M17100103) - Agreement for Pre-Construction Services with an Option for a Guaranteed Maximum Price

Location: 1515 J Street, District 4

Recommendation: Pass a Motion authorizing the City Manager or his designee to execute a design-assist agreement with Kitchell CEM, Inc. for Pre-construction Services with an Option for a Guaranteed Maximum Price (GMP) contract for the Memorial Auditorium Improvement Project.

Contact: Jon Blank, Supervising Engineer, (916) 808-7194, Department of Public Works; Desmond Parrington, Project Manager, (916) 808-5044; Fran Halbakken, Assistant City Manager/Project Executive, (916) 808-7194; Office of the City Manager

Presenter: None

Attachments:

- 1-Description/Analysis
- 2-Contract

Description/Analysis: On October 18, 2016, City Council directed staff to select a consultant to perform pre-construction services for the Memorial Auditorium improvement project, and to bring a proposed contract to City Council for consideration. On January 24, 2017, City Council suspended competitive bidding in the best interests of the City and authorized use of the design-assist project delivery method for the Memorial Auditorium improvement project. Improvements to the Memorial Auditorium are needed to relocate Community Center Theater events to the Memorial Auditorium while the Theater is under construction.

Staff recommends approval of an agreement with Kitchell to provide design-assist and pre-construction services for the improvements to Memorial Auditorium. Prior to the start of construction, Kitchell will review the architect's plans for constructability and provide cost estimating, value engineering, and other cost saving services. The goal of this pre-construction work is to ensure that the project is within budget and ready for construction. Upon the conclusion of this effort, Kitchell will prepare a proposal for a Guaranteed Maximum Price (GMP) for construction of the Memorial Auditorium upgrades. City staff will then negotiate the GMP, and prior to the start of construction, staff will bring the proposed GMP to City Council for review and approval. Construction would only proceed after City Council approves the GMP and authorizes Kitchell to proceed with construction through an amendment to Kitchell's contract. It is anticipated that the GMP amendment will be brought to City Council in early 2018.

Policy Considerations: The improvements to the Memorial Auditorium support the following goals and policies of the City's General Plan:

- ERC 4.1.3 The City shall enhance the quality of existing City-owned arts and cultural resources and facilities through reinvestment, communications and marketing.
- HCR 2.1.9 City-Owned Resources. The City shall maintain all City-owned historic and cultural resources in a manner that is consistent with the U.S. Secretary of the Interior's Standards for the Treatment of Historic Properties.

Economic Impacts: Not Applicable

Environmental Considerations: The Memorial Auditorium improvement project is exempt from the California Environmental Quality Act (CEQA) under the following CEQA Guidelines sections: Section 15301 which exempts projects involving the repair, maintenance, and minor alteration of an existing facility, and involves negligible or no expansion of use; and Section 15302 which exempts projects involving reconstruction of existing structures and facilities, where the reconstruction will be located on the same site as the existing structure and will have substantially the same purpose and capacity.

Sustainability: The improvements, to the extent feasible, will be designed to reduce the carbon footprint contribution, therefore helping meet the City of Sacramento's sustainability goal.

Commission/Committee Action: Not applicable.

Rationale for Recommendation: Improvements to the Memorial Auditorium are needed to relocate events to the Memorial Auditorium while the Community Center Theater is closed for renovation. Staff recommends a contract with Kitchell for the Memorial Auditorium design-assist services because Kitchell was selected in 2010 through a Request for Qualifications process to provide design-assist services for the Community Center Theater, and the Theater and Memorial Auditorium renovations are closely related, making coordination between both projects essential.

Financial Considerations: Sufficient funding is available in the Convention Center Complex Renovation Project Fund (M17100100) to execute a contract with Kitchell CEM, Inc. in the amount of \$177,804. The anticipated GMP for construction is \$12,490,000; however, an amendment to the Kitchell agreement that includes the final GMP will be brought back to Council later once the design has been completed and staff has negotiated the GMP with Kitchell.

Local Business Enterprise (LBE): Kitchell CEM, Inc. is a local business enterprise.

Department: City Manager's Office
Division: Executive Office
Project Name: Memorial Auditorium Renovation
Project #: M17100103

**PRE-CONSTRUCTION SERVICES WITH OPTION FOR A
GUARANTEED MAXIMUM PRICE (GMP) CONTRACT**

This **CONTRACT** is made at Sacramento, California as of _____, 2017
("Effective Date"), by and between the City of Sacramento, a municipal corporation ("CITY"),
and:

CONTRACTOR: Kitchell CEM, Inc.
2450 Venture Oaks Way, Suite 500
Sacramento, CA 95833
(916) 648-9700 / MWade@kitchell.com

PROJECT: Memorial Auditorium Upgrade

1. Contract Documents.

- A. The Contract Documents, sometimes referred to as the "Contract," consist of the following documents, which are hereby incorporated by reference as if set forth in full in this Contract:
- (1) This Contract, including all exhibits attached hereto.
 - (2) Change Orders or other amendments to this Contract, including but not limited to the Change Order or amendment that accepts the Guaranteed Maximum Price (GMP) and authorizes Construction Phase 1, with the more recent taking precedence over previous Change Orders/amendments in the event of a conflict.
 - (3) Construction Drawings, Project Specifications, and the Project Design Manual (PDM).
 - (4) Applicable provisions of the CITY's Standard Specifications for Public Construction of the City of Sacramento as approved by the Sacramento City Council on June 4, 2007 (Resolution No. 2007-350), and any subsequent amendments thereto approved by the Sacramento City Council or the Sacramento City Manager, as set forth in Exhibit C; provided however that Standard Specifications requirements may be superseded or amended by designs, decisions or changes/modifications completed during the Work if CITY and CONTRACTOR specifically acknowledge and mutually accept the itemized changes/modifications in writing.

2. **Definitions.** Terms, words, and phrases used in the Contract Documents shall have the following meanings:
- A. **Change Order** shall mean a written instrument issued after execution of the Contract signed by CITY and CONTRACTOR, stating their agreement regarding the scope of the change in the Work; and/or the amount of the adjustment to the Contract Amount; and/or the extent of the adjustment to the Time of Completion.
 - B. **Contract** shall mean the executed contract between CITY and CONTRACTOR.
 - C. **Day or Days** shall mean calendar days unless otherwise specifically noted in the Contract Documents.
 - D. **Designer** shall mean a qualified, licensed design professional who is not an employee of CONTRACTOR, but is retained by CONTRACTOR, or employed or retained by anyone under contract with CONTRACTOR or Subcontractor, to furnish design services required under the Contract Documents.
 - E. **Cost of the Work** shall mean costs reasonably incurred by CONTRACTOR in the proper performance of the Work, excluding the Contractor Contingency, Bond Premium, and costs to obtain the insurance required by Section 23.
 - F. **Engineer** shall mean the CITY's Representative.
 - G. **Fully Executed** shall mean the final completion of any document requiring endorsements and signatures. A document is not fully executed until all required signatures have been secured and the document has been issued to the CONTRACTOR by CITY.
 - H. **General Conditions** shall mean any additional terms and conditions applicable to the Construction Phases that are agreed to between CITY and CONTRACTOR upon approval of the GMP (if the GMP is approved by City Council).
 - I. **Hazardous Conditions** shall mean any conditions or materials encountered at the Site that have been identified in the hazardous materials and geotechnical reports.
 - J. **Hazardous Materials** shall mean any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.
 - K. **LEED** shall mean "Leadership in Energy and Environmental Design" as established by the U.S. Green Building Council.

- L. **Legal Requirements** shall mean all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.
- M. **Major Event** shall mean a performance, concert, graduation, or other event at Memorial Auditorium, located at 1515 J Street in Sacramento, that has no fewer than 500 attendees based on ticket sales, box office receipts or attendee counts by Memorial Auditorium or event staff.
- N. **Project** shall mean the set of improvements to Memorial Auditorium, located at 1515 J Street, Sacramento, CA 95814, including but not limited to:
- Temporary Improvements, including the following:
 - Modular Restrooms to Supplement Orchestra Level Patron Amenities
 - Protective Structure for Truck Load-In/Load-Out
 - Permanent Improvements, including the following:
 - Acoustical Treatments at Upper Balcony and a new Orchestra Shell
 - Audience Seating - Replacement at Orchestra Level / Refurbishment at Dress Circle and First Balcony
 - Limited Audio-Video Equipment Upgrades
 - Orchestra Pit Modifications to Accommodate Performance Requirements
 - Rigging System Refurbishment
 - Structural Capacity Upgrades for Stage and Audience Chamber
 - Theatrical Lighting / Dimming / Road Show System Improvements
- O. **Site** shall mean the Project as defined by the following assessor's parcel number: 006-0062-001-0000.
- P. **Subcontractor** shall mean any person or entity retained by CONTRACTOR as an independent contractor to perform a portion of the Work and shall include material, workers and suppliers.
- Q. **Sub-Subcontractor** shall mean any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's work and shall include material, workers and suppliers.
- R. **Substantially Complete** as applied to the Work shall mean: that the City Representative: (1) has reasonably determined that the Work has been substantially performed; (2) has issued a Certificate of Occupancy; and (3) has determined that there are only minor deficiencies as set forth on a final written punch list prepared by the CONTRACTOR and accepted by the City Representative.

- S. **Testing Authority** shall mean the individual in charge of organizing, conducting, paying for all testing and documentation, administering tests, documenting all test results and compiling a formal Acceptance Testing Report required under Title 24. For the purposes of this Contract, the CITY shall retain a qualified contractor(s) to perform this work and serve as the Testing Authority.
 - T. **Work** shall mean all efforts associated with CONTRACTOR's design review and coordination, construction, and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.
 - U. All terms not defined above shall have the meanings specified in Section 1 of the Standard Specifications, which is incorporated by this reference.
3. **Scope of Work.** CONTRACTOR shall furnish all tools, equipment, apparatus, facilities, labor, material and transportation necessary to perform and complete in a good and workmanlike manner to the satisfaction of the CITY, all the Work called for in the Contract Documents. The Work shall be separated into three distinct phases, Pre-Construction, Construction Phase 1, and Construction Phase 2, and shall include:
- A. Pre-Construction Phase. As specified in Exhibit A, the Pre-Construction Phase scope of work shall include without limitation all site visits, cost estimating, value engineering, design review, quality control review, constructability review, risk assessment, scheduling, construction impacts, meetings, participation in the preparation and packaging of construction documents, bid outreach and prequalification, obtaining all permits (CONTRACTOR shall obtain all permits but City will pay the permit fee), completion of construction drawings for both Construction Phase 1 and Construction Phase 2, obtaining bids for sub-contractors/suppliers, documenting results and all other work necessary to assist the CITY'S designer to develop a design within the Project Budget and Project Schedule, culminating in the preparation of a GMP for completion of all the Work. If necessary, the GMP will be divided into a base proposal and (additive/deductive) alternates acceptable to the CITY.
 - B. Construction Phase 1. As specified in Exhibit A, the Construction Phase 1 scope of work shall include without limitation the construction of permanent and temporary improvements, systems commissioning, and obtaining any outstanding permits to provide the CITY with a fully operational facility consistent with the Contract Documents and requirements of this Contract.
 - C. Construction Phase 2. As specified in Exhibit A, the Construction Phase 2 scope of work shall include without limitation demolition of the temporary improvements and related restorations, systems commissioning, and obtaining any outstanding

permits to provide the CITY with a fully operational facility consistent with the Contract Documents and requirements of this Contract.

D. Commencement and Prosecution of Work.

- (1) Notices to Proceed. The CITY shall issue a separate Notice to Proceed for each phase of the Work under this Contract: Pre-Construction Phase, Construction Phase 1, and Construction Phase 2.
- (2) Pre-Construction Phase. The Pre-Construction Phase Notice to Proceed shall be issued after CITY has executed this Contract. CONTRACTOR shall commence the Work for Pre-Construction Phase activities not later than 5 calendar days after the date of the written Notice to Proceed on Pre-Construction Phase activities from CITY. Upon the Effective Date of this Contract, the previous agreement between CITY and CONTRACTOR (City Agreement 2010-0678) shall terminate and CONTRACTOR shall immediately cease rendering services under Agreement 2010-0678. Upon termination, CONTRACTOR shall submit an invoice to CITY for services rendered by CONTRACTOR prior to termination, and upon CITY's approval of such invoice, CITY shall pay CONTRACTOR for such services rendered prior to termination.
- (3) Construction Phase 1. CONTRACTOR shall not proceed with Construction Phase 1 unless and until: (i) the City Council accepts the GMP through authorization of a Change Order or other amendment to the Contract in accordance with Section 6; (ii) CONTRACTOR provides the bonds and insurance certificates required by Sections 22 and 23 below; and (iii) the CITY issues a Notice to Proceed for Construction Phase 1 Work. CONTRACTOR shall commence the Work for Construction Phase 1 not later than 5 calendar days after the date of the written Notice to Proceed from CITY.
- (4) Construction Phase 2. CONTRACTOR shall not proceed with Construction Phase 2 unless and until the City and CONTRACTOR execute a Change Order detailing the start and completion dates, or start date and time for completion. CONTRACTOR shall commence the Work for Construction Phase 2 as agreed upon by Change Order, but not later than 5 calendar days after the date of the written Notice to Proceed from CITY.
- (5) Prosecution of Work. CONTRACTOR shall diligently prosecute the Work to final completion of the appropriate stage. The phrase "commence the Work" means to engage in design review activities in the Pre-Construction Phase, or to engage in construction activities in Construction Phases 1 and 2.

- E. Facilities and Equipment. CITY shall not furnish any facilities or equipment for Pre-Construction Phase activities of this Contract, but CITY will grant CONTRACTOR access to the Memorial Auditorium for the purpose of completing work in the approved Contract Documents during Construction Phase activities. CONTRACTOR shall, at its sole cost and expense, furnish all equipment that may be required for furnishing services under the Construction Phases of this Contract. CONTRACTOR shall coordinate with CITY to establish mutually acceptable access to the Memorial Auditorium during the Construction Phases.

4. **Time of Completion.**

A. Completion Date.

- (1) Pre-Construction Phase activities shall be brought to completion in the manner provided for in the Contract Documents on or before March 15, 2018 (hereinafter called the "Completion Date – Pre-Construction Phase") unless extensions of time are granted in accordance with the Contract Documents.
- (2) Construction Phase 1 activities including substantial completion as well as beneficial use and occupancy, shall be brought to completion in the manner provided for in the Contract Documents on or before July 1, 2019 (hereinafter called the "Completion Date – Construction Phase 1"), unless extensions of time are granted in accordance with the Contract Documents.
- (3) Construction Phases 2 activities, including final completion, shall be brought to completion in the manner provided for in the Contract Documents and as mutually agreed upon by CITY and CONTRACTOR through execution of a Change Order (hereinafter called the "Completion Date – Construction Phase 2"), unless extensions of time are granted in accordance with the Contract Documents. The parties anticipate that Construction Phase 2 will occur approximately one (1) year after the completion of Construction Phase 1. CONTRACTOR shall negotiate in good faith to determine a reasonable start date and time of completion, and to minimize impacts to scheduled events during Construction Phase 2.
- (4) Failure to complete the Construction Phase 1 Work by the Completion Date – Construction Phase 1 and in the manner provided for by the Contract Documents shall subject CONTRACTOR to liquidated damages as provided in Section 15 below. Additionally, failure to complete the Construction Phase 2 Work by the Completion Date – Construction Phase 2 and in the manner provided for by the Contract Documents shall subject

CONTRACTOR to liquidated damages as provided in Section 15 below. Time is and shall be of the essence in these Contract Documents.

- (5) The CITY may extend the expiration date of this Contract for the purposes of administrative management, but such extension of the Contract expiration date shall not extend the "Completion Dates" set forth above unless specifically mentioned as a modification to the "Completion Date."
- B. Time for Performance. CONTRACTOR shall devote such time and effort to the performance of Work pursuant to this Contract as is necessary for the satisfactory and timely performance of CONTRACTOR's obligations under this Contract. CONTRACTOR agrees that it shall commence performance of the Work and achieve the Completion Dates as set forth in this Section 4.
- C. Extensions of Time. In the event CITY deems it necessary, in its sole discretion, to extend the Completion Dates of the Work to be done under this Contract beyond the required Completion Dates specified, such extensions, including extensions for Excusable Delays, shall in no way release any guarantee given by CONTRACTOR pursuant to the provisions of the Contract Documents, nor shall such extension of time relieve or release the sureties on the bonds executed pursuant to said provisions. By executing such bonds, the sureties shall be deemed to have expressly agreed to any extension of time and shall be limited to the period of excusable delay as defined herein giving rise to the same as determined by City Council of CITY.
- D. Excusable Delays.
 - (1) For the purpose of these Contract Documents, the term "Excusable Delays" shall mean, and is limited to, delays caused directly by acts of God; acts of the public enemy; fires; inclement weather that prevents construction of the critical path items of work as determined by the CITY Representative; riots; insurrections; epidemics; quarantine restrictions; strikes; lockouts; sit downs; acts of governmental agency; priorities or privileges established for the manufacture, assemble, or allotment of materials necessary in the Work by order, decree or otherwise of the United States or by any department, bureau, commission, committee, agent, or administrator of any legally constituted public authority; changes in the Work ordered by CITY insofar as they necessarily require additional time in which to complete the Work; the prevention by CITY of CONTRACTOR from commencing or prosecuting the Work because of the acts of others, excepting CONTRACTOR's subcontractors; or the prevention of CONTRACTOR from commencing or prosecuting the Work because of a City-wide failure of public utility service.

- (2) The term "Excusable Delay" shall specifically not include: (i) any delay which could have been avoided by the exercise of care, prudence, foresight and diligence on the part of CONTRACTOR; (ii) any delay in the prosecution of parts of the Work, which may in itself be unavoidable but which does not prevent or delay the prosecution of other parts of the Work, nor the completion of the whole Work within the time specified; (iii) any reasonable delay resulting from time required by CITY for review of Plans and submittals required of CONTRACTOR and for the making of surveys, measurements and inspection; (iv) any delay arising from an interruption in the prosecution of the Work on account of the reasonable interference from other contractors employed by CITY which does not necessarily prevent the completion of the Work within the time specified. Excusable Delays, if any, shall operate only to extend the Completion Date (not in excess of the period of such delay as determined by CITY) but shall not under any circumstances increase the sum CITY is to pay CONTRACTOR as provided in these Contract Documents.

E. Contractor to Serve Notice of Delays.

- (1) Whenever CONTRACTOR foresees any delay in the prosecution of the Work, and in any event upon the occurrence of any delay which CONTRACTOR regards as an Excusable Delay, CONTRACTOR shall notify the CITY Representative in writing immediately within ten (10) calendar days of the probability of such delay and its cause, in order that the CITY Representative may take immediate steps to prevent if possible the occurrence or continuance of the delay or if this cannot be done, may determine whether the delay is to be considered excusable, how long it continues, and to what extent the prosecution and completion of the Work are delayed thereby. Said written notice shall constitute an application for an extension of time only if the notice requests such an extension and sets forth the CONTRACTOR's estimate of the additional time required together with a full description of the cause of the delay relied upon.
- (2) After the completion of any part or whole of the Work, the CITY Representative, in estimating the amount due CONTRACTOR, will assume that any and all delays which may have occurred in its prosecution and completion have been avoidable delays, except such delays as shall have been called to the attention of the CITY Representative at the time of their occurrence and determined by CITY Representative to have been excusable. CONTRACTOR shall not be entitled to claim Excusable Delay for any delay for which the CONTRACTOR failed to provide such timely written notice to CITY.

- F. Extension of Time and Liquidated Damages. Should any delays occur which the CITY considers Excusable Delay, as herein defined, CONTRACTOR shall be allowed an extension of time beyond the time herein set forth proportional to the delay or delays in which to complete this Contract; and, during an extension which may have been granted because of an Excusable Delay or Excusable Delays, CITY shall not charge liquidated damages against CONTRACTOR for such delay. Only the CITY Representative may grant an extension of time on the Contract. Extensions of time shall only be valid if issued in writing as part of a Change Order and fully executed by the CITY.
- G. Extension of Time Does Not Waive City's Right. The granting of any extension of time on account of Excusable Delay which in the judgment of the CITY Representative is Excusable Delay shall in no way operate as a waiver on the part of CITY of its rights under this Contract excepting only extension of the Completion Date.
- H. No Payment for Delays. No damages or compensation of any kind shall be paid to CONTRACTOR or any subcontractor because of delays in the progress of the Work whether such delays qualify for extension of time under this Contract; except that this provision shall not preclude the recovery of damages for a delay caused by the CITY that is unreasonable under the circumstances and that is not within the contemplation of the parties, provided that the CONTRACTOR timely submits all such written notice(s) to CITY and fully complies with such other procedures as may be specified in the Contract Documents or any laws or regulations for CONTRACTOR to claim damages for such delay.
- I. No Stoppage of Work. CONTRACTOR shall not stop Work unless directed to do so by CITY, or under "Emergency" conditions as set forth in Section 14(D) of this Contract.

5. **Contract Amount.**

- A. CITY shall pay CONTRACTOR in accordance with the requirements set forth in this section. Compensation to the CONTRACTOR shall be separated into three phases of work as described in Section 1 above. The Pre-Construction Phase covers all work completed prior to CITY acceptance of a GMP. Construction Phases 1 and 2 cover all remaining work as outlined in this Contract. CONTRACTOR acknowledges and agrees that CITY is not obligated to accept the GMP, nor authorize Construction Phases 1 or 2 to proceed, and that CITY shall have no obligations whatsoever under the Contract for the Construction Phases unless and until the City Council accepts the GMP and authorizes the Construction Phases to proceed by approving a Change Order or other amendment to this Contract.
- B. CITY agrees to pay CONTRACTOR for the Work as follows:

- (1) Payment for Pre-Construction Phase services performed under this Contract (including all services and authorized reimbursable expenses) **shall not exceed \$177,804**. Payment for Pre-Construction Phase services shall be made by CITY to CONTRACTOR on a monthly lump sum basis as specified in Section 7(A) below.
- (2) Total payment for Construction Phases 1 and 2 combined (including all Work, services, authorized reimbursable expenses, construction, materials and associated expenses for Construction Phase activities) **shall not exceed the GMP**. The GMP shall be derived during the Pre-Construction Phase in accordance with Section 6 below. CITY, in its sole discretion, may approve or reject the GMP, which will be presented to the City Council as a Change Order or other amendment to this Contract. If CITY rejects the GMP, CITY has no obligation to proceed with the Construction Phases and CONTRACTOR is not entitled to any compensation for the Construction Phases. As of the Effective Date of this Contract, the CONTRACTOR and CITY anticipate **the GMP will not exceed \$12,490,000** for both Construction Phases 1 and 2. Nonetheless, CONTRACTOR and CITY agree that final authority to accept the GMP rests solely with the City Council, who may only exercise that authority by approving a Change Order or other amendment to this Contract.
- (3) Total compensation for the Pre-Construction Phase and Construction Phases shall not exceed the sum of items 1 and 2, above.
- (4) Compensation for services and authorized reimbursable expenses during the Pre-Construction Phase shall not be subject to retention.
- (5) Compensation for design support services, cost of obtaining permits, authorized design-based reimbursable expenses, fees during the Construction Phase, and bonds and insurance costs approved in the GMP, shall not be subject to retention, but all other Work related to the Project and completed during the Construction Phase shall be subject to retention. (See Section 8 "Retention of Sums Charged Against Contractor").
- (6) During the Construction Phases, CONTRACTOR shall submit separate invoices for design support services and expenses versus construction-related costs subject to retention.
- (7) During the Construction Phases, CONTRACTOR shall submit detailed monthly invoices that include a schedule of values; however, General Conditions may be submitted on a monthly lump sum basis.

C. CONTRACTOR's Costs. During the Construction Phases, full compensation for all costs incurred by CONTRACTOR shall be included in the GMP. CITY shall not provide any additional compensation to CONTRACTOR for costs incurred by CONTRACTOR during the Construction Phases unless such costs are mutually agreed to through a written Change Order signed by CITY and CONTRACTOR. Accordingly, CONTRACTOR shall pay for the following costs of the Work during either the Pre-Construction or the Construction Phases:

- (1) Costs associated with obtaining all necessary licenses required for the prosecution of the Work.
- (2) Business Operations Tax (BOT) associated with the building permit.
- (3) Any overtime charges related to the plan check, permit, or inspections.
- (4) Any request for inspections outside normal working hours for the CITY.
- (5) Any penalties, re-inspection fees or similar charges resulting from actions or inaction by CONTRACTOR.

D. CITY's Costs. CITY shall pay for the following costs:

- (1) The Hazardous Materials and Geotechnical reports.
- (2) ALTA survey
- (3) Fee for Project building permits and Project-related impact fees, but excluding overtime inspection costs unless mutually agreed to by CITY and CONTRACTOR, re-inspection fees, and any penalties.
- (4) Cost of all Acceptance Testing and documentation required under Title 24 of the California Code of Regulations. CITY shall retain a qualified contractor(s) to perform this work and serve as the "Testing Authority" for all Acceptance Testing required by Title 24 of the California Code of Regulations.
- (5) Costs for a consultant to monitor and report on labor compliance of the CONTRACTOR and subcontractors for the Work.

6. **The Guaranteed Maximum Price (GMP).**

A. GMP Proposal.

- (1) Contents of GMP Proposal. Upon completion of Pre-Construction Phase services, CONTRACTOR shall submit to CITY a GMP Proposal that includes the following documents, which shall be used as the basis for the GMP and shall be identified in a supplemental document ("GMP Proposal") prepared by CONTRACTOR:
 - a) A list of assumptions made by CONTRACTOR in preparing the GMP.

- b) A complete schedule of values, allowances, and unit prices for the Cost of the Work for both Construction Phase 1 and Construction Phase 2.
 - c) Calculations when necessary or required by City to adequately compare the GMP with estimates provided by the Architect or Owner's Representative.
 - d) A list of qualified subcontractors and corresponding scopes of works and cost.
 - e) Local hiring documentation.
 - f) A critical path performance schedule.
 - g) A list of alternates and their associated cost and time impact for completion of all the Work described in the Contract Documents if the entire Project cannot be completed within the approved schedule.
 - h) All bonds and insurance necessary for completion of the Work.
 - i) All permits necessary for construction or a detail of any deferred permits or submittal requirements.
- (2) Construction Contingency. The GMP shall include a Contingency which will be identified in the GMP Proposal. The Contingency is available for CONTRACTOR's exclusive use for unforeseen costs that are incurred in performing the Work that are not included in the GMP; however, CONTRACTOR must submit notification of a potential Change Order, and if approved, City will execute a Change Order to use the Contingency as soon as practicable. Such approval shall not be unreasonably withheld, and CITY shall respond to CONTRACTOR regarding a Contingency request within 10 working days following CITY's receipt of CONTRACTOR's request. By way of example, and not as a limitation, such Contingency costs include: trade buy-out differentials; acceleration costs caused by Excusable Delays; costs in correcting defective, damaged or nonconforming Work not the fault of the CONTRACTOR or Subcontractors; and costs associated with design errors or omissions that are reasonably inferable from the Contract Documents and Subcontractor defaults. The Contingency is not available to CITY for any reason, including changes in scope, except where scope changes are necessary to meet the requirements in the Contract Documents. Contingency funds remaining at the end of the Project shall be returned to the CITY. Contingency funds shall be tracked and documented by CONTRACTOR with detailed and summary breakdowns, projections, and supporting documentation acceptable to the CITY. CITY may, but is not obligated to, provide additional Construction Contingency through Change Order for excessive acceleration costs and design errors and omissions should the entire Construction Contingency be unexpectedly expended. CONTRACTOR's requests for increasing the Construction Contingency shall be made as stated above.

- (3) Review and Adjustment to GMP Proposal. After submission of the GMP Proposal, CONTRACTOR and CITY shall meet to discuss and review the GMP Proposal. The GMP shall include detailed cost breakdowns for all items, including a description of the scope of work for all vendors and sub-contractors, shared resources, contractor supplied materials and equipment, allowances and similar information to disclose the detailed distribution of all costs. If CITY has any comments regarding the GMP Proposal, or finds any inconsistencies or inaccuracies in the information presented or if additional detail is desired by the CITY, written notice shall be provided to CONTRACTOR. CONTRACTOR shall, upon receipt of CITY's notice, make appropriate adjustments to the GMP Proposal and resubmit to CITY in a timely manner.
- (4) Rates and Fees. The following rates and fees shall be applicable to the GMP:
 - a) CONTRACTOR's Fee: A range of between 3% and 6% of the Cost of the Work, including Work required by the General Conditions. The exact percentage shall be established upon CITY's acceptance of the GMP through Change Order or amendment to this Contract. This Fee will compensate CONTRACTOR for overhead, including General Conditions and General Requirements, and profit, and the Fee shall be converted to a lump sum amount at the execution of a Change Order or other amendment approving the GMP, if the GMP is approved by the City Council.
 - b) CONTRACTOR's General Liability Insurance and Bond Premium: Between 2% to 3% of the GMP amount. The exact amount will be established upon CITY's acceptance of the GMP through a Change Order or other amendment to this Contract.
 - c) General Conditions and General Requirements: Includes any other rates and fees to be mutually agreed upon by the parties upon acceptance of the GMP.

B. CITY Action Regarding the GMP Proposal.

- (1) Acceptance of the GMP. The GMP Proposal will become the GMP upon approval by the Sacramento City Council of a Change Order or other amendment to this Contract that accepts the GMP and authorizes the Construction Phase to proceed.
- (2) Failure to Accept the GMP Proposal. If CITY rejects the GMP Proposal, or fails to notify CONTRACTOR in writing on or before 60 calendar days following CITY acknowledgement of receiving a complete GMP Proposal,

the GMP Proposal shall be deemed withdrawn and of no effect. In such event, CITY and CONTRACTOR shall meet and confer as to how the Project will proceed, with CITY having the following options:

- a) CITY may suggest modifications to the GMP Proposal, whereupon, if such modifications are accepted in writing by CONTRACTOR, the GMP Proposal shall be deemed accepted and the parties shall proceed in accordance with the schedule set forth in the GMP.
- b) CITY may negotiate modifications and/or supplemental services necessary to achieve an acceptable GMP.
- c) CITY may terminate this Contract, in which case CITY shall have no further obligations to CONTRACTOR, other than payment for Pre-Construction Phase services rendered under this Contract prior to termination.

C. Excess Costs; Savings.

- (1) CONTRACTOR does not guarantee the exact cost of any specific line item provided as part of the GMP, but CONTRACTOR agrees that CITY shall not have any obligation to pay for any Cost of the Work that exceeds the GMP accepted by CITY, and that CONTRACTOR shall be responsible for paying all costs of completing the Work which exceed the GMP.
- (2) If the sum of the actual Cost of the Work is less than the approved GMP, as such GMP may have been adjusted over the course of the Project, the difference ("Savings") shall remain with CITY, but CONTRACTOR's Fee identified in Section 6(A)(4) shall *not* be reduced upon issuance of the final payment to the CONTRACTOR.

7. **Payments.** CITY agrees to pay and CONTRACTOR agrees to accept, as complete payment for the above Work, in accordance with the schedule and procedures set forth in the Contract Documents and subject to deductions, withholdings and additions as specified in the Contract Documents, a total sum for Pre-Construction Phase services that shall not exceed the amount specified in Section 5(B)(1) above and the GMP amount for all services under both Construction Phase 1 and Construction Phase 2. In addition, subject to deductions, withholdings and additions as specified in the Contract Documents, payment for individual items of the Work shall be made as follows:

- A. Pre-Construction Phase Work. On the first day of each month during the Pre-Construction Phase, the CONTRACTOR shall present to the CITY a lump sum invoice based on the monthly fee billing schedule identified in Exhibit B for work performed through the 25th calendar day of the preceding month. The CITY shall inspect the invoice and, if approved, the CITY shall process the invoice for payment.

B. Construction Phase Work.

- (1) On the first day of each month during the Construction Phases, the CONTRACTOR shall present to the CITY two separate documents. The first document shall be a detailed invoice for support services and related authorized reimbursable expenses not subject to retention (with separate amounts for support services and reimbursable expenses). CITY shall inspect this first document and, if approved, the CITY shall process the invoice for payment. The second document shall be a statement showing the amount of labor and materials incorporated in the Work through the 25th calendar day of the preceding month. After both the CONTRACTOR and City Representative approve the statement in writing, and the City's labor compliance officer provides written approval, the CITY shall issue payment for 95% of the amount it shall find to be due, subject to any deductions or withholdings authorized or required under the Contract or any applicable Laws or Regulations.

- (2) CITY shall retain separate retentions for Construction Phase 1 and Construction Phase 2. For Construction Phase 1, CITY shall pay the remaining 5% of the value of the Construction Phase 1 Work performed under the Contract (the "Retention"), if unencumbered and subject to any deductions or withholdings authorized or required under the Contract or any applicable Laws or Regulations, not later than 60 days after CITY files a Notice of Completion with the Sacramento County Recorder's Office for Construction Phase 1. For Construction Phase 2, CITY shall pay the Retention, if unencumbered and subject to any deductions or withholdings authorized or required under the Contract or any applicable Laws or Regulations, not later than 60 days after CITY files a Notice of Completion with the Sacramento County Recorder's Office for Construction Phase 2. Acceptance by CONTRACTOR of said Retention shall constitute a waiver of all claims against CITY arising under the Contract Documents, except for disputed claims in stated amounts that the CONTRACTOR specifically reserves in writing, but only to the extent that the CONTRACTOR has complied with all procedures and requirements applicable to the presentation and processing of such claim(s) under the Contract Documents. CONTRACTOR shall be entitled to substitute securities for Retention or to direct that payment of Retention be made into escrow, as provided in Public Contract Code section 22300, upon execution of the CITY's Escrow Agreement for Security Deposits in Lieu of Retention.

- C. No inaccuracy or error in said monthly invoice(s) shall operate to release CONTRACTOR or Surety from damages arising from such work or from enforcement of each and every provision of the Contract Documents, and CITY

shall have the right subsequently to correct any error made in any invoice for payment.

- D. CONTRACTOR shall not be paid for any defective or improper work.
 - E. The parties agree that, for purposes of the timely progress payment requirements specified in Public Contract Code section 20104.50, the date that the CITY receives a statement jointly approved by the CONTRACTOR and the CITY as provided above shall be deemed to constitute the date that CITY receives an undisputed and properly submitted payment request from the CONTRACTOR. Progress payments not made within 30 days after this date may be subject to payment of interest as provided in Public Contract Code section 20104.50.
 - F. This Contract is subject to compliance monitoring and enforcement by the California Department of Industrial Relations, as specified in California Labor Code section 1771.4.
8. **Retention of Sums Charged Against Contractor.** When, under the provisions of this Contract or any applicable Laws or Regulations, CITY is authorized or required to withhold, deduct or charge any sum of money against CONTRACTOR, CITY may deduct and retain the amount of such charge from the amount of the next succeeding progress payment(s), or from any other moneys due or that may become due to CONTRACTOR from CITY. If, on completion or termination of the Contract, sums due to CONTRACTOR are insufficient to pay CITY's charges against CONTRACTOR, CITY shall have the right to recover the balance from CONTRACTOR or its Sureties.
9. **Payments Do Not Imply Acceptance of Work.** The payment of any progress payment, or the acceptance thereof by CONTRACTOR, shall not constitute acceptance of the Work or any portion thereof and shall in no way reduce the liability of CONTRACTOR to replace unsatisfactory work or material, though the unsatisfactory character of such work or material may not have been apparent or detected at the time such payment was made.
10. **Acceptance Not Release.**
- A. CONTRACTOR shall correct immediately any defective or imperfect work which may be discovered before final acceptance of the entire Work. Any unsatisfactory materials shall be rejected, notwithstanding that they may have been overlooked by the inspector. The inspection of the Work, or any part thereof, shall not relieve CONTRACTOR of any of his obligations to perform satisfactory work as herein prescribed.
 - B. Failure or neglect on the part of CITY or any of its officers, employees or authorized agents to discover, identify, condemn or reject defective or imperfect work or materials shall not be construed to imply an acceptance of such work or materials,

if such defect or imperfection becomes evident at any time prior to final acceptance of the entire Work, nor shall such failure or neglect be construed as barring CITY from enforcing Contractor's warranty(ies) or otherwise recovering damages or such a sum of money as may be required to repair or rebuild the defective or imperfect work or materials whenever CITY may discover the same, subject only to any statutes of limitation that may apply to any such claim.

11. **City's Right to Take Possession of the Work in Whole or in Part.** CITY shall have the right at any time to enter upon the Site and perform work not covered by this Contract, or to occupy and use a portion of the Work, prior to the date of the final acceptance of the Work as a whole at the end of Construction Phase 2, without in any way relieving CONTRACTOR of any obligations under this Contract. CITY shall coordinate with CONTRACTOR to avoid disruption of CONTRACTOR's Work.
12. **No Waiver of Remedies.** Neither the inspection by CITY or its agents, nor any order or certificate for the payment of money, nor any payment for, nor acceptance of the whole or any part of the Work by CITY, nor any extensions of time, nor any position taken by CITY or its agents shall operate as a waiver of any provision of this Contract or of any power herein reserved to CITY or any right to damages herein provided, nor shall any waiver of any breach of this Contract be held to be a waiver of any other or subsequent breach. No waiver will be effective unless it is in writing signed by the CITY. All remedies provided in this Contract shall be taken and construed as cumulative; that is, in addition to each and every other remedy herein provided, and CITY shall have any and all equitable and legal remedies which it would in any case have.
13. **Warranty.**
 - A. CONTRACTOR's Warranty. Except as otherwise expressly provided in the specifications, and excepting only items of routine maintenance, ordinary wear and tear, unusual abuse or neglect, or damage caused by the negligence of the CITY or its tenants, CONTRACTOR guarantees all work executed by him and all supplies, materials and devices of whatsoever nature incorporated in, or attached to the Work, or otherwise delivered to CITY as a part of the Work pursuant to the Contract, to be absolutely free of all defects of workmanship and materials for a period of one year after final acceptance of the entire Work by CITY. CONTRACTOR shall repair or replace any or all such work or material, together with all or any other work or material which may be displaced or damaged in so doing, that may prove defective in workmanship or material within said one year guarantee period without expense or charge of any nature whatsoever to CITY.
 - B. CONTRACTOR's Failure to Comply with Warranty. In the event that the CONTRACTOR shall fail to comply with the conditions of the foregoing guarantee within ten (10) days after being notified of the defect in writing, CITY shall have the right, but shall not be obligated to repair, or obtain the repair of, the defect

and CONTRACTOR shall pay to CITY on demand all costs and expense of such repair. Notwithstanding anything herein to the contrary, in the event that any defect in workmanship or material covered by the foregoing guarantee results in a condition which constitutes an immediate hazard to the health or safety, or any property interest, or any person, CITY shall have the right to immediately repair, or cause to be repaired, such defect, and CONTRACTOR shall pay to CITY on demand all costs and expense of such repair. The foregoing statement relating to hazards to health, safety or property shall be deemed to include both temporary or permanent repairs which may be required as determined in the sole discretion and judgment of CITY.

- C. Assignment of Manufacturer and Other Product Warranties. In addition to the above, the CONTRACTOR shall make a written assignment of all manufacturer's and other product warranties to the CITY, prior to completion and final acceptance of the Work by CITY.
- D. Joint and Several Liability. The CONTRACTOR's Performance Bond shall secure the performance of the CONTRACTOR's obligations under this Section 13, and the CONTRACTOR and its Surety shall be jointly and severally liable for these obligations.
- E. Changes in the Work. Changes in the Work authorized or directed in accordance with the Contract Documents and extensions of time of completion made necessary by reason thereof shall not in any way release any warranty or guarantee given by Contractor pursuant to the provisions of the Contract Documents, nor shall such changes in the Work relieve or release the Sureties on Bonds provided pursuant to the Contract Documents. By executing such Bonds, the Sureties shall be deemed to have expressly agreed to any such change in Work and to any extension of time made by reason thereof.

14. Changes to the Work, Contract Amount, or Time of Completion.

A. Change Orders.

- (1) All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. CITY and CONTRACTOR shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.
- (2) If CITY requests a proposal for a change in the Work from CONTRACTOR and CITY subsequently elects not to proceed with the change, a Change Order shall not be issued to reimburse CONTRACTOR for costs incurred for

estimating services, design services, and services involved in the preparation of proposed revisions to the Contract Documents.

- (3) CONTRACTOR shall not list Change Orders on invoices or pay requests until the Change Order is fully executed. A Change Order is not fully executed until it has been approved and signed by the CITY.

B. Work Change Directives.

- (1) A Work Change Directive is a written order prepared and signed by CITY, directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s).
- (2) CITY and CONTRACTOR shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

C. Minor Changes in the Work. Minor changes in the Work are changes that do not involve an adjustment in the Contract Amount and/or Time of Completion and that do not materially and adversely affect the Work in the judgment of the CITY. CONTRACTOR may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however that CONTRACTOR shall promptly inform CITY in writing before any minor change is implemented, and receive written confirmation from CITY accepting the minor change in the Work before CONTRACTOR performs the minor change.

D. Emergencies. In any emergency affecting the safety of persons and/or property, CONTRACTOR shall act, at its discretion, to prevent threatened damage, injury or loss, but shall take steps to immediately notify CITY of the emergency and submit a written notification to the CITY within 24 hours of taking any emergency action.

15. **Liquidated Damages if Work Not Completed on Time.**

- A. The actual fact of the occurrence of damages and the actual amount of the damages that CITY would suffer if the entire Work, and/or any specified portion thereof, were not completed within the time(s) specified herein are dependent upon many circumstances and conditions that could prevail in various combinations, and for this reason, it is impracticable and extremely difficult to fix the actual damages. Damages that CITY would suffer in the event of such delay include: loss of the use of the Memorial Auditorium for performances, concerts, graduations, or other events; expenses of prolonged assignment to the project of an architectural and/or engineering staff; prolonged costs of administration, inspection, and supervision; increased operational expenses and/or impaired

operation of other facilities dependent upon completion of the project; and the loss and inconvenience suffered by the public within the City of Sacramento by reason of the delay in the completion of the project or portion thereof. Accordingly, the parties agree, and by execution of this Agreement, CONTRACTOR acknowledges that it understands and agrees, that the amount(s) set forth herein as liquidated damages reflect the parties' best efforts at the time of entering into the Contract to estimate the damages that may be incurred by CITY and the public due to the CONTRACTOR's delay in completion of the Work and/or any specified portion thereof, and shall be presumed to be the amount of damages sustained by the failure of CONTRACTOR to complete the entire Work and/or any specified portion thereof within the time(s) specified herein.

- B. CONTRACTOR shall pay liquidated damages to CITY for failure to Substantially Complete, as that term is defined in Section 1, Construction Phase 1 Work by the Completion Date-Construction Phase 1 (as extended in accordance with the Contract Documents, if applicable) and failure to complete the entire Construction Phase 2 Work by the Completion Date-Construction Phase 2 (as extended in accordance with the Contract Documents, if applicable) in the amount of \$4,493 for each calendar day after the Completion Date for Construction Phase 1 and Construction Phase 2, respectively (as extended in accordance with the Contract Documents, if applicable), continuing to the time at which the entire Work for Construction Phase 1 is Substantially Complete and the entire Work for Construction Phase 2 is complete, respectively. Such amount is the actual cash value agreed upon by the CITY and CONTRACTOR as the loss to CITY and the public resulting from CONTRACTOR's default.
- C. The parties agree, and by execution of this Agreement, CONTRACTOR acknowledges that it understands and agrees, that the foregoing provisions provide for the imposition of liquidated damages from the Completion Date-Construction Phase 1 and Completion Date-Construction Phase 2 (as extended in accordance with the Contract Documents, if applicable) until the date the entire Work for Construction Phase 1 is Substantially Complete and the entire Work for Construction Phase 2 is complete, respectively, as determined by the Engineer in accordance with Section 8-4 of the Standard Specifications.
- D. In the event CONTRACTOR shall become liable for liquidated damages, CITY, in addition to all other remedies provided by law, shall have the right to withhold any and all payments that otherwise would be or become due CONTRACTOR until the liability of CONTRACTOR under this Section 15 is finally determined. CITY shall have the right to use and apply such payments, in whole or in part, to reimburse CITY for all liquidated damages due or to become due to CITY. Any remaining balance of such payments shall be paid to CONTRACTOR only after discharge in full of all liability incurred by CONTRACTOR under this Section 15 or otherwise under any provision of the Contract Documents or any applicable Law or Regulation. If the

sum so retained by CITY is not sufficient to discharge all such liabilities of CONTRACTOR, CONTRACTOR shall continue to remain liable to CITY until all such liabilities are satisfied in full. No failure by CITY to withhold any payment as specified above shall in any manner be construed to constitute a release of any such liabilities nor a waiver of the CITY's right to withhold payment for such liabilities.

16. Termination.

A. Termination after Completion Date – Construction Phase.

- (1) In addition to any other rights CITY may have, if any services or work required under the Contract (including but not limited to punch list items) are not completed as of the Completion Date for the respective Construction Phases (as adjusted by any extensions of time for Excusable Delays granted pursuant to the Contract Documents), CITY may terminate the Contract at any time after the Completion Date for the respective - Construction Phase (as adjusted by any extensions of time for Excusable Delays granted pursuant to the Contract Documents), by providing a written notice to CONTRACTOR specifying the date of termination. Such notice also may specify conditions or requirements that CONTRACTOR must meet to avoid termination of the Contract on such date. If CONTRACTOR fails to fulfill all such conditions and requirements by such termination date, or, if no such conditions or requirements are specified, CONTRACTOR shall cease rendering services and performing work on such termination date, and shall not be entitled to receive any compensation for services rendered or work performed after such termination date. In the event of such termination, CONTRACTOR shall remain liable to CITY for liquidated damages incurred for any period of time prior to the termination date.

- (2) In addition to any other charges, withholdings or deductions authorized under the Contract or any Laws or Regulations, if CITY terminates the Contract pursuant to this section, CITY may withhold and deduct from any payment and/or retention funds otherwise due CONTRACTOR any sum necessary to pay the CITY's cost of completing or correcting, or contracting for the completion or correction of, any services or work under the Contract that are not completed to the satisfaction of the CITY or that otherwise are deficient or require correction as of such termination date, including but not limited to incomplete punch list items. Such costs shall include all of the CITY's direct and indirect costs incurred to complete or correct such services or work, including the CITY's administrative and overhead costs. If the amount of payment(s) and/or retention funds otherwise due the CONTRACTOR are insufficient to pay such costs, CITY

shall have the right to recover the balance of such costs from the CONTRACTOR and/or its Surety(ies).

B. Termination for Convenience.

- (1) Upon written notice to the CONTRACTOR, the CITY may at any time, without cause and without prejudice to any other right or remedy of the CITY, elect to terminate the Contract for the convenience of CITY. In such case, the CONTRACTOR shall be paid (without duplication of any items, and after deduction and/or withholding of any amounts authorized to be deducted or withheld by the Contract Documents or any Laws or Regulations):
 - a) For Work executed in accordance with the Contract Documents prior to the effective date of termination and determined to be acceptable by the Engineer, including fair and reasonable sums for overhead and profit on such Work;
 - b) For reasonable claims, costs, losses, and damages incurred in settlement of terminated contracts with subcontractors, suppliers, and others; and
 - c) For reasonable expenses directly attributable to termination.
- (2) CONTRACTOR shall not be paid for any loss of anticipated profits or revenue for any Work not performed prior to termination, nor for any economic loss arising out of or resulting from such termination, except for the payments listed in this section. CONTRACTOR's warranty under Exhibit A of this Agreement shall apply, and CONTRACTOR shall remain responsible for all obligations related to such warranty, with respect to all portions of the Work performed prior to the effective date of the termination for convenience pursuant to this section. The CITY shall be entitled to have any or all remaining Work performed by other contractors or by any other means at any time after the effective date of a termination for convenience pursuant to this section.

C. Termination for Breach of Contract.

- (1) If CONTRACTOR abandons the Work under this Contract, or if the Contract or any portion of the Contract is sublet or assigned without the consent of the CITY, or if the Engineer determines in the Engineer's sole discretion that the conditions of the Contract in respect to the rate of progress of the Work are not being fulfilled or any part thereof is unnecessarily delayed, or if CONTRACTOR violates or breaches, or fails to execute in good faith,

any of the terms or conditions of the Contract, or if CONTRACTOR refuses or fails to supply enough properly skilled labor or materials or refuses or fails to make prompt payment to subcontractors for material or labor, or if CONTRACTOR disregards any Laws or Regulations or proper instruction or orders of the Engineer, then, notwithstanding any provision to the contrary herein, the CITY may give CONTRACTOR and its Sureties written notification to immediately correct the situation or the Contract shall be terminated.

- (2) In the event that such notice is given, and, in the event such situation is not corrected, or arrangements for correction satisfactory to the CITY are not made, within ten (10) calendar days from the date of such notice, the Contract shall upon the expiration of said period cease and terminate. In the event of any such termination, CITY may take over the Work and prosecute the Work to completion, or otherwise, and the CONTRACTOR and its Sureties shall be liable to CITY for any cost occasioned CITY thereby, as hereinafter set forth.
- (3) In the event CITY completes the Work, or causes the Work to be completed, no payment of any kind shall be made to CONTRACTOR until the Work is complete. The cost of completing the Work, including but not limited to, extra costs of project administration and management incurred by CITY, both direct or indirect, shall be deducted from any sum then due, or that becomes due, to CONTRACTOR from CITY. If sums due to CONTRACTOR from CITY are less than the cost of completing the Work, CONTRACTOR and its Sureties shall pay CITY a sum equal to this difference on demand. In the event CITY completes the Work, and there is a sum remaining due to CONTRACTOR after CITY deducts the costs of completing the Work, then CITY shall pay such sum to CONTRACTOR. The CONTRACTOR and CONTRACTOR's Sureties shall be jointly and severally liable for all obligations imposed on CONTRACTOR hereunder.
- (4) No act by CITY before the Work is finally accepted, including, but not limited to, exercise of other rights under the Contract, actions at law or in equity, extensions of time, payments, assessments of liquidated damages, occupation or acceptance of any part of the Work, waiver of any prior breach of the Contract or failure to take action pursuant to this section upon the happening of any prior default or breach of CONTRACTOR, shall be construed to be a waiver or estoppel of the CITY's right to act pursuant to this section upon any subsequent event, occurrence or failure by CONTRACTOR to fulfill the terms and conditions of the Contract. The rights of CITY to terminate the Contract pursuant to this section and pursuant to Sections 16(A) and 16(B) are cumulative and are in addition to all other rights of CITY pursuant to the Contract and at law or in equity.

- D. Contractor Bankrupt. If CONTRACTOR should commence any proceeding under the Bankruptcy Act, or if CONTRACTOR be adjudged as bankrupt, or if CONTRACTOR should make any assignment for the benefit of creditors, or if a receiver should be appointed on account of CONTRACTOR's insolvency, then the CITY may, without prejudice to any other right or remedy, terminate the Contract and complete the Work by giving notice to CONTRACTOR and his Surety. CONTRACTOR's Surety shall have the right to complete the Work by commencing within 30 calendar days of CITY's notice; and, in the event CONTRACTOR's Surety fails to commence work within 30 calendar days of CITY's notice, CITY shall have the right to complete, or cause completion of the Work.
- E. Sureties' Obligations Upon Termination. If the CITY terminates the Contract pursuant to this Section 16:
- (1) The Surety under CONTRACTOR's performance bond shall be fully responsible for all of the CONTRACTOR's remaining obligations of performance under the Contract as if the Surety were a party to the Contract, including without limitation CONTRACTOR's obligations, as provided in the Contract Documents, to complete and provide a one-year warranty of the entire Work, pay liquidated damages and indemnify, defend and hold harmless CITY, up to the full amount of the performance bond.
 - (2) The Surety under CONTRACTOR's payment bond shall be fully responsible for the performance of all of the CONTRACTOR's remaining payment obligations for work, services, equipment or materials performed or provided in connection with the Work or any portion thereof, up to the full amount of the payment bond.

17. Prevailing Wage Requirements.

- A. Payment of Prevailing Wages. This Contract is subject to prevailing wage requirements pursuant to Section 3.60.180 of the Sacramento City Code. Accordingly, CONTRACTOR shall comply with all applicable laws and regulations related to payment of prevailing wages and CONTRACTOR shall ensure that every lower-tier subcontractor complies with all applicable laws and regulations related to payment of prevailing wages. The provisions of Sacramento City Code section 3.60.180 require, among other things, that CONTRACTOR and every lower-tier subcontractor pay not less than the prevailing rate of wages, as determined by the Director of the California Department of Industrial Relations pursuant to California Labor Code section 1773. CONTRACTOR and every lower-tier subcontractor shall submit certified payrolls and labor compliance documentation electronically when and as required by CITY. CONTRACTOR is responsible for compliance with

Sacramento City Code section 3.60.180, and shall include these requirements in every subcontract. This Contract is subject to compliance monitoring and enforcement by the California Department of Industrial Relations, as specified in California Labor Code section 1771.4.

- B. DIR Registration. California Labor Code section 1725.5 requires the CONTRACTOR and all lower-tier subcontractors performing public works services to be currently registered with the California Department of Industrial Relations (DIR), as specified in California Labor Code Section 1725.5. California Labor Code section 1771.1 provides that a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal (subject to the requirements of Section 4104 of the California Public Contract Code), or engage in the performance of any contract for public work, unless currently registered and qualified to perform public work pursuant to California Labor Code section 1725.5. The CONTRACTOR shall list the CONTRACTOR's current DIR registration number, and the current DIR registration number of all lower-tier subcontractors, as part of its GMP Proposal, as shown in the example below:

CONTRACTOR's DIR No. _____
Subcontractor name: _____ DIR No. _____
Subcontractor name: _____ DIR No. _____
Subcontractor name: _____ DIR No. _____

Further information can be found on DIR's website at <http://www.dir.ca.gov/Public-Works/Contractors.html>. The above summary is provided solely for informational purposes, and does not in any way affect the CONTRACTOR's and subcontractors' obligation to comply in all respects with all other applicable laws and regulations. The CONTRACTOR shall disseminate these provisions to every lower-tier subcontractor.

- C. Apprentices on Public Work Projects. CONTRACTOR and any subcontractor or subconsultant shall comply with Sacramento City Code section 3.60.190, California Labor Code section 1777.5 *et seq.*, and implementing regulations set forth in Title 8 of the California Code of Regulations, governing the employment of apprentices. CONTRACTOR and any subcontractor or subconsultant performing Public Work will be subject to penalties for apprenticeship violations in accordance with Labor Code section 1777.7. Please refer to Exhibit L for more information, and refer to the link below for guidance in meeting your obligation to satisfy the apprentice requirements for this project:
<https://www.dir.ca.gov/das/DASApprenticesOnPublicWorksSummaryOfRequirements.htm>

- D. CONTRACTOR agrees to the following:

- (1) CONTRACTOR and subcontractors shall pay all mechanics and laborers employed directly on the site of the Work, unconditionally and at least once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and the laborers and mechanics.
 - (2) CONTRACTOR will post the scale of wages to be paid in a prominent and easily accessible place at the site of the Work.
 - (3) There may be withheld from the CONTRACTOR so much of accrued payments as the CITY considers necessary to pay to laborers and mechanics employed by CONTRACTOR or any subcontractor on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by the laborers and mechanics and not refunded to CONTRACTOR or subcontractors or their agents.
- E. The City of Sacramento has an approved Labor Compliance Program. CONTRACTOR and every lower-tier subcontractor is required to submit certified payrolls and labor compliance documentation electronically at the discretion of and in the manner specified by the CITY.
- F. Electronic submittal will be performed through a web-based system. CONTRACTOR and each subcontractor will be given a Log On identification and password to access the City of Sacramento Reporting system. Use of the system may entail additional data entry of weekly payroll information including employee identification labor classification, total hours worked and hours worked on this project, wage and benefit rates paid, etc. The CONTRACTOR's payroll and accounting software might be capable of generating a 'comma delimited file' that will interface with the software.
- G. These requirements flow down to every lower-tier subcontractor and vendor required to provide labor compliance documentation.
- H. All questions regarding the Labor Compliance Program should be directed to the CITY's Labor Compliance Section at (916) 808-1923.

18. Indemnity.

- A. CONTRACTOR shall defend, hold harmless and indemnify the CITY, its officers, employees, and agents, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments,

penalties, costs and expenses of every type and description, whether arising on or off the site of the Work, including, but not limited to, any fees and/or costs reasonably incurred by CITY's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform the Work by the CONTRACTOR, any subcontractor or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, including without limitation Liabilities from arts organizations whose performances at the Community Center Theater and/or Memorial Auditorium are disrupted, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder, or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense to the extent arising from (i) the sole negligence or willful misconduct of, or defects in design furnished by, CITY, its agents, servants, or independent contractors who are directly responsible to CITY, or (ii) the active negligence of CITY. If CITY performs work on the Project or at the Site with separate contractors under CITY's control, CITY shall hold harmless and indemnify CONTRACTOR for any Liabilities arising from the sole negligence or willful misconduct of CITY's contractors.

- B. The existence or acceptance by CITY of any of the insurance policies or coverages described in this Contract shall not affect or limit any of CITY's rights under this Section 18, nor shall the limits of such insurance limit the liability of CONTRACTOR hereunder. The provisions of this Section 18 shall survive any expiration or termination of the Contract.
19. **Contractor Shall Assume Risks.** Until the completion and final acceptance by CITY of all Work under this Contract, the Work shall be under CONTRACTOR's responsible care and charge, and CONTRACTOR, at no cost to CITY, shall rebuild, repair, restore and make good all injuries, damages, re-erectations, and repairs occasioned or rendered necessary by accidental causes of any nature, to all or any portions of the Work. The CONTRACTOR shall assume all risks during both Construction Phases as described in Section 3(B), Section 3(C) and the attached Exhibit A.
20. **General Liability of Contractor.** Except as otherwise herein expressly stipulated, CONTRACTOR shall perform all the work and furnish all the labor, materials, tools, equipment, apparatus, facilities, transportation, power and light, and appliances, necessary or proper for performing and completing the Work herein required in the manner and within the time herein specified. The mention of any specific duty or liability of CONTRACTOR shall not be construed as limitation or restriction of any general liability

or duty of CONTRACTOR and, any reference to any specific duty or liability shall be construed to be for the purpose of explanation.

21. **Contract Adjustments and Disputes.**

A. **Duty to Continue Performance.** Unless provided to the contrary in the Contract Documents, CONTRACTOR shall continue to perform the Work and CITY shall continue to satisfy its payment obligations to CONTRACTOR, pending the final resolution of any dispute or disagreement between CONTRACTOR and CITY.

22. **Performance and Payment Bonds.** Prior to CITY's acceptance of the GMP, CONTRACTOR shall provide a Performance Bond and a Payment Bond to the CITY, each for a sum equal to one hundred percent (100%) of the GMP (refer to Exhibit K). Each Bond shall be executed by a surety insurer admitted and duly authorized to transact business in the State of California. If the GMP is increased by a Change Order, CONTRACTOR shall increase the Performance and Payment Bond amounts to the extent required by the CITY. The amount paid by CITY to CONTRACTOR for the Payment Bond and Performance Bond shall be included within the GMP. No additional compensation beyond the GMP amount will be provided to CONTRACTOR for procurement of bonds.

23. **Insurance Requirements.** During the entire term of this Contract, CONTRACTOR shall maintain in full force and effect the insurance coverage described in this section.

Full compensation for all premiums that CONTRACTOR is required to pay for the insurance coverage described herein shall be included in the compensation specified for performance of the Work under the Contract. No additional compensation will be provided for CONTRACTOR's insurance premiums. Any available insurance proceeds in excess of the specified minimum limits and coverages shall be available to CITY.

It is understood and agreed by the CONTRACTOR that its liability to the CITY shall not in any way be limited to or affected by the amount of insurance coverage required or carried by the CONTRACTOR in connection with this Contract.

A. Minimum Scope and Limits of Insurance Coverage.

(1) Commercial General Liability Insurance, providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal and advertising injury, arising out of activities performed by or on behalf of CONTRACTOR and its subcontractors, products and completed operations of CONTRACTOR and its subcontractors, with limits of not less than five million dollars (\$5,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general

aggregate limit shall be twice the required occurrence limit. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.

- (2) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than three million dollars (\$3,000,000) per accident. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the CONTRACTOR.
- (3) Excess Insurance: The minimum limits of insurance required above may be satisfied by a combination of primary and umbrella or excess insurance coverage; provided that any umbrella or excess insurance shall contain, or be endorsed to contain, a provision that it shall apply on a primary basis for the benefit of the CITY, and any insurance or self-insurance maintained by CITY, its officials, employees, or volunteers shall be in excess of such umbrella or excess coverage and shall not contribute with it.
- (4) Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Worker's Compensation policy shall include a waiver of subrogation in favor of the CITY.
- (5) Pollution Liability.
 - a) Prior to, and as a condition of, CITY's acceptance of the GMP, CONTRACTOR shall obtain Pollution Liability insurance. This insurance shall be written in comprehensive form either as a separate policy or as an endorsement to CONTRACTOR's general liability coverage and shall cover liability for bodily injury, property damage, and environmental damage resulting from pollution and related cleanup costs incurred, all arising out of any Work to be performed under the Contract, including liability for and defense of lawsuits and regulatory actions. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Coverage shall apply to sudden as well as gradual pollution conditions, including without limitation conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, natural gas, waste materials, or other irritants, contaminants, or pollutants, including asbestos. The liability limits shall be not less than:
 1. Combined Single Limit for each occurrence: \$5,000,000.

2. General Aggregate: \$10,000,000.

b) If the coverage required is written on a claims-made coverage form:

1. The retroactive date must be shown, and this date must be before the award date of the Contract.
2. Insurance must be maintained and evidence of insurance must be provided for at least five years after final payment.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Contract award date, the CONTRACTOR must purchase extended reporting period coverage for a minimum of five years after final payment.
4. A copy of the claims reporting requirements must be submitted to the CITY for review.
5. If the Work involves lead-based paint or asbestos identification/remediation, the CONTRACTOR's Pollution Liability policy shall not contain lead-based paint or asbestos exclusions. If the Work involves mold identification/remediation, the CONTRACTOR's Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

(6) Professional Liability Insurance may be required as specified in Section 34 below. If such Professional Liability Insurance is required, it shall be provided on a claims made basis for errors, omissions, or malpractice with limits of not less than two million dollars (\$2,000,000) with a \$4,000,000 aggregate, and such insurance must be continued for at least 3 years following completion of all Work under this Contract. The retroactive date must be prior to the date this Contract is approved or any Work is performed.

B. Additional Insured Coverage.

(1) Commercial General Liability Insurance: The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of: activities performed by or on behalf of CONTRACTOR and its subcontractors; products and completed operations of CONTRACTOR and its subcontractors; and premises owned, leased or used by CONTRACTOR and its subcontractors.

(2) Automobile Liability Insurance: The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

C. Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

(1) CONTRACTOR's insurance coverage, including excess insurance, shall be primary insurance as respects CITY, its officials, employees and volunteers. Any insurance or self-insurance maintained by CITY, its officials, employees or volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.

(2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY, its officials, employees or volunteers.

(3) Coverage shall state that CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(4) CITY will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

D. Acceptability of Insurance. Insurance shall be placed with insurers with a Bests' rating of not less than A:VI. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section 23 must be declared to and approved by the CITY in writing prior to execution of this Contract.

E. Verification of Coverage.

(1) CONTRACTOR shall furnish CITY with certificates and required endorsements evidencing the insurance required. Copies of policies shall be delivered to the CITY on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.

(2) For all insurance policy renewals during the term of this Contract, Contractor shall send insurance certificates reflecting the policy renewals directly to:

City of Sacramento
c/o EXIGIS LLC
P.O. Box 4668 ECM- #35050
New York, NY 10168-4668

Insurance certificates also may be faxed to (888) 355-3599, or e-mailed to: certificates-sacramento@riskworks.com

(3) The CITY may withdraw its offer of contract or cancel the Contract if the certificates of insurance and endorsements required have not been provided prior to execution of this Contract as set forth below. The CITY may withhold payments to CONTRACTOR and/or cancel the Contract if the insurance is canceled or CONTRACTOR otherwise ceases to be insured as required herein.

a. Pre-Construction Services: For all Pre-Construction Services prior to CITY's acceptance of the GMP, the CONTRACTOR must have in place the required insurance identified in Section 23(A) with the following exceptions:

- i. Commercial General Liability Insurance with limits of not less than one million dollars (\$1,000,000) per occurrence; and
- ii. Automobile Liability Insurance with limits of not less than one million dollars (\$1,000,000) per accident.
- iii. Pollution Liability

b. Construction Services: Upon written acceptance of a GMP by CITY, CONTRACTOR must provide all insurance required in Section 23(A). In addition, payment and performance bonds must be provided as set forth in Section 22.

F. Subcontractors. Contractor shall require and verify that all subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in Exhibit H.

G. Property Insurance.

(1) CONTRACTOR shall purchase and maintain without interruption, in a company or companies lawfully authorized to do business in California, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the full replacement cost thereof with a \$10,000 deductible. Earth movement/Earthquake coverage will not be included, as the CITY has directed this will be self-insured by the CITY based on maximum probable loss of the new improvements. Such property insurance shall be maintained, otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until completion and final acceptance of all Work or until no person or entity other than the CITY has an insurable interest in the property required to be covered, whichever is later. This insurance shall provide for losses to be payable directly to the

CITY, CONTRACTOR, or any Subcontractor, as named insureds or loss payees, as their interests may appear. The policy shall have no coinsurance penalty provisions.

- (2) This property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of lightning, fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, flood, windstorm, water damage, damage caused by frost and freezing, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the CONTRACTOR's or architect's services and expenses (including the services and expenses of subcontractors and subconsultants) required as a result of such insured loss. This property insurance shall include comprehensive boiler and machinery coverage including coverage for installation and testing. The policy shall contain flood limits of \$2,000,000 and consequential loss not limited to loss of use to property owner of \$500,000.
- (3) This property insurance shall cover portions of the Work stored on and off the Project site, and also portions of the Work in transit. CONTRACTOR shall be responsible for any claim in an amount less than \$10,000.
- (4) CITY will provide coverage for existing structure and will secure a Waiver of Subrogation in favor of the CONTRACTOR from their insurance carrier. CONTRACTOR and CITY by the nature of the Builder Risk mutually waive subrogation in regards to property coverage for the new work to be installed. Upon CITY's written notification to CONTRACTOR of CITY's election to do so, provided at any time prior to CITY's acceptance of the GMP, CONTRACTOR shall have no obligation to provide property insurance coverage under this subsection G, and any costs incurred by CONTRACTOR to obtain property insurance coverage of any kind with respect to the Work shall be the sole responsibility of CONTRACTOR and shall not be paid by CITY. CONTRACTOR shall provide suitable written evidence of such coverage to CITY not more than 30 days after CITY's acceptance of the GMP. CITY shall be responsible for the deductible for the CITY's property policy, except that CONTRACTOR shall fund the first \$10,000 of any claim made against the Builders Risk policy.

24. Failure to Maintain Bonds or Insurance.

- (1) If, at any time during the performance of this Contract, CONTRACTOR fails to maintain any item of the bonds and/or insurance required under the Contract in

full force and effect, CONTRACTOR shall immediately suspend all Work under the Contract and notify CITY in writing of such failure. After such notice is provided, or if CITY discovers such failure and notifies CONTRACTOR, the CITY thereafter may withhold all Contract payments due or that become due until notice is received by CITY that such bonds and/or insurance have been restored in full force and effect and that the premiums therefor have been paid for a period satisfactory to the CITY's Division of Risk Management. CONTRACTOR shall not resume Work until notified by CITY to do so, and the CITY shall have no responsibility or liability for any costs incurred by CONTRACTOR as a result of such suspension of Work.

- (2) In addition to the foregoing, any failure to maintain any item of the required bonds and/or insurance at any time during the performance of this Contract will be sufficient cause for termination of the Contract by CITY.
- (3) The CONTRACTOR shall be solely responsible for, and shall defend, indemnify and hold harmless the CITY, its officers, employees and agents against and from, any and all damages, claims, losses, actions, costs or other expenses of any kind incurred by any party as a direct or indirect result of any suspension of Work or termination of the Contract under the provisions of this Section 24.

25. **Representatives of the Parties.**

A. CITY Representative.

- (1) The CITY Representative for this Contract is:

Desmond Parrington
Senior Development Project Manager
915 I Street, Fifth Floor
Sacramento, CA 95814
(916) 808-5044
dparrington@cityofsacramento.org

- (2) All CONTRACTOR questions pertaining to this Contract shall be referred to the CITY Representative or the Representative's designee. Unless otherwise provided in this Contract, all correspondence to the CITY shall be addressed to the CITY Representative.

B. CONTRACTOR Representative.

- (1) The CONTRACTOR Representative for this Contract is:

Matt Wade, Project Director
Kitchell CEM, Inc.

2450 Venture Oaks Way, Suite 500
Sacramento, CA 95833
Phone: (916) 648-9700
Email: MWade@kitchell.com

- (2) All CITY questions pertaining to this Contract shall be referred to the CONTRACTOR Representative. All correspondence to CONTRACTOR shall be addressed to the CONTRACTOR Representative.
- C. All notices delivered under the Contract Documents will be deemed effective according to the provisions of Section 41(F) below.

26. Ownership and Confidentiality of Information.

A. Contractor Information.

- (1) CITY shall have full ownership and control, including ownership of any copyrights, of all Information prepared, produced, or provided by CONTRACTOR pursuant to this Contract. In this Contract, the term "Information" shall be construed to mean and include: any and all work product, submittals, reports, plans, specifications, and other deliverables consisting of documents, writings, handwritings, typewriting, printing, photostatting, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. CONTRACTOR shall not be responsible for any unauthorized modification or use of such Information for other than its intended purpose by CITY.
- (2) CONTRACTOR shall fully defend, indemnify and hold harmless CITY, its officers and employees, and each and every one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by CONTRACTOR pursuant to this Contract infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights. CITY shall make reasonable efforts to notify CONTRACTOR not later than ten (10) days after CITY is served with any such claim, action, lawsuit or other proceeding, provided that CITY's failure to provide such notice within such time period shall not relieve CONTRACTOR of its obligations hereunder, which shall survive any termination or expiration of this Contract.
- (3) All proprietary and other information received from CONTRACTOR by CITY, whether received in connection with CONTRACTOR's proposal to CITY or

in connection with any Work performed by CONTRACTOR, will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "trade secret" when it is provided to CITY, CITY shall give notice to CONTRACTOR of any request for the disclosure of such information. The CONTRACTOR shall then have five (5) days from the date it receives such notice to enter into an agreement with the CITY, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by CITY in any legal action to compel the disclosure of such information under the California Public Records Act. The CONTRACTOR shall have sole responsibility for defense of the actual "trade secret" designation of such information.

- (4) The parties understand and agree that any failure by CONTRACTOR to respond to the notice provided by CITY and/or to enter into an agreement with CITY, in accordance with the provisions above, shall constitute a complete waiver by CONTRACTOR of any rights regarding the information designated "trade secret" by CONTRACTOR, and such information shall be disclosed by CITY pursuant to applicable procedures required by the Public Records Act.

- B. CITY's Right to Information at Termination. Should this Contract be terminated, CITY retains the right to utilize consultants, professionals, contractors, sub-contractors and others hired directly or indirectly by the CONTRACTOR to prepare the Information. CONTRACTOR agrees to encourage and facilitate the completion of the Information, and not prohibit or discourage designers, professionals, contractors, sub-contractors and others hired directly or indirectly by the CONTRACTOR from entering into contracts to complete the Information.
- C. Confidentiality of CITY Information. During performance of this Contract, CONTRACTOR may gain access to and use CITY information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "City Information") that are valuable, special and unique assets of the CITY. CONTRACTOR agrees to protect all CITY Information and treat it as strictly confidential, and further agrees that CONTRACTOR shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any CITY Information to any third party without the prior written consent of CITY. In addition, CONTRACTOR shall comply with all CITY policies governing the use of the CITY network and technology systems, as set forth in applicable provisions of the City of Sacramento Administrative Policy

Instructions # 30. A violation by CONTRACTOR of this Section 26(C) shall be a material violation of this Contract and shall justify legal and/or equitable relief.

27. **Accounting Records of Contractor.** During performance of the Contract and for a period of three (3) years after completing the entire Work, CONTRACTOR shall maintain all accounting and financial records related to the Contract and performance of the Work in accordance with generally accepted accounting practices, and shall keep and make such records available for inspection and audit by representatives of the CITY upon reasonable written notice.
28. **Use Tax Requirements.** During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:
- A. Use Tax Direct Payment Permit: For all leases and purchases of materials, equipment, supplies, or other tangible personal property used to perform the Contract and shipped from outside California, the CONTRACTOR and any subcontractors leasing or purchasing such materials, equipment, supplies or other tangible personal property shall obtain a Use Tax Direct Payment Permit from the California State Board of Equalization ("SBE") in accordance with the applicable SBE criteria and requirements.
- B. Sellers Permit: For any construction contract and any construction subcontract in the amount of \$5,000,000 or more, CONTRACTOR and the subcontractor(s) shall obtain sellers permits from the SBE and shall register the jobsite as the place of business for the purpose of allocating local sales and use tax to the CITY. CONTRACTOR and its subcontractors shall remit the self-accrued use tax to the SBE, and shall provide a copy of each remittance to the CITY.

The above provisions shall apply in all instances unless prohibited by the funding source for the Contract.

29. **Independent Contractor.**
- A. It is understood and agreed that CONTRACTOR (including CONTRACTOR's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither CONTRACTOR nor CONTRACTOR's assigned personnel shall be entitled to any benefits payable to employees of CITY. CITY is not required to make any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of this Contract, and CONTRACTOR shall be issued a Form 1099 for its services hereunder. As an independent contractor, CONTRACTOR hereby agrees to indemnify and hold CITY harmless from any and all claims that may be made against CITY based upon any contention by any of CONTRACTOR's employees or by any third party, including but not limited to any state or federal

agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Contract or by reason of the nature and/or performance of any Work under this Contract.

- B. It is further understood and agreed by the parties hereto that CONTRACTOR, in the performance of its obligations hereunder, is subject to the control and direction of CITY as to the designation of tasks to be performed and the results to be accomplished under this Contract, but not as to the means, methods, or sequence used by CONTRACTOR for accomplishing such results. To the extent that CONTRACTOR obtains written permission to, and does, use CITY facilities, space, equipment or support services in the performance of this Contract, this use shall be at the CONTRACTOR's sole discretion based on the CONTRACTOR's determination that such use will promote CONTRACTOR's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Contract, the CITY does not require that CONTRACTOR use CITY facilities, equipment or support services or work in CITY locations in the performance of this Contract.
- C. If, in the performance of this Contract, any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. Except as may be specifically provided elsewhere in this Contract, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONTRACTOR. It is further understood and agreed that CONTRACTOR shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of CONTRACTOR's assigned personnel and subcontractors.
- D. The provisions of this Section 29 shall survive any expiration or termination of this Contract. Nothing in this Contract shall be construed to create an exclusive relationship between CITY and CONTRACTOR. CONTRACTOR may represent, perform services for, or be employed by such additional persons or companies as CONTRACTOR sees fit provided that CONTRACTOR does not violate the provisions of Section 32, below regarding conflicts of interest.

30. Licenses; Permits; Etc.

- A. Permits. CONTRACTOR shall obtain all necessary permits, approvals, fees, licenses, government charges, and inspection charges required for the prosecution of the Work by any agency or entity having jurisdiction over the Project. CITY shall pay for all necessary permits, inspections, and government charges as set forth in Section 5(D). CONTRACTOR further represents and warrants that CONTRACTOR has all licenses, permits, City Business Operations Tax Certificate, qualifications, and approvals of whatsoever nature legally required for CONTRACTOR to practice its profession or provide any Work or services under the

Contract. CONTRACTOR represents and warrants that CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Contract any licenses, permits, and approvals that are legally required for CONTRACTOR to practice its profession or provide such Work or services. Without limiting the generality of the foregoing, if CONTRACTOR is an out-of-state corporation, CONTRACTOR warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.

B. Licensed Design Professionals. CONTRACTOR shall, consistent with applicable state licensing laws, provide qualified licensed design professionals for any and all design work completed by CONTRACTOR, including all deferred submittals for such items as “fire suppression,” “fire alarm,” “building security alarm,” and similar design and documentation. Qualified licensed design professionals may include licensed contractors preparing designs for work they will install under the provisions of Division 3 of the Business and Professions Code by Section 5537.2 or 6737.3. Nothing in the Contract Requirements is intended or deemed to create any legal or contractual relationship between CITY and any design consultant employed by the CONTRACTOR.

31. **Contractor Not Agent.** Except as CITY may specify in writing, CONTRACTOR and CONTRACTOR’s personnel shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONTRACTOR and CONTRACTOR’s personnel shall have no authority, express or implied, to bind CITY to any obligations whatsoever.

32. **Conflicts of Interest.** CONTRACTOR covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, that would conflict in any manner with the interests of CITY or that would in any way hinder CONTRACTOR’s performance of Work under this Contract. CONTRACTOR further covenants that in the performance of this Contract, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor, without the written consent of CITY. CONTRACTOR agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY at all times during the performance of this Contract. If CONTRACTOR is or employs a former officer or employee of the CITY, CONTRACTOR and any such employee(s) shall comply with the provisions of Sacramento City Code section 2.16.090 pertaining to appearances before the City Council or any CITY department, board, commission or committee.

33. **Standard of Performance.**

A. Pre-Construction Services.

- (1) General Standard. CONTRACTOR shall perform all Work required pursuant to this Contract in the manner and according to the standards currently observed by a competent practitioner of CONTRACTOR's profession in California. All products of whatsoever nature that CONTRACTOR delivers to CITY pursuant to this Contract shall be prepared in a professional manner and conform to the standards of quality normally observed by a person currently practicing in CONTRACTOR's profession, and shall be provided in accordance with any schedule of performance specified in the Contract Documents. CONTRACTOR shall assign only competent personnel to perform Work pursuant to this Contract.
- (2) Design Professional Standard. The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project.
- (3) Contractor Staffing. CONTRACTOR shall notify CITY in writing of any changes in CONTRACTOR's staff assigned to perform the Work required under this Contract, prior to any such performance. In the event that CITY, at any time during the term of this Contract, desires the removal of any person assigned by CONTRACTOR to perform Work pursuant to this Contract, because CITY, in its sole discretion, determines that such person is not performing in accordance with the standards required herein, CONTRACTOR shall remove such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such person.

B. Construction Services.

- (1) General Standard. Unless otherwise provided in the Contract Documents to be the responsibility of CITY or a separate contractor, CONTRACTOR shall provide through itself or subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit CONTRACTOR to complete construction of the Project consistent with the Contract Documents and in an efficient manner. CONTRACTOR shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.
- (2) Subcontractors. CONTRACTOR shall employ only subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. CONTRACTOR shall ensure that the sub-contractors have valid A, B, or C contractor's licenses and make sure they are registered with the California Department of Industrial Relations (DIR) prior to hiring them. CITY may reasonably object to CONTRACTOR's

selection of any subcontractor, provided that the Contract Amount and/or Time of Completion shall be adjusted to the extent that CITY's decision impacts CONTRACTOR's overall project cost and/or time of performance. CONTRACTOR assumes responsibility to CITY for the proper performance of the work of subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between CITY and any subcontractor or sub-subcontractor, including but not limited to any third-party beneficiary rights.

- (3) Condition of the Site. CONTRACTOR shall keep the Site reasonably free from debris, trash and construction wastes to permit CONTRACTOR to perform construction services efficiently, safely and without interfering with the use of adjacent land areas, and as further stipulated in the Contract Documents. When the Work is Substantially Complete, or a portion of the Work has been completed, CONTRACTOR shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit CITY to occupy the Project or a portion of the Project for its intended use. CONTRACTOR shall provide a finished cleaning of all areas acceptable to the CITY before releasing any area to the CITY for occupancy.
- (4) Safety at the Site. CONTRACTOR recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. CONTRACTOR assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. CONTRACTOR shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, CONTRACTOR's Safety Representative shall be an individual stationed at the Site, during all construction related activities. The Safety Representative shall make routine daily inspections of the Site, shall document inspections in a daily log (including photographs), and shall hold weekly safety meetings with CONTRACTOR's personnel, Subcontractors and others as applicable.
- (5) Compliance with Safety Legal Requirements. CONTRACTOR and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any CITY-specific safety requirements set forth in the Contract Documents, provided that such CITY-specific requirements do not violate

any applicable Legal Requirement. CONTRACTOR shall immediately report in writing to CITY any safety-related injury, loss, damage or accident arising from the Work and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

(6) Safety Compliance by Subcontractors and Sub-Subcontractors. CONTRACTOR's responsibility for safety under this Section 33(B) is not intended in any way to relieve subcontractors and sub-subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

(7) CITY Safety Compliance. CITY shall require all CITY employees, its subcontractors, employees, agents and guests entering the construction site to comply with and obey all CONTRACTOR site rules and safety regulations including attendance at a Project specific orientation.

C. Cooperation Between Parties. CITY and CONTRACTOR commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

D. CITY Contractors. If CITY performs other work on the Project or at the Site with separate contractors under CITY's control, CONTRACTOR agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and timely manner, consistent with the Contract Documents, and without unreasonable disruption or interference.

34. **Professional Services.**

A. The CONTRACTOR shall not be required to provide professional services which constitute the practice of architecture or engineering, unless such services are specifically required by the Contract Documents for a portion of the Work, and unless the CONTRACTOR has specifically agreed in writing to provide such services, or unless such services are incidental to CONTRACTOR's development of submittals or shop drawings or the means and methods to be used by CONTRACTOR, its subcontractors, or material suppliers.

- B. If professional architecture or engineering services are required, the CONTRACTOR shall cause such services to be performed by appropriately licensed professionals, who shall be required to carry professional liability insurance as specified in Section 23 above.
- C. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the CONTRACTOR by the Contract Documents, the CONTRACTOR shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval. The CITY shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

35. Hazardous Conditions.

- A. Unless otherwise expressly provided in the Contract Documents to not be part of the Work, CONTRACTOR is responsible for all Hazardous Conditions encountered at the Site that have been identified in the hazardous materials and geotechnical reports that will be prepared by other consultant(s) for the City and provided to the CONTRACTOR for the areas referenced in Exhibit D (as it may be amended from time to time), as well as all Hazardous Conditions that are the direct or indirect result of work completed by the CONTRACTOR. Upon encountering any previously un-identified Hazardous Conditions, CONTRACTOR shall notify CITY and take steps necessary to protect the Work and continue working in unaffected areas of the Project Site.
- B. Upon receiving notice of the presence of suspected Hazardous Conditions that were not previously identified in the hazardous materials and geotechnical reports referred to in Section 35(A), the CITY shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include CITY retaining qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that CITY or CONTRACTOR must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.
- C. CONTRACTOR shall be obligated to resume work at the affected area of the Project only after CITY's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary

approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

- D. To the fullest extent permitted by law, CITY shall indemnify, defend and hold harmless CONTRACTOR, Subcontractors, anyone employed directly or indirectly for any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site provided the hazardous condition is not the result directly or indirectly of actions taken by the CONTRACTOR or previously included in the hazardous materials and geotechnical reports referred to in Section 35(A).
- E. Notwithstanding the preceding provisions, CITY is not responsible for Hazardous Conditions introduced to the Site by CONTRACTOR, subcontractors or anyone for whose acts they may be liable. CONTRACTOR shall indemnify, defend and hold harmless CITY and CITY's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by CONTRACTOR, subcontractors or anyone for whose acts they may be liable.

36. **Differing Site Conditions.**

- A. Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work are collectively referred to herein as "Differing Site Conditions."
- B. Upon encountering a Differing Site Condition, CONTRACTOR shall provide prompt written notice to CITY of such condition, which notice shall not be later than four (4) calendar days after such condition has been encountered. CONTRACTOR shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

37. **Art in Public Places.** The Project is considered an "eligible construction project," subject to the art in public places requirements of Chapter 2.84 of the Sacramento City Code.

38. **Non-Discrimination.**

- A. Non-Discrimination. CONTRACTOR agrees that it shall not discriminate against any person on account of their sex, race, color, religious creed, ancestry, national origin, disability, medical condition, marital status, age, gender, military or veteran

status, genetic information, or sexual orientation in violation of the Fair Employment and Housing Act or the Unruh Civil Rights Act. Upon a final determination by a court of competent jurisdiction that the Grantee has violated either of these Acts, the City may, at its option, (1) withhold payments to CONTRACTOR under this Contract until CONTRACTOR complies; or (2) suspend or terminate this Contract. CONTRACTOR shall include the provisions of this paragraph in every subcontract, including procurement of materials and lease of equipment, unless specifically exempted by the CITY.

B. Non-Discrimination in Employee Benefits. This Contract is subject to the requirements of Sacramento City Code Chapter 3.54, Non-Discrimination in Employee Benefits by City Contractors (also referred to as the “Equal Benefits Ordinance”). A summary of the requirements of Sacramento City Code Chapter 3.54, entitled “Requirements of the Non-Discrimination in Employee Benefits Code” can be viewed at: <http://portal.cityofsacramento.org/Finance/Procurement/Standard-Agreements>. By signing this Contract, CONTRACTOR acknowledges and represents that CONTRACTOR has read and understands these requirements and agrees to fully comply with all applicable requirements of Sacramento City Code Chapter 3.54. If requested by CITY, CONTRACTOR agrees to promptly provide such documents and information as may be required by CITY to verify CONTRACTOR’s compliance. Any violation by CONTRACTOR of Sacramento City Code Chapter 3.54 constitutes a material breach of this Contract, for which the CITY may terminate the Contract and pursue all available legal and equitable remedies.

39. **Considering Criminal Conviction Information in the Employment Application Process.** This Contract is subject to the requirements of Sacramento City Code Chapter 3.62, Procedures for Considering Criminal Conviction Information in the Employment Application Process (also referred to as the “Ban-the-Box” Ordinance). A summary of the requirements of Sacramento City Code Chapter 3.62, entitled “Ban-The-Box Requirements,” can be viewed at: <http://portal.cityofsacramento.org/Finance/Procurement/Standard-Agreements>. By signing this Contract, CONTRACTOR acknowledges and represents that CONTRACTOR has read and understands these requirements and agrees to fully comply with all applicable requirements of Sacramento City Code Chapter 3.62. If requested by CITY, CONTRACTOR agrees to promptly provide such documents and information as may be required by CITY to verify CONTRACTOR’s compliance. Any violation by CONTRACTOR of Sacramento City Code Chapter 3.62 constitutes a material breach of this Contract, for which the CITY may terminate the Contract and pursue all available legal and equitable remedies. CONTRACTOR agrees to require its subcontractors to fully comply with all applicable requirements of Sacramento City Code Chapter 3.62, and include these requirements in all subcontracts covered by Sacramento City Code Chapter 3.62.

40. **Priority Local Hire.** CONTRACTOR shall work towards the goal that a minimum of 5% of CONTRACTOR's total labor hours for on-site Project construction work performed by workers who are California residents ("Labor Hours"), including work performed by apprentices, journeymen, and administrative support staff, be completed by "Priority Workers." A "Priority Worker" is a resident who resides within the SHRA Promise Zone Boundary or one of the following economically disadvantaged zip code areas: 95811, 95814, 95815, 95817, 95820, 95823, 95824, 95832, and 95838 (refer to map in Exhibit M). To demonstrate achievement of this 5% goal, CONTRACTOR and *all* subcontractors must provide monthly workforce reports to CITY by the 5th calendar day of each month, with the following information from the previous month:

- (1) Total Labor Hours for the month.
- (2) Number of Labor Hours worked by Priority Workers for the month.
- (3) Percentage of Labor Hours worked by Priority Workers for the month.
- (4) Addresses of the Priority Workers who performed Labor Hours for that month.
- (5) Payroll records verifying time worked by Priority Workers and rate of pay.

41. **Miscellaneous.**

- A. Assignment. Neither CONTRACTOR nor CITY shall, without the written consent of the other, assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents. Any attempted or purported assignment without CITY's written consent shall be void and of no effect.
- B. Binding Effect. CONTRACTOR and CITY intend that the provisions of the Contract Documents are binding upon the parties, and their heirs, executors, administrators, successors and assigns, subject to the provisions of Section 41(A) above.
- C. Governing Law. This Contract shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Contract shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.
- D. Severability. If any portion of this Contract or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Contract shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

- E. Waiver. No failure or delay by a party in exercising any right, power or remedy under this Contract will operate as a waiver of that right, power or remedy, and no waiver will be effective unless it is in writing and signed by the waiving party. If a party waives any right, power or remedy, the waiver will not waive any successive or other right, power or remedy the party may have under this Contract.
- F. Notice. Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given: (i) if delivered in person to the individual intended to receive such notice; (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Contract; or (iii) if transmitted by email, by the time stated on the intended recipient's email.
- G. Entire Agreement. The Contract Documents contain the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Contract. No alteration to the terms of the Contract Documents shall be valid unless approved in writing by CONTRACTOR, and by CITY, in accordance with applicable provisions of the Sacramento City Code.
- H. Authority. The person signing this Contract for CONTRACTOR hereby represents and warrants that he/she is fully authorized to sign this Contract on behalf of CONTRACTOR and to bind CONTRACTOR to the performance of its obligations hereunder.
- I. References. Titles, headings and similar references contained herein are solely to facilitate reference to various provisions of the Contract and in no way affect or limit the interpretations of the provisions to which they refer.
- J. Exhibits. All exhibits referred to herein are attached hereto and are by this reference incorporated as if set forth fully herein.

[Signature Page Follows]

Executed as of the day and year first above stated.

CITY OF SACRAMENTO
A Municipal Corporation

CONTRACTOR: *Kitchell CEM, Inc.*

By: _____

86-0358697
Federal I.D. No.

Print name: _____

C0973818

Title: _____

State I.D. No.

For: Howard Chan, City Manager

12041

APPROVED AS TO FORM:

City of Sacramento Business Op. Tax Cert.
No.

Maile Hanson

City Attorney

TYPE OF BUSINESS ENTITY (*check one*):

ATTEST:

- ____ Individual/Sole Proprietor
- ____ Partnership
- Corporation (**two signatures required**)
- ____ Limited Liability Company
- ____ Other (*please specify:* _____)

City Clerk

[Signature]

5/19/2008

Exhibits:

Russell A. Fox, President

- Exhibit A Scope of Services
- Exhibit B Fee Schedule for Pre-Construction Services
- Exhibit C Standard Specifications
- Exhibit D Hazardous Material and Geotechnical Reports
- Exhibit E Drug-Free Workplace Policy and Affidavit

Print Name and Title

- Exhibit F C&D Debris Recycling
- Exhibit G Notice Regarding Assembly Bill 626
- Exhibit H Insurance Required for Subcontractors
- Exhibit I Local Business Enterprise
- Exhibit J Worker's Compensation Certification
- Exhibit K Sample Performance and Payment Bonds
- Exhibit L Apprentices
- Exhibit M Priority Local Hire Area

[Signature]

DAVID GIANNELLI, Sr. V.P. & President
Michael Bruggeman, Asst. Secretary

Print Name and Title

EXHIBIT A

SCOPE OF SERVICES

PRE-CONSTRUCTION SERVICES

- A. Project Development Support. CONTRACTOR shall participate in meetings, workshops, hearings and similar activities as necessary to ensure familiarity with the development of the project and provide CITY and design team with feedback, recommendations, and similar advice in development of the design, assumptions, budget, schedule and construction cost. Such meetings shall include:
- (1) Design meetings
 - (2) Conduct site visits
 - (3) Regulatory meetings
 - (4) Coordination meetings
 - (5) Constructability review meetings
 - (6) Accessibility review
 - (7) Value engineering sessions
 - (8) Cost estimating meetings
 - (9) Project phasing and segmentation coordination meetings
 - (10) Bid packaging and documentation meetings
 - (11) Long lead packaging and bidder coordination meetings
 - (12) Bid process meetings
 - (13) Bid review and GMP coordination meetings
 - (14) Additional meetings as deemed necessary by CITY for the development and completion of the project through acceptance of the Guaranteed Maximum Price (GMP).
- B. Design and Construction Document Constructability Review. CONTRACTOR shall review and comment on design concepts, recommendations, drawings, specifications, phasing, and scheduling to improve project constructability and implementation. Reviews to be completed at 50% Design Development (DD) and 50% Construction Documents (CD).
- (1) Deliverable: 50% DD Constructability Design Review Report
 - (2) Deliverable: 50% CD Constructability Design Review Report
- C. Cost Estimating. CONTRACTOR shall review and reconcile construction cost estimate(s) prepared by Design Team and CONTRACTOR using Unifomat format. Cost estimate reconciliation shall include comparison of estimated costs with current local market prices available from local contractors/vendors, and development of separate cost estimates when requested by CITY. Cost Estimates and reconciliations to be completed at the 50% Design Development and 50% Construction Documents.

- (1) Deliverable: 50% DD Cost Estimate Report
- (2) Deliverable: 50% CD Cost Estimate Report

D. Value Engineering. CONTRACTOR shall organize and conduct Value Engineering Session(s) with Design Team and other stakeholders. Value Engineering session to be completed at 50% Design Development.

- (1) Deliverable: 50% DD Value Engineering Report

E. Quality Control Review. CONTRACTOR shall review construction documents for coordination, completion and accuracy prior to bidding.

F. Scheduling. CONTRACTOR shall develop a phased construction schedule and implementation plan addressing construction activities and the on-going use and operation of the Memorial Auditorium. The schedule shall include construction activities as well as the move-in and move-out dates for the Community Center Theater users. The phased schedule shall be modified as necessary through completion of the GMP to reflect the project scope.

- (1) Deliverable: Phased Construction Schedule and Implementation Plan

G. Bid Package Preparation. CONTRACTOR shall prepare bid packages for all activities necessary to complete the project. Bid packages shall include alternates acceptable to CITY.

- (1) Deliverable: Trade Contractor/Bid Package Bidding Documents

H. Bidder Outreach and Prequalification. CONTRACTOR shall market, solicit, and handle bidder pre-qualification (when authorized in writing by CITY) and handle bidding of all work necessary to complete the total GMP and provide CITY with a fully functional facility acceptable to CITY.

- (1) Deliverable: Bidder Outreach and Prequalification Report(s)

I. Bid Analysis. CONTRACTOR shall reconcile bids with cost estimates and total GMP. Review Scope issues with Design Team if necessary.

- (1) Deliverable: Bid Analysis and Reconciliation Report(s)

J. Guaranteed Maximum Price (GMP). CONTRACTOR shall negotiate final GMP package including all phases of construction necessary to provide CITY with a complete and fully functional facility acceptable to CITY. Within 30 days prior to CITY's acceptance of the GMP, CITY and CONTRACTOR will meet to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

K. Risk Assessment. CONTRACTOR shall provide a Risk Assessment of the design, phasing, options and construction documents during each phase of the design and for all options and alternatives.

(1) Deliverable: Risk Assessment Report(s)

L. Permitting. Obtain building permits and special permits for permanent improvements as required by law or the Construction Documents for both Construction Phases. Assist City and Design Team in obtaining all approvals required from authorities having jurisdiction over the Project.

(1) Deliverable: Building and Encroachment permits (on and off-site), and other jurisdictional permits as required to perform the Construction Phases of the Work.

CONSTRUCTION SERVICES (both Construction Phases)

CONTRACTOR shall provide comprehensive construction, management and administrative services required to supply and install all work to complete construction of the Project in accordance with completed construction documents, Project schedule and Guaranteed Maximum Price, as established in the Pre-Construction Phase. CONTRACTOR's scope of services includes:

- **Project Management and Coordination** – Provide overall management and coordination services for completion and acceptance of both Construction Phases. Maintain a qualified, full-time staff responsible for implementing plan of construction. Management services include continued efforts as needed with document management, submittal process, value engineering, cost estimating/budget management, material procurement, coordination, project phasing/sequencing and closeout.
- **Procurement** – Coordinate procurement and deliveries of materials and equipment in accordance with the contract documents.
- **Permitting** – Obtain any permits that may be in progress or not fully acquired as part of the Pre-Construction Phase, Construction Phase 1, and Construction Phase 2; or any permits not identified in the Pre-Construction Phase but needed to proceed with construction.
- **Safety** – Implement and monitor project specific Safety Plan. Verify and monitor safety programs of all Trades Contractors.
- **Project Scheduling** – Prepare master project schedule for both construction phases comprised of Critical Path Method network in bar chart format. Master project schedule includes all activities, milestones, relationships, durations and other required information to illustrate construction activities required by the contract documents to meet the overall contract duration. Updates will be provided per contract requirements.
- **Quality Control** – Establish Quality Control Plan with Trade Contractors for the project. Warrant that the materials and equipment provided for the Project will be of good quality and new unless otherwise required or permitted by the Construction Documents; that the construction will be free from faults and defects; and that the construction will conform with the requirements of the Construction Documents.
- **Risk Assessment and Mitigation** – Assess and implement a Risk Mitigation Plan related to the overall project.
- **Project Cost Control & Reporting** – Budget and contingency management of project costs of the GMP.

- **Trade Contractor Management** – Management of all Trade Contractors relating to budget management, schedule execution and coordination, quality control and verification of safety programs.
- **Project Meetings** – CITY, CONTRACTOR and Architect meetings on a weekly basis or as necessary. Participate in other meetings as required for Trade Contractor coordination, safety, quality and budget management.
- **Document Management** – Manage all project documentation during construction and completion of each construction phase, as required by the contract documents. Prolog database platform will be used to collaborate RFIs, submittals and other project management solutions.
- **Commissioning** – Assist City in the commissioning process with the City’s Commissioning Authority for each construction phase, and manage the Trade Contractor’s participation in the commissioning process and documentation.
- **Project Closeout** – Manage the project closeout process with Trade Contractors to provide all necessary deliverables and closeout requirements in accordance with the contract documents for Construction Phased 1 and Construction Phase 2, and any additional documents for the overall project closeout.

EXHIBIT B

FEE SCHEDULE FOR PRE-CONSTRUCTION SERVICES

PRECONSTRUCTION COST PROPOSAL
Memorial Auditorium

1 2 3 4 5 6 7 8 9 0

Memorial Auditorium
Memorial Auditorium

Construction Documents
Permitting/Bidding / Award

14-wks

6 months

Position / Name	Full Time											
	1 = 100%						0.5 = 50%					
	J	A	S	O	N	D	J	A	S	O	N	D
	6	7	8	9	10	11	12	13	14			
	85% CO Est & Design											
Programming and Preconstruction	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%
Project Director	10%	20%	10%	10%	10%	10%	10%	20%	10%	10%	10%	10%
Director of Construction Operations	10%	20%	10%	10%	10%	10%	10%	20%	10%	10%	10%	10%
Sr. Project Manager	10%	20%	10%	10%	10%	10%	10%	20%	10%	10%	10%	10%
Project Manager	10%	20%	10%	10%	10%	10%	10%	20%	10%	10%	10%	10%
General Construction Superintendent	2%											
Engineering Arch Services Director	10%											
Registered Architect Design Manager	10%											
Civil Design Manager	10%											
Structural Design Manager	10%											
Mechanical Plumbing - LEED Design Manager	10%											
Electrical Design Manager	10%											
Estimator	50%											
Estimator	5%											
Schedule Analyst												
QAVOC Manager												
Preconstruction Total (TLC's / Month)	0.3	1.9	0.3	0.3	0.3	0.3	0.3	0.6	0.0	0.2	5.1	
Total Hours per Month	328	328	328	328	328	328	328	328	328	328	328	
Total Supervision Billed Lump Sum per Month	\$ 12,638	\$ 65,918	\$ 12,638	\$ 12,638	\$ 12,638	\$ 12,638	\$ 12,638	\$ 21,313	\$ 26,415	\$ 8,989		

* If Kitchell's Preconstruction Phase scope extends past Feb 2018, contract may be amended by change order and billed accordingly



TOGETHER. BUILDING VALUE EVERY DAY.

Preconstruction Fee \$ 177,804

5/8/2017

Memorial Auditorium Staffing Rates



TOGETHER, BUILDING VALUE EVERY DAY.

Position / Name	Hours	Hourly Rate	TOTAL
<u>Programming and Preconstruction</u>			
Project Director	45	\$ 214.50	\$ 9,667
Director of Construction Operations	289	\$ 214.50	\$ 57,628
Sr. Project Manager	260	\$ 203.50	\$ 52,909
Project Manager	289	\$ 198.00	\$ 53,195
General Construction Superintendent	43	\$ 192.50	\$ 8,342
Engineering Arch Services Director	7	\$ 192.50	\$ 1,335
Registered Architect Design Manager	35	\$ 154.00	\$ 5,339
Civil Design Manager	35	\$ 154.00	\$ 5,339
Structural Design Manager	35	\$ 154.00	\$ 5,339
Mechanical Plumbing - LEED Design Manager	35	\$ 154.00	\$ 5,339
Electrical Design Manager	35	\$ 154.00	\$ 5,339
Estimator	35	\$ 192.50	\$ 6,673
Estimator	173	\$ 121.00	\$ 20,973
Schedule Analyst	17	\$ 154.00	\$ 2,669
QA/QC Manager	17	\$ 192.50	\$ 3,337
Total	1,309		\$ 243,419

EXHIBIT C

STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION (June 2007)

The "Standard Specification for Public Works Construction (June 2007)" shall be limited to work located in the public right-of-way, and the construction of utility services through the property and connecting to any facilities located on the Project site. In the event of any inconsistency between the provisions of the Standard Specifications and the terms and conditions of this Contract, the terms and conditions of this Contract shall govern.

For the purposes of this Contract the following definitions shall apply to the Standard Specifications:

- "Engineer" shall mean "City Representative."
- "Standard Specifications" shall mean the Standard Specifications for Public Construction dated June 2007, and any subsequent amendments.
- In the event of any inconsistency between the definitions stated in the Standard Specifications and the definitions in Section 1 of the Contract, the definitions in Section 1 shall govern.

The following Sections of the Standard Specification shall apply to this Project in addition to all other requirements in this Contract:

Section 1	-	Definitions (except as otherwise provided in the Special Provisions);
Section 4	-	Scope of Work (except as otherwise provided in the Special Provisions);
Section 5	-	Control of Work and Materials;
Section 6	-	Legal Relations and Responsibilities;
Section 7	-	Prosecution and Progress;
Section 8	-	Measurements and Payments
Section 10	-	Construction Materials (Excluding 10-39 through 10.54 inclusive);
Section 11	-	Pre-Construction Photographs (in addition to other contract requirements);
Section 12	-	Clearing and Grubbing, Tree Removal;
Section 13	-	Existing Facilities;
Section 14	-	Earthwork, Excavation, Embankment and Sub-Grade;
Section 15	-	Water Use In Construction;
Section 16	-	Dust Control;
Section 17	-	Laying Aggregate Base;
Section 18	-	Side Forms and Headers;

- Section 19 - Portland Cement Concrete Pavement, Joints and Curing;
- Section 20 - Concrete Structures;
- Section 21 - Placing Steel Reinforcement;
- Section 22 - Asphaltic Concrete;
- Section 23 - Seal Coat-Armor Top;
- Section 24 - Curbs, Gutters, Sidewalks, Gutter Drains;
- Section 25 - Manholes and Flusher Branches;
- Section 26 - Laying Sewer and Drain Pipe;
- Section 27 - Water Distribution Systems;
- Section 28 - Laying Culvert and Drain Tile;
- Section 29 - Moving and Changing Utilities and Water Services;
- Section 30 - Cast-In-Place Concrete Pipe;
- Section 32 - Miscellaneous Facilities;
- Section 33 - Pneumatically Applied Mortar (Gunitite);
- Section 34 - Electrical;
- Section 37 - Boring and Jacking;
- Section 38 - Standard Details (including elimination of out dated drawings and replacement with latest drawings available).

EXHIBIT D

HAZARDOUS MATERIALS AND GEOTECHNICAL REPORTS

[TO BE PROVIDED UNDER SEPARATE COVER]

(Geotechnical Report – Prepared by Youngdahl & Associates;
Hazardous Materials Report – Prepared by Stantec

EXHIBIT E

DRUG FREE WORKPLACE POLICY AND AFFIDAVIT

Pursuant to City Council Resolution CC90-498 dated 6/26/90, the following is required.

The undersigned contractor certifies that it and all subcontractors performing under this Contract will provide a drug-free workplace by:

1. Publishing a "Drug-Free Workplace" statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Establishing a Drug-Free Awareness Program to inform employees about:
 - a. The dangers of drug abuse in the workplace.
 - b. The contractor's policy of maintaining a drug-free workplace.
 - c. Any available drug counseling, rehabilitation, and employee assistance program.
 - d. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
3. Notify employees that as a condition of employment under this Contract, employees will be expected to:
 - a. Abide by the terms of the statement.
 - b. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace.
4. Making it a requirement that each employee to be engaged in the performance of the Contract be given a copy on the "Drug-Free Workplace" statement.
5. Taking one of the following appropriate actions, within thirty (30) days of receiving notice from an employee or otherwise receiving such notice, that said employee has received a drug conviction for a violation occurring in the workplace:
 - a. Taking appropriate disciplinary action against such an employee, up to and including termination; or
 - b. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement or other appropriate agency.

* I certify that no person employed by this company, corporation, or business has been convicted of any criminal drug statute violation on any job site or project where this company, corporation or business was performing was within three years of the date of my signature below.

EXCEPTION: _____
Date Violation Type Place of Occurrence

If additional space is required, use back of this form.

* The above statement will also be incorporated as a part of each subcontract agreement for any and all subcontractors selected for performance on this project.

THE CONTRACTOR WITH HIS/HER SIGNATURE REPRESENTS TO THE CITY THAT THE INFORMATION DISCLOSED IN THIS DOCUMENT IS COMPLETE AND ACCURATE. IT IS UNDERSTOOD AND AGREED THAT FALSE CERTIFICATION IS SUBJECT TO IMMEDIATE TERMINATION BY THE CITY.

The Representations Made Herein On This Document Are Made Under Penalty of Perjury.

CONTRACTOR'S NAME: Kitchell CEM, Inc.
BY: [Signature] President 5/18/2017
Signature Title Date

Effects of violations: a. Suspension of payments under the Contract. b. Suspension or termination of the Contract. c. Suspension or debarment of the contractor from receiving any Contract from the City of Sacramento for a period not to exceed five years.

EXHIBIT F

Construction and Demolition (C&D) Debris Recycling Requirements

As a condition of receiving this Contract, Contractor agrees to fully comply with the requirements specified herein for all demolition projects, as well as projects with a valuation of \$250,000 or more:

1. **Definitions.** For purposes of this section, the following terms, words and phrases shall have the following meanings:

“Certified C&D sorting facility” means a facility that receives C&D debris and/or processes C&D debris into its component material types for reuse, recycling, and disposal of residuals and possesses a valid certificate as a C&D sorting facility from the Sacramento Regional County Solid Waste Authority.

“Construction and demolition debris” or “C&D debris” means used or commonly discarded materials resulting from construction, repair, remodel or demolition operations on any pavement, house, building, or other structure, or from landscaping that are not hazardous as defined in California Health and Safety Code section 25100 et seq. Such materials include, but are not limited to, concrete, asphalt, wood, metal, brick, dirt, sand, rock, gravel, plaster, glass, gypsum wallboard, cardboard and other associated packaging, roofing material, ceramic tile, carpeting, masonry, plastic pipe, trees, and other vegetative matter resulting from land clearing and landscaping.

“Divert” or “diversion” means to use materials for any purpose other than disposal in a landfill or transformation facility. Methods to divert materials include on-site reuse of the materials, delivery of materials from the project site to a certified C&D sorting facility or a recycling facility, or other methods as approved in regulations promulgated by the City Department of Utilities.

“Franchised waste hauler” means a person who possesses a valid commercial solid waste collection franchise issued by the Sacramento Regional County Solid Waste Authority.

“Mixed C&D debris” means loads that include commingled recyclable and non-recyclable C&D debris generated at a project site.

“Recyclable C&D debris” means C&D debris required to be diverted from landfills as specified in the Waste Management Plan and returned to the economic mainstream in the form of raw material for new, reused or reconstituted products that meet the quality standards necessary to be used in the marketplace.

“Recycling facility” means a facility or operation that receives, processes, and transfers source-separated recyclable materials.

“Source-separated C&D debris” means recyclable C&D debris that is separately sorted and containerized at the site of generation by individual material type and segregated from mixed C&D debris prior to collection and transporting.

“Waste log” means a record detailing the management of C&D debris generated by the covered project, including the date and weight/volume of material by type that was salvaged, reused, recycled or disposed.

2. **Waste Management Plan.** A completed WMP (see **Attachment 1**) must be submitted to and approved by the City prior to commencing any work on the project. The WMP must specify the types of C&D debris that will be generated from the project; the manner in which C&D debris will be managed and/or stored on the project site; the manner in which recyclable C&D debris generated from the project will be recycled or reuse; the person who will haul, collect or transport the recyclable C&D debris from the project site; and the certified C&D sorting facility or recycling facility where recyclable C&D debris will be delivered. The WMP must be approved by the City prior to commencing any work on the project.

3. Contractor shall be solely responsible for diverting the recyclable C&D materials specified on the WMP. Mixed C&D debris shall be delivered to a SWA-certified C&D sorting facility only. Only the permit holder, the person who generates the waste, a franchised waste hauler, or the City of Sacramento can transport or haul mixed C&D debris. Source-separated C&D debris may be delivered by any person to any recycling facility that accepts such materials. (See **Attachment 2** for list of C&D Debris Haulers and Facilities).

4. During the course of the project, Contractor shall maintain a waste log (see **Attachment 3**), and keep all weight tickets or weight receipts, for all C&D debris hauled away from the project. At a minimum, the waste log shall specify the C&D debris generated by the project; the manner in which C&D debris was recycled or re-used; and the facility where the C&D debris was delivered.

5. Within 30 days after submitting the project completion report, Contractor shall submit to the City a completed waste log, along with copies of supporting weight tickets. Contractor shall maintain and keep accurate and complete records of all bills, weight receipts or weight tickets that were issued for the collection, transport or disposal of C&D debris for a period of one-year after submittal of the waste log. The records shall be made available for inspection, examination and audit by the City during the one-year retention period to validate the information provided in the WMP and in the waste log. If the City determines noncompliance by the Contractor after an audit has been conducted, Contractor shall reimburse the City for all costs incurred in performing the audit.

6. Failure by Contractor to comply with any provisions specified herein will subject Contractor to possible suspension and/or termination of this Contract for cause; repayment of any or all of the Contract amount disbursed by the City; imposition of a penalty, payable to the City (\$50-\$250 for first offense, \$251-\$500 for second offense, and \$501-\$1500 for subsequent offenses); and/or submission of a performance security deposit fee when submitting a permit application to the City for a project within one year of imposition of the penalty.

For questions or to obtain more information about the Recycling Requirements for C&D debris, contact the City of Sacramento, Solid Waste Services Division, 2812 Meadowview Road, Building 1, Sacramento, CA 95832, or telephone (916) 808-4833, or email C&D@cityofsacramento.org

C&D Debris Waste Management Plan

C&D Debris Waste Management Plan
City of Sacramento Solid Waste Services
2812 Meadowview Road, Building 1
Sacramento, CA 95832
Phone: (916) 808-4839 / Fax: (916) 808-4999
C&D@cityofsacramento.org

Form

submitted by:

Please attach a business card, or put your name with a phone number and/or an email address.

This Waste Management Plan (WMP) must be submitted and approved before work can begin. Only one WMP is required for each public construction project. The administration fee and, if applicable, a security deposit must be submitted with this form to be approved. Administration fee is 0.04% of project bid amount (min \$40, max \$800); security deposit, if applicable, is 1% of bid amount (max \$10,000). The accompanying Waste Log must be submitted within 30 days of the project completion report, or a penalty may be imposed.

A. Building Project Information:

Job Address: _____

Contractor: _____

Address: _____

Engineering

Estimate: _____

Phone: _____

Email: _____

B. Briefly describe the project:

C. Materials Required to be Recycled

50% of all debris must be recycled if generated during the course of your project. You can either **source-separate** them, which may be hauled by anyone, or mix them in one container and send the **mixed C&D debris** load to a **Certified Mixed C&D Sorting Facility**. Mixed C&D loads can only be hauled by a franchised hauler or self-hauled. Please see the Definitions section, on the next page, for more information.



D. Material Management

1. How will C&D debris will be stored on the project site: _____ Mixed C&D _____ Source-Separated
2. Company to haul away debris: _____
3. Facilities to receive debris: _____

C&D Debris Waste Management Plan

C&D Debris Waste Management Plan
City of Sacramento Solid Waste Services
2812 Meadowview Road, Building 1
Sacramento, CA 95832
Phone: (916) 808-4839 / Fax: (916) 808-4999
C&D@cityofsacramento.org

E. Definitions.

Please read and understand these terms. Call Solid Waste at (916) 808-4833 if these terms are not clear to you. More information is also available online at <http://www.cityofsacramento.org/utilities/>.

1. **Self-haul or self-hauling:** This is when the general contractor or a subcontractor *who is doing work on the project* hauls their own waste materials for recycling or disposal. Note that a *jobsite cleanup crew is not doing other work on the project and is not self-hauling*. Jobsite cleanup crews need to be franchised in order to haul mixed C&D debris away.
2. **Franchised hauler:** Check the Department of Utilities (DOU) website for a list of these haulers. Only these companies and the City of Sacramento can collect and haul mixed C&D debris generated within the City for a fee.
3. **Source separation:** This means keeping wood, metal, cardboard, or other recyclables in separate containers, and sending the materials to an authorized recycler. A list of authorized recyclers can be found on the DOU web site. Source-separated materials may be hauled by anyone.
4. **Mixed C&D debris:** This means putting all recyclable debris into one container. Mixed materials must be sent to a certified mixed C&D sorting facility. Mixed materials may be either self-hauled or hauled by a franchised hauler. If your job site is crowded, this option saves the most space.
5. **Certified Mixed C&D Sorting Facility:** See the DOU web site for a list. These facilities have been certified by the Sacramento Regional Solid Waste Authority (SWA) to extract recyclable materials from mixed C&D debris.

F. Terms and Conditions

- Your approved Waste Management Plan and Waste Log must be kept on the job site for the duration of the project.
- City of Sacramento Solid Waste Services staff may enter the jobsite to inspect waste collection areas.
- **ALL Clean Wood Waste** (unpainted, untreated lumber, plywood and OSB), **Inert Materials** (concrete, asphalt paving, brick, block, and dirt), **Wooden Pallets**, **Scrap Metal**, and **Corrugated Cardboard** must be recycled.
- Only SWA-Certified Mixed C&D Sorting Facilities may be used to recycle these materials if mixed with other materials.
- Only the City of Sacramento, SWA-Franchised Haulers, or self-haulers (as defined above) may collect and transport mixed C&D material from the jobsite.
- C&D Debris may not be burned or dumped illegally.
- Your Waste Log must be completed and submitted, with supporting weight tickets, within 30 days of submitting your project completion report. All waste hauling and disposal or recycling activity must be entered on the Waste Log, including information from any subcontractors who self-hauled their own debris off-site.
- You must keep all receipts or weight-tickets from your project for a period of one year from the submittal of your waste log.
- Failure to comply with these terms and conditions may result in a fine and payment of a security deposit on future projects.

C&D Debris Haulers & Facilities

C&D Debris Waste Management Plan
City of Sacramento Solid Waste Services
2812 Meadowview Road, Building 1
Sacramento, CA 95832
Phone: (916) 808-4833 / Fax: (916) 808-4999
C&D@cityofsacramento.org

Certified Mixed C&D Facilities

Allied Waste / Elder Creek Transfer and Recovery	(916) 387-8425
Florin-Perkins Public Disposal	(916) 443-5120
L&D Landfill	(916) 737-8640
Waste Management / K&M Recycle America	(916) 452-0142

Franchised Haulers

ACES Waste Services, Inc.	(866) 488-8837	Elk Grove Waste Management, LLC	(916) 689-4052
Allied Waste Services	(916) 631-0600	Mini Drops, Inc.	(916) 686-8785
All Waste Systems, Inc.	(916) 456-1555	Norcal Waste Services of Sacramento	(916) 381-5300
Atlas Disposal Industries, LLC	(916) 455-2800	North West Recyclers	(916) 686-8575
California Waste Recovery Systems	(916) 441-1985	Waste Management of Sacramento	(916) 387-1400
Central Valley Waste Services, Inc.	(209) 369-8274	Waste Removal & Recycling	(916) 453-1400
City of Sacramento Solid Waste	(916) 808-4839	Western Strategic Materials, Inc.	(916) 388-1076

Recyclers*

Bell Marine	(916) 442-9089
C & C Paper Recycling	(916) 920-2673
EBI Aggregates	(916) 372-7580
International Paper	(916) 371-4634
Modern Waste Solutions	(916) 447-6800
PRIDE Industries, Inc.	(916) 640-1300
Recycling Industries, Inc.	(916) 452-3961
Sacramento Local Conservation Corps	(916) 386-8394
Smurfit-Stone Container Corporation	(916) 381-3340
Southside Art Center	(916) 387-8080
Spencer Building Maintenance, Inc.	(916) 922-1900

Recovery Stations & Landfills

Elder Creek Recovery & Transfer Station	(916) 387-8425
Kiefer Landfill	(916) 875-5555
L & D Landfill	(916) 383-9420
North Area Recovery Station	(916) 875-5555
Sacramento Recycling & Transfer Station	(916) 379-0500
Waste Management Recycle America	(916) 452-0142

More updated information can be found online at:

<http://www.cityofsacramento.org/utilities/>

* Please note that any facility may receive source-separated recyclable materials as long as it is authorized to do so by the State of California. This is not meant to be a complete list.

EXHIBIT G

NOTICE REGARDING ASSEMBLY BILL 626

Assembly Bill 626 (AB 626), signed into law September 29, 2016, established a new claim resolution process for public works project contracts entered into on or after January 1, 2017. AB 626 is codified in Section 9204 of the California Public Contract Code. Section 9204 remains in effect until January 1, 2020, and as of that date will be repealed unless another statute extends or deletes this sunset date.

Public Contract Code Section 9204 applies to any “claim,” as defined in Section 9204, which is presented by the Contractor to the City. Section 9204 defines a “claim” as a separate demand by the Contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following: (1) a time extension, including, without limitation, for relief from damages or penalties for delay assessed by the City; (2) payment by the City of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Contract and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled; or (3) payment of an amount that is disputed by the City.

If Contractor presents a claim to the City in accordance with the provisions of Public Contract Code Section 9204 (hereafter referred to as a “Claim”), the process specified in Section 9204 will be followed, and the provisions of Section 4-8 (Disputed Claims) and Section 4-9 (Review by Claim Review Committee and Issuance of Decision by Department Director) of the City’s Standard Specifications for Public Construction will not apply to the Claim. Contractor’s Claim shall comply with the provisions of Section 4-7 (Notice of Claims for Additional Compensation or Damages) of the City’s Standard Specifications or Contractor shall give a separate written notice of potential claim that complies with the requirements specified in Section 4-7, except in any case where compliance with the requirements specified in Section 4-7 would conflict with Public Contract Code Section 9204.

Subsection (e) of Public Contract Code Section 9204 requires that the text of Section 9204 or a summary be set forth in the plans or specifications for any public works project that may give rise to a claim under Section 9204.

The full text of Public Contract Code Section 9204 is as follows:

9204.

(a) The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.

(b) Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.

(c) For purposes of this section:

(1) "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

(A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.

(B) Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.

(C) Payment of an amount that is disputed by the public entity.

(2) "Contractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.

(3) (A) "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(B) "Public entity" shall not include the following:

(i) The Department of Water Resources as to any project under the jurisdiction of that department.

(ii) The Department of Transportation as to any project under the jurisdiction of that department.

(iii) The Department of Parks and Recreation as to any project under the jurisdiction of that department.

(iv) The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.

(v) The Military Department as to any project under the jurisdiction of that department.

(vi) The Department of General Services as to all other projects.

(vii) The High-Speed Rail Authority.

(4) "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

(5) "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier subcontractor.

(d) (1) (A) Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

(B) The claimant shall furnish reasonable documentation to support the claim.

(C) If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the 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 public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the

claimant a written statement identifying the disputed portion and the undisputed portion.

(D) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

(2) (A) If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(B) 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 public entity shall provide the claimant 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 public entity 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 public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. 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. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

(C) For purposes of this section, 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 section.

(D) Unless otherwise agreed to by the public entity 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.

(E) This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

(3) Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

(4) Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

(5) If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

(e) The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

(f) A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the

commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

(g) This section applies to contracts entered into on or after January 1, 2017.

(h) Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

(i) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

EXHIBIT H
SUBCONTRACTOR INSURANCE REQUIREMENTS

1. Trade Contractor (“Subcontractor”) agrees to obtain and maintain, at its own expense, the following insurance coverages with limits as defined below and through insurers acceptable to CONTRACTOR. The insurance obligations of Trade Contractor are fully binding on anyone hired by Trade Contractor and Trade Contractor’s Agents.

- a. General Liability – Trade Contractor shall obtain and maintain not less than the following limits of liability:
- \$1,000,000 Each Occurrence
 - \$2,000,000 General Aggregate (which shall apply separately to each Project)
 - \$1,000,000 Personal Injury
 - \$2,000,000 Products/Completed Operations Aggregate

CITY, CONTRACTOR, their respective affiliates, employees, officers, directors and agents, and any other parties required by the Prime Contract shall be made additional insureds (“Additional Insureds”) under such liability policy using ISO Form B (20 10 11/85) or both the CG 20 10 10/01 and CG 20 37 10/01 or equivalent and such additional insured protection shall continue in full force and effect through the statute of repose in the state in which the Work is performed. The policy must be endorsed to be primary and not excess of, or contributing with, any other insurance carried by or for the benefit of the Additional Insureds.

For Construction contracts for projects of one million (\$1,000,000) and over and less than three million (\$3,000,000) require limits of not less than three million (\$3,000,000) in General Liability and Auto Liability coverage. – i.e. substitute \$3,000,000 for the \$1,000,000 limits above.

“Continuing Products/Completed Operations Liability Insurance – The Contractor will provide continuing products/completed operations liability Insurance with a limit of not less than five million (\$5,000,000) for each occurrence for at least three years following substantial completion of the work on projects over one million (\$1,000,000).”

- b. Workers’ Compensation Insurance and Employer’s Liability - Trade Contractor shall

provide Workers' Compensation Coverage in accordance with state statutes. Employer's Liability Insurance shall be maintained with aggregate limits no less than \$1,000,000. The Workers' Compensation and Employer's Liability policy shall provide a waiver of subrogation, to the fullest extent allowed by state law, in favor of CONTRACTOR, Owner and any other entity or individual required by the Prime Contract. Trade Contractor waives all rights against Owner, CONTRACTOR and their respective affiliates, agents, officers, directors and employees to the extent of any damages covered by such policy obtained by Trade Contractor pursuant to this paragraph.

- c. Automobile Liability - Trade Contractor shall provide automobile liability coverage with limits of not less than a combined single limit of not less than \$1,000,000. This insurance shall provide primary coverage for any auto, including all owned, non-owned and hired vehicles and waive any and all rights of subrogation against the Additional Insureds listed in 1.a. Auto pollution liability coverage, ISO Form CA 99 48, is required if any vehicles are hauling hazardous materials.

If the Contractor is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

- d. Professional Liability - If Trade Contractor has design or engineering responsibility of any nature on this Project, Trade Contractor shall provide Professional Liability coverage with limited contractual liability coverage in favor of CONTRACTOR with a limit no less than \$1,000,000 per claim and a deductible no greater than \$100,000 per claim. Any self-insured retention ("SIR") must be clearly identified on the Certificate of Insurance and is subject to CONTRACTOR's approval. This insurance shall be maintained for not less than the duration of the Project and five (5) years following completion of construction. The retroactive date of such policy must be on or before the date Trade Contractor or Trade Contractor's Agents began professional services for the Project.
- e. Pollution Liability - If Trade Contractor's Work involves earthmoving, asbestos, lead, mold or other pollutant abatement, Trade Contractor shall purchase limits of \$3,000,000 each occurrence (if written on an occurrence basis) or \$3,000,000 each

claim (if written on a claims-made basis). This insurance shall be maintained for not less than the duration of the Project and five (5) years following completion of construction.

The policy must name CONTRACTOR and those entities defined in 1.a. as additional insureds and be primary and not in excess of, or contributing with, any other insurance carried by or for the benefit of the additional insureds.

f. Temporary Labor Force (Leasing Company) – Trade Contractor may hire temporary labor forces to perform Work on the project. The leasing company shall provide Workers’ Compensation Coverage in accordance with state statutes. Employer’s Liability Insurance shall be maintained with aggregate limits no less than \$1,000,000. The leasing company shall add CONTRACTOR and Owner as Additional Insureds on form CG 20 26 11/85 with primary/non-contributory wording and waiver of subrogation. If the leased employee will be driving on company business, the Trade Contractor must secure motor vehicle records and all other appropriate background checks.

g. Umbrella Liability

Trade Contractor agrees to obtain, maintain and pay for umbrella and/or excess liability insurance over the general liability, auto liability and employer’s liability policies with not less than the following limits of liability, unless expressly modified by the Subcontract Documents as required by its scope of Work:

Electrical Trade Contractors	\$5,000,000
HVAC Trade Contractors	\$5,000,000
Plumbing Trade Contractors	\$5,000,000
Steel Trade Contractors	\$5,000,000
Elevator Trade Contractors	\$5,000,000
Concrete Trade Contractors	\$5,000,000
Pre-cast Trade Contractors	\$5,000,000
Curtain Wall Trade	\$5,000,000
Site Utility Trade Contractors	\$5,000,000
Earthwork	\$5,000,000
Masonry	\$5,000,000
Roofing	\$5,000,000
Windows	\$5,000,000
All Other Trade Contractors	\$2,000,000

The umbrella liability policy shall provide the same Additional Insured, and Primary and Noncontributory coverage as required in this Agreement related to the underlying insurance policies.

- h. Cancellation Endorsement Requirement – All insurance policies shall contain an endorsement requiring thirty (30) days prior written notice to CONTRACTOR of any cancellation of that policy except cancellation for non- payment of premium, for which 10 days prior written notice which shall be mailed to CONTRACTOR. Trade Contractor shall have the affirmative obligation to so notify CONTRACTOR of any such material change in coverage or the non-renewal of any of the coverages required by this Agreement.
- i. Certificate of Insurance Requirements – Trade Contractor agrees that no less than ten (10) days before beginning any work under this Subcontract, Trade Contractor shall provide CONTRACTOR with a Certificate of Insurance demonstrating that the insurance required by this Subcontract Agreement was purchased and is in effect. Trade Contractor shall also provide CONTRACTOR with a copy of the Additional Insured, Waiver of Subrogation and Primary and Noncontributory endorsements or such other policy language demonstrating that the insurance policies comply with this Subcontract Agreement. Trade Contractor shall provide current Certificates of Insurance through final payment.
- j. Trade Contractor agrees that its failure to obtain or maintain the insurance required by this Trade Contract Agreement or to provide a satisfactory Certificate of Insurance shall be deemed to be a material breach subject to Section 9 of the Trade Contract Agreement.
- k. It is understood and agreed that CONTRACTOR may withhold payments to Trade Contractor until a properly executed Certificate of Insurance providing insurance as required herein, accompanied by a signed Trade Contract, is received by CONTRACTOR.
- l. Trade Contractor waives all rights against Owner, CONTRACTOR, Architect, Architect's consultants, separate contractors and any of their subcontractors, sub-subcontractors, agents, affiliates and employees for damages caused by fire or other causes of loss to the extent covered by property insurance provided under the Prime Contract or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by the Owner or CONTRACTOR as a fiduciary. Trade Contractor shall require Trade Contractor's Agents to provide similar waivers in favor of the parties enumerated herein. The policies

shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the damaged property. Trade Contractor shall be responsible for payment of any deductibles for builder's risk claims related to its scope of Work.

- m. Unless provided otherwise in the Prime Contract, Trade Contractor shall be responsible for any deductibles for the insurance coverages it is contractually obligated to provide under this Exhibit A.
- n. All insurance policies are to be written through companies duly entered and authorized to transact that class of insurance in the state in which the project is located. The insurance companies must have an A.M. Best rating of A, VII or better in the most recent Best's Key Rating Guide.
- o. Approval, disapproval or failure to act by CONTRACTOR regarding any insurance supplied by the Trade Contractor shall not relieve the Trade Contractor of full responsibility or liability for damages and accidents. Neither shall the bankruptcy, insolvency or denial of liability by the insurance company exonerate the Trade Contractor from liability.
- p. CONTRACTOR shall make no special payments for any insurance that the Trade Contractor may be required to purchase; such insurance is included in the contract price and unit prices.

EXHIBIT I

LOCAL BUSINESS ENTERPRISE (LBE) PARTICPATION PROGRAM

NOTE: Proposers must provide responses to the following items. Failure to provide a response to each of the items in this section may be grounds for rejection of the proposal.

1. LBE FIVE PERCENT (5%) PARTICIPATION

On April 3, 2012, the Sacramento City Council adopted a Local Business Enterprise (LBE) Preference Program to provide enhanced opportunities for the participation of local business enterprises (LBEs) in the City's contracting and procurement activities. On November 19, 2013, City Council increased the LBE preference and authorized City departments to require minimum LBE participation levels in individual contracts. Under City Code section 3.60.270 , when the bid specifications for a City contract establish a minimum participation level for LBEs, no bidder on the contract shall be considered responsive unless its bid meets the minimum LBE participation level required by the bid specifications.

The City has established a minimum 5% participation level for LBEs on this contract. Pursuant to City Code Section 3.60.270, no bidder on this contract shall be considered responsive unless its bid meets or exceeds this minimum participation level.

Local Business Enterprise means a business enterprise, including but not limited to, a sole proprietorship, partnership, limited liability company, corporation, or other business entity that has a legitimate business presence in the city or unincorporated county of Sacramento. Evidence of legitimate business presence in the city or unincorporated county of Sacramento shall include:

1. Having a current City of Sacramento Business Operation Tax or County of Sacramento Business License; and
2. Having either of the following types of offices or workspace operating legally within the city or unincorporated county of Sacramento:
 - a. The LBE's principle business office or workspace; or
 - b. The LBE's regional, branch or satellite office with at least one full time employee located in the city or unincorporated county of Sacramento.

A. LOCAL BUSINESS ENTERPRISE (LBE)

Is the firm submitting the bid qualified as a local business enterprise? Check the appropriate box below:

YES - the firm submitting the bid is qualified as a local business enterprise.

NO - the firm submitting the bid is not qualified as a local business enterprise.

If the response to the above is YES, provide the City of Sacramento Business Operations Tax Certificate Number and/or County of Sacramento Business License Number:

If the response to the above is YES, provide a current copy of the City of Sacramento Business Operations Tax Certificate and/or County of Sacramento Business License.

If the response to the above is YES, provide business office or workspace address*:

* Address must be a physical address for the basis of location, this excludes P.O. Box addresses.

EXHIBIT J
WORKER'S COMPENSATION CERTIFICATION

In accordance with Article 5 (commencing at Section 1860), Chapter 1, Part 7, Division 2 of the Labor Code, the below certificate must be signed and filed with the awarding body prior to performing any work under this contract. Labor Code Section 3700, inter alia, states the following:

"Every employer shall secure the payment of compensation in one or more of the following ways:

- "(a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this State.
- "(b) By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

To be signed by authorized corporate officer or partner or individual submitting the Proposal. If Bidder is: (example)

1. An individual using a firm name, sign: "John Doe, an individual doing business as Blank Company."
2. An individual doing business under his own name, Sign: your name only.
3. A co-partnership, sign: "John Doe and Richard Doe, co-partners doing business as Blank Company, by, John Doe, co-partner.
4. A corporation, sign: "Blank Company, by John Doe, Secretary." (or other title)

I am aware of the provisions of Section 3700 of the 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 I will comply with such provisions before commencing the performance of the work of this contract.

DATE: _____ Contractor _____

By _____
Signature

EXHIBIT K

**CITY OF SACRAMENTO
PERFORMANCE BOND**

Bond No.: _____

Premium: _____

Department of -----
Page 1 of 1

WHEREAS, the City of Sacramento, State of California, hereinafter called City, has conditionally awarded to (*here insert full name and address of Contractor*):

as principal, hereinafter called Contractor, a contract for construction of:

which contract is by reference incorporated herein and made a part hereof as if the Surety named below were a party to the contract, and is hereinafter referred to as the Contract; and

WHEREAS, under the terms of the Contract, Contractor is required to furnish a bond for the faithful performance of the Contract.

NOW, THEREFORE, we the Contractor and (*here insert full name and address of Surety*):

_____,
a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California, hereinafter called Surety, are held and firmly bound unto the City, as obligee, in the sum of:

_____ DOLLARS (\$ _____),

for the payment of which sum well and truly to be made, we the Contractor and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally. The condition of this obligation is such that, if the Contractor, Contractor's heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and fully perform all covenants, conditions and agreements required to be kept and performed by Contractor in the Contract and any changes, additions or alterations made thereto, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meanings, and shall indemnify and save harmless the City, its officers, employees and agents, as therein provided, then the Surety's obligations under the Contract and this bond shall be null and void; otherwise they shall be and remain in full force and effect. This obligation shall remain in full force and effect through the end of the Contract warranty period, which will expire one year after the completion of work date specified in the Notice of Completion filed for the above-named project.

As part of the obligations secured hereby and in addition to the sum specified above, there shall be included all costs, expenses and fees, including attorney's fees, reasonably incurred by City in successfully enforcing such obligations, all to be taxed as costs and included in any judgment rendered.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or to the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by authorized representatives of the Contractor and Surety. SIGNED AND SEALED on _____, 20_____.

(Contractor) (Seal)
By _____
Title _____

(Surety) (Seal)
By _____
Title _____

ORIGINAL APPROVED AS TO FORM:

City Attorney

**CITY OF SACRAMENTO
PAYMENT BOND**

Department of -----
Page 1 of 1

Bond No.: _____

Premium: _____

WHEREAS, the City of Sacramento, in the State of California, hereinafter called City, has conditionally awarded to:

hereinafter called Contractor, a contract for construction of:

Field (Project Name)(PN: Field Project Number)

which contract is by reference incorporated herein and made a part hereof, and is hereinafter referred to as the Contract; and

WHEREAS, under the terms of the Contract and pursuant to Chapter 5 of Title 3 of Part 6 of Division 4 of the California Civil Code (commencing with Civil Code Section 9550), Contractor is required to furnish a good and sufficient payment bond to secure payment of the claims to which reference is made in Civil Code Section 9554.

NOW, THEREFORE, we the Contractor and (*here insert full name and address of Surety*):

_____,
a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California, hereinafter called Surety, are held and firmly bound unto the City, and unto all persons or entities entitled to assert a claim against a payment bond under any of the aforesaid Civil Code provisions in the sum of _____ DOLLARS (\$ _____), on the condition that if Contractor shall fail to pay for any materials or equipment furnished or used in performance of the Contract, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, or for any amounts required to be deducted, withheld, and paid over to the Franchise Tax Board or the Employment Development Department from the wages of employees of the Contractor and all subcontractors with respect to such work or labor, then the Surety shall pay the same in an amount not exceeding the sum specified above. If suit is brought upon this bond, Surety shall pay, in addition to the above sum, all costs, expenses and fees, including attorney's fees, reasonably incurred by any party in successfully enforcing the obligation secured hereby, all to be taxed as costs and included in any judgment rendered. Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect, and shall bind Contractor, Surety, their heirs, executors, administrators, successors and assigns, jointly and severally.

It is hereby stipulated and agreed that this bond shall inure to the benefit of all persons, companies, corporations, political subdivisions, State agencies and other entities entitled to assert a claim against a payment bond under any of the aforesaid Civil Code provisions, so as to give a right of action to them or their assigns in any suit brought upon this bond. The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or to the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by authorized representatives of the Contractor and Surety. SIGNED AND SEALED on _____, 20 ____.

(Contractor) (Seal)
By _____
Title _____

(Surety) (Seal)
By _____
Title _____

ORIGINAL APPROVED AS TO FORM:

City Attorney

Apprentices on Public Work Projects

Summary of Requirements

California Labor Code Section 1777.5 requires all public works contractors and subcontractors to:

1. Submit contract award information
2. Employ registered apprentices
3. Make training fund contributions

Submit contract award information:

If you are a contractor already approved to train apprentices (a member of a DAS recognized Apprenticeship Committee)

“Contractors who are already approved to train apprentices must provide contract award information to the apprenticeship committee for each applicable apprenticeable craft or trade that has approved the contractor in the area of the site of the of the public works project.” The Contract Award Information must be in writing and submitted to the applicable committee(s) within 10 days of the date of the prime or subcontract but in no event later than the first day the contractor has workers employed on the public works project. **You may use form DAS 140** for this purpose. This is simply a notification of award; it is not automatically a request for dispatch of a registered apprentice.

If you are not already approved to train by an Apprenticeship Committee

Contractors not already approved to train apprentices must submit Contract Award Information (DAS 140) to **every** apprenticeship program in the geographic area of the public works project, **for each craft you intend to employ on the project.** You can determine which apprenticeship programs are approved in specific geographic locations by clicking on the following link <http://www.dir.ca.gov/databases/das/pwaddrstart.asp>
The Contract Award Information must be in writing and submitted to the applicable committee(s) within 10 days of the date of the prime or subcontract but in no event later than the first day the contractor has workers employed on the public works project. This is simply a notification of award; it is not automatically a request for dispatch of a registered apprentice.

Employ registered apprentices:

A contractor on a public works project must employ one (1) hour of apprentice work for every five (5) hours performed by a journeyman. **Title 8 California Code of Regulations, Section 230.1** for **each separate craft at the end of a project.** **Please check the DAS Important notices to determine if any exemptions exist for your craft or trade.** <http://www.dir.ca.gov/DAS/PublicWorksForms.htm>

All contractors must request dispatch of an apprentice from an apprenticeship program (for each apprenticeable craft or trade) by giving the program actual notice of at least 72 hours (excluding Saturdays, Sundays and Holidays) before the date on which apprentices are required. A DAS 142 form is provided for this purpose. All requests for dispatch must be in writing and sent by first class mail, fax or email.

Contractors who do not receive a sufficient number of apprentices from their initial request, must request dispatch apprentices from all other apprenticeship committees, if more than one exists in the area of the public works project. To determine which apprenticeship programs are approved for your craft or trade in a specific geographic location click the following link <http://www.dir.ca.gov/databases/das/pwaddrstart.asp>

Ratios:

How many apprentices must I employ on a Public Works project?

At the end of the project, your straight time apprentice hours must equal a total of 1 hour for every 5 straight time journeyman hours for each separate craft. For example, if you have a total of 100 journeyman hours at the end of the project, you would need 20 apprentice hours in that same craft.

Can I mix and match crafts to reach the minimum ratio?

No. The minimum ratio requirement is per each individual craft and only includes straight time hours.

Do overtime hours count toward the minimum ratio?

No, only straight time hours count. Be careful not to confuse premium pay with overtime pay.

What is the maximum number of apprentices I can use on a Public Works Project?

It depends on which box you have checked on your DAS 140. If you checked box 1 or 2 and fall under the regulations set forth in a specific program's standards, then you are allowed to use the maximum ratio set forth in those Standards. If you have checked box 3 and agreed to be governed by the regulations set forth by the California Apprenticeship Council then the minimum and maximum ratio is the same: 1 apprentice hour for every 5 journeyman hours totaled at the end of the project.

I am a contractor who is approved to train by an approved program and am covered by their Standards, or I am a contractor who has agreed to be covered by a program's Standards for a single project. How do I know what the Standards allow for that program's maximum apprentice ratios?

You can ask the program for a copy of their Standards or a copy of the language in Article XV which covers ratios. Or you can call the DAS office nearest the location for that program and request the same.

Make Training Fund Contributions:

Contractors who are awarded public works jobs must make training fund contributions in the amount established in the prevailing wage rate publication for journeymen and apprentices. This nominal fee contributes to the assurance that new apprentices coming into the craft will be guaranteed the highest level of training and as skilled craftsmen retire, the trade will survive.

Contractors who contribute to an apprenticeship program are entitled to a full credit in the amount of those contributions. Contractors who do not contribute to an apprenticeship program must submit their contributions to the California Apprenticeship Council, P. O. Box 511283, Los Angeles, California 90051-7838.

Training fund contributions to the Council are due and payable on the 15th day of the month for work performed during the preceding month. The contribution should be paid by check and be accompanied by a completed [training fund contribution form](#) or a letter containing the following information:

1. The name, address and telephone number of the contractor making the contribution.
2. The contractor's license number.
3. The name and address of the public agency that awarded the contract.
4. The jobsite location, including the county where the work was performed.
5. The contract or project number.
6. The time period covered by the enclosed contributions.
7. The contribution rate and total hours worked by apprenticeable occupation.
8. The name of the program(s) that provide apprentices, if any.
9. The number of apprentice hours worked, by apprenticeable occupation and by program.

Subject to change for most recent documentation please click on the following link:

<http://www.dir.ca.gov/das/DASApprenticesOnPublicWorksSummaryOfRequirements.htm>

Are you exempt?

What are the instances in which a contractor on a public works project is considered exempt from the requirements of LC 1777.5?

1. Labor Code 1777.5 does not apply to general contractors whose contract is under \$30,000.
2. When the craft or trade is not apprenticeable.
3. When the contractor holds a sole proprietor license and no workers were employed by the contractor. In other words, the contractor performed the entire work from start to finish and worked alone.
4. When the project is a federal project and the funding of the project does not contain any city, county, and/or state monies unless the project is administered by a state agency in which case the apprenticeship requirements apply.
5. When the project is a private project not covered by the definition of public works as found in Labor Code section 1720.

What if I am exempt from the requirements of California Labor Code Section 1777.5 as my situation falls under one of the exemptions listed above? Do I still have to provide a "Notice of Contract Award" (DAS 140 form) to the applicable program?

You do not have to submit a "Notice of Contract Award". However, for purposes of letting the applicable program know of your exemption, you may, nevertheless, want to provide the form to the applicable program so they are aware of your exemption.

If I have an Individual Contractor Exemption granted by the Chief of DAS per Labor Code § 1777.5 (j), or § 1777.5(k), do I still need to send a DAS 140 to the appropriate programs?

Yes, you still need to submit a Notice of Contract Award Information (DAS 140) to the appropriate Program Committees. The Individual Contractor Exemptions and Program Committee exemptions pertain to the ratio of apprentices on a public works project and do not eliminate the DAS 140 requirement.

I am a small subcontractor and my job will take less than 40 hours. Am I exempt from hiring apprentices?

No, you must still submit a DAS 140 and 142. However, you may request apprentices in less than 8 hour increments. Important Notice: see changes in [Code of Regulations section 230.1](#), regarding the employment of apprentices on Public Works.

What is a registered apprentice?

An apprentice is someone who has signed an agreement with an employer, an approved apprenticeship program or program sponsor, and whose agreement is registered with the Division of Apprenticeship Standards (DAS). Only an approved apprenticeship program can provide a contractor with a registered apprentice on public works projects.

Do programs that provide apprentices for public works projects provide workers compensation benefits for the apprentice they send out to jobs or is the responsibility of the contractor and/or subcontractor?

This responsibility lies with the contractor and/or subcontractor.

How can I find the names of the applicable approved apprenticeship programs/committees?

1. Contact the DAS District office whose assigned geographic areas of responsibility cover the county/ies in which the public works project is located.
2. Visit our [interactive website](#)

As a contractor who has been awarded a public works contract, and has my own employees, am I still required hiring registered apprentices?

Yes. **Important Notice:** see changes in Code of [Regulations sections 230.1](#), regarding the employment of apprentices on Public Works

I am a non-union contractor. Am I required to hire an apprentice?

Yes, you must request dispatch from all approved programs in the geographic area of the project.

Can I employ my friend, family, or my own employee who is still beginning to learn a particular trade, as an apprentice?

No. The law requires that you employ only apprentices who are registered with an approved program. However, if your friend or your employee is a registered apprentice, and has been dispatched to you by an approved apprenticeship program, yes you can.

What happens if I employed my friend who is not a registered apprentice and I paid him the journeyman rate?

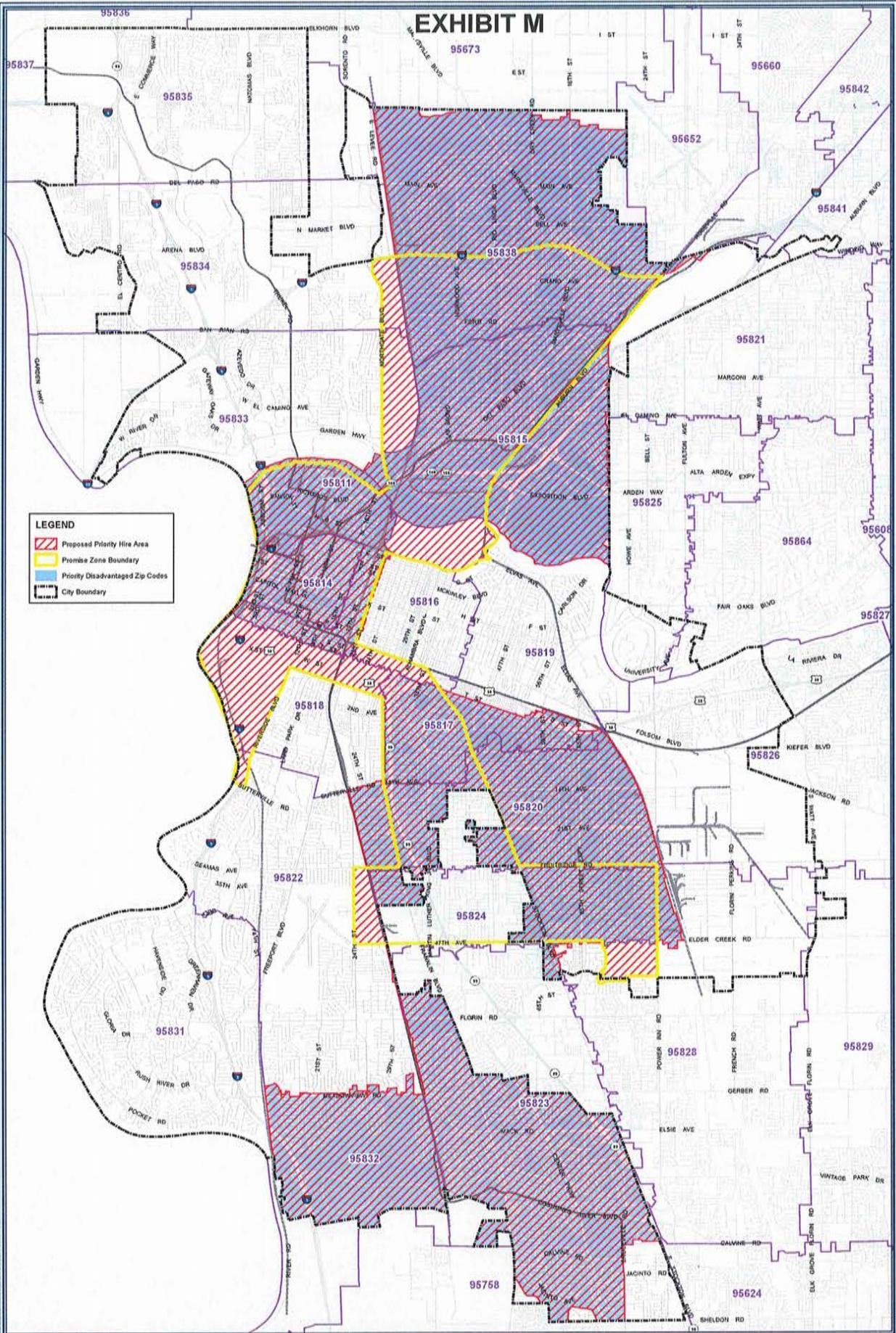
You may employ your friend and pay him journey wages but this does not affect the apprenticeship requirements.

What are the benefits and advantages to hiring a registered apprentice?

The benefits of hiring an apprentice registered in a state approved program are:

1. Lower pay rate than the journeyman pay rate.
2. Elimination of recruitment programs for workers who are already trained.
3. Creates a diversified and flexible workforce and larger pool of employees with specific skills.
4. Increases productivity; employees in a structured training program are motivated to achieve.

EXHIBIT M



LEGEND

- Proposed Priority Hire Area
- Promise Zone Boundary
- Priority Disadvantaged Zip Codes
- City Boundary

AGENCY CUSTOMER ID: _____

LOC #: _____



ADDITIONAL REMARKS SCHEDULE

Page ____ of ____

AGENCY ACIG Insurance Agency, Inc.		NAMED INSURED Kitchell CEM, Inc. 2450 Venture Oaks Way, Suite 500 Sacramento CA 95833	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC CODE		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 **FORM TITLE:** Certificate of Liability (03/16)

HOLDER: City of Sacramento c/o EXIGIS LLC

ADDRESS: P.O. Box 4668 ECM- #35050 New York NY 10168-4668

GL - If these policies are cancelled, non-renewed or materially changed, 60 days notice, except 10 days for nonpayment of premium, will be mailed to the Certificate Holder.

WC - If these policies are cancelled, non-renewed or materially changed, 60 days notice, except 10 days for nonpayment of premium, will be mailed to the Certificate Holder.

AGENCY CUSTOMER ID: _____

LOC #: _____



ADDITIONAL REMARKS SCHEDULE

Page ____ of ____

AGENCY ACIG Insurance Agency, Inc.		NAMED INSURED Kitchell CEM, Inc. 2450 Venture Oaks Way, Suite 500 Sacramento CA 95833	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC CODE		

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FORM NUMBER: 25 **FORM TITLE:** Certificate of Liability (03/16)

HOLDER: City of Sacramento c/o EXIGIS LLC

ADDRESS: P.O. Box 4668 ECM- #35050 New York NY 10168-4668

Kitchell
 ADDENDUM EXCESS LIABILITY COVERAGE
 June 1, 2016 to June 1, 2020

Insurer: Westchester Fire Insurance Company
 Limit: \$1,000,000 excess of underlying limits
 Policy No.: G28122913001

ADDITIONAL INSURED – AUTOMATIC STATUS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Any person or organization that you are required by contract to include as an additional insured on this policy if the contract is executed prior to the loss.

- A. Who is an Insured (Section II) is amended to include as an insured any person or organization shown in the above SCHEDULE (called additional insured), but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" arising out of your premises or your operations for the additional insured.
- B. The insurance provided to the additional insured is subject to the following limitations:
 - 1. Unless required by written contract, this insurance does not apply to "bodily injury" or "property damage" occurring after "your work" for the additional insured has been completed or after that portion of "your work" out of which the "bodily injury" or "property damage" arises has been put to its intended use by any person or organization.
 - 2. Unless required by written contract, this insurance does not apply to "bodily injury" or "property damage" arising out of the sole negligence, act or omission of the additional insured.
 - 3. This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" for which the additional insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement except to the extent that the additional insured would have been obligated to pay such damages in the absence of the contract or agreement.
 - 4. This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering or failure to render any professional services by any insured, including:
 - a) The preparing, approving or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or,
 - b) Supervisory, inspection or engineering services.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured.
 - 5. This endorsement shall not apply to a person or organization if any other additional insured endorsement attached to this policy specifically applies to that person or organization.
 - 6. The insurance afforded herein only applies to the extent permitted by applicable state law, including statutes governing additional insured coverage in the construction industry.
- C. This insurance shall not exceed the scope of coverage, including limits, of this policy and in no event shall the insurance provided to the additional insured exceed the scope of coverage, including limits, required by the contract. If a written contract or agreement requires that additional insured status be provided by the use of specified edition dates of the ISO CG2010 and/or CG2037, then the terms of that endorsement are incorporated into this endorsement as respects such additional insured and shall supersede the coverage grant and limitations in Sections A. and B. of this endorsement. In the event that CG2010 and/or CG2037 are required but no edition dates are specified, the 04/13 editions shall apply.
- D. This insurance is excess to any other insurance, whether primary, excess, contingent or on any other basis, available to the additional insured unless a written contract requires that this insurance be primary or primary and non-contributing. However, this insurance is always excess to other insurance, whether primary, excess, contingent or on any other basis, when the additional insured has been added to the other insurance as an additional insured.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of the mentioned Policy, other than as above stated.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated. **(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)**

Endorsement Effective: **Same as policy effective date unless otherwise indicated above.**

Policy Effective: 6/1/2016

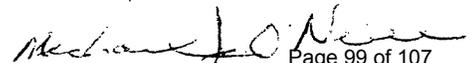
Policy No.: GL16PA0002

Endorsement No.:

Insured: Kitchell CEM, Inc.

Premium \$

Insurance Company: American Contractors Insurance Co. RRG

Countersigned By  Page 99 of 107

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
SCHEDULE

Name of Person(s) or Organization(s):

Any person or organization for whom you have agreed by written contract to furnish this waiver.

The TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US Condition (Section IV – COMMERCIAL GENERAL LIABILITY CONDITIONS) is amended by the addition of the following:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or “your work” done under a contract with that person or organization and included in the “products-completed operations hazard”. This waiver applies only to the person or organization shown in the Schedule above.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of the mentioned Policy, other than as above stated.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective: **Same as policy effective date unless otherwise indicated above.**

Policy Effective Date: 6/1/2016

Policy No.: GL16PA0002

Endorsement No.:

Insured: Kitchell CEM, Inc.

Premium \$

Insurance Company: American Contractors Insurance Co RRG

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT-CALIFORNIA

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be ____*% of the California workers' compensation premium otherwise due on such remuneration.

Schedule

Person or Organization

Job Description

Whomever the named insured is required by written contract executed prior to loss to waive rights of recovery against.

★ No Additional Premium to be applied

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective: Same as Policy Effective Date unless otherwise indicated above.

Policy Effective Date: 6/1/2016

Policy No. WCA000006816

Endorsement No.

Premium \$

Insured Kitchell CEM, Inc.

Carrier Name/Code: ACIG Insurance Company

Countersigned by _____





CERTIFICATE OF LIABILITY INSURANCE

6/1/2017

DATE (MM/DD/YYYY)

5/18/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

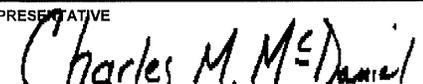
PRODUCER Lockton Companies 8110 E. Union Avenue Suite 700 Denver CO 80237 (303) 414-6000	CONTACT NAME: _____ PHONE (A/C, No, Ext): _____ FAX (A/C, No): _____ E-MAIL ADDRESS: _____													
	<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : The Charter Oak Fire Insurance Company</td> <td>25615</td> </tr> <tr> <td>INSURER B :</td> <td></td> </tr> <tr> <td>INSURER C :</td> <td></td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : The Charter Oak Fire Insurance Company	25615	INSURER B :		INSURER C :		INSURER D :		INSURER E :		INSURER F :
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INSURER E :														
INSURER F :														
INSURED 1328704 Kitchell CEM, Inc. 2450 Venture Oaks Way, Suite 500 Sacramento, CA 95833														

COVERAGES **CERTIFICATE NUMBER:** 14702236 **REVISION NUMBER:** XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER: _____			NOT APPLICABLE			EACH OCCURRENCE \$ XXXXXXXX DAMAGE TO RENTED PREMISES (Ea occurrence) \$ XXXXXXXX MED EXP (Any one person) \$ XXXXXXXX PERSONAL & ADV INJURY \$ XXXXXXXX GENERAL AGGREGATE \$ XXXXXXXX PRODUCTS - COMP/OP AGG \$ XXXXXXXX \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	N	N	DT8105E496169	6/1/2016	6/1/2017	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$ XXXXXXXX
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			NOT APPLICABLE			EACH OCCURRENCE \$ XXXXXXXX AGGREGATE \$ XXXXXXXX \$ XXXXXXXX
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	NOT APPLICABLE			<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ XXXXXXXX E.L. DISEASE - EA EMPLOYEE \$ XXXXXXXX E.L. DISEASE - POLICY LIMIT \$ XXXXXXXX
A	Hired Auto Physical Damage	N	N	DT8105E496169	6/1/2016	6/1/2017	Comp. Ded. \$1,000 Coll. Ded. \$1,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Auto Liability carrier in the State of California is The Travelers Indemnity Company of Connecticut. Policy number, coverage, and effective dates above apply.
 RE: Memorial Auditorium Renovation, Project #M17100103

CERTIFICATE HOLDER 14702236 City of Sacramento c/o EXIGIS LLC P.O. Box 4668 ECM- #35050 New York NY 10168	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
---	--

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BUSINESS AUTO EXTENSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

GENERAL DESCRIPTION OF COVERAGE – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to the Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- | | |
|---|---|
| A. BROAD FORM NAMED INSURED | H. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT |
| B. BLANKET ADDITIONAL INSURED | I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT |
| C. EMPLOYEE HIRED AUTO | J. PERSONAL PROPERTY |
| D. EMPLOYEES AS INSURED | K. AIRBAGS |
| E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS | L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS |
| F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS | M. BLANKET WAIVER OF SUBROGATION |
| G. WAIVER OF DEDUCTIBLE – GLASS | N. UNINTENTIONAL ERRORS OR OMISSIONS |

PROVISIONS

A. BROAD FORM NAMED INSURED

The following is added to Paragraph **A.1., Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

Any organization you newly acquire or form during the policy period over which you maintain 50% or more ownership interest and that is not separately insured for Business Auto Coverage. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

B. BLANKET ADDITIONAL INSURED

The following is added to Paragraph **c.** in **A.1., Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to be named as an additional insured is an "insured" for Covered Autos Liability Coverage, but only for damages to which

this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.

C. EMPLOYEE HIRED AUTO

1. The following is added to Paragraph **A.1., Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.

2. The following replaces Paragraph **b.** in **B.5., Other Insurance**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

b. For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

- (1) Any covered "auto" you lease, hire, rent or borrow; and
- (2) Any covered "auto" hired or rented by your "employee" under a contract in an "employee's" name, with your

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permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

D. EMPLOYEES AS INSURED

The following is added to Paragraph A.1., **Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS

1. The following replaces Paragraph A.2.a.(2), of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

(2) Up to \$3,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

2. The following replaces Paragraph A.2.a.(4), of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

(4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS

The following replaces Subparagraph (5) in Paragraph B.7., **Policy Period, Coverage Territory**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

(5) Anywhere in the world, except any country or jurisdiction while any trade sanction, embargo, or similar regulation imposed by the United States of America applies to and prohibits the transaction of business with or within such country or jurisdiction, for Covered Autos Liability Coverage for any covered "auto" that you lease, hire, rent or borrow without a driver for a period of 30 days or less and that is not an "auto" you lease, hire, rent or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households.

(a) With respect to any claim made or "suit" brought outside the United States of America, the territories and possessions of the United States of America, Puerto Rico and Canada:

(i) You must arrange to defend the "insured" against, and investigate or settle any such claim or "suit" and keep us advised of all proceedings and actions.

(ii) Neither you nor any other involved "insured" will make any settlement without our consent.

(iii) We may, at our discretion, participate in defending the "insured" against, or in the settlement of, any claim or "suit".

(iv) We will reimburse the "insured" for sums that the "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, that the "insured" pays with our consent, but only up to the limit described in Paragraph C., **Limits Of Insurance**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**.

(v) We will reimburse the "insured" for the reasonable expenses incurred with our consent for your investigation of such claims and your defense of the "insured" against any such "suit", but only up to and included within the limit described in Paragraph C., **Limits Of Insurance**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**, and not in addition to such limit. Our duty to make such payments ends when we have used up the applicable limit of insurance in payments for damages, settlements or defense expenses.

(b) This insurance is excess over any valid and collectible other insurance available to the "insured" whether primary, excess, contingent or on any other basis.

(c) This insurance is not a substitute for required or compulsory insurance in any country outside the United States, its territories and possessions, Puerto Rico and Canada.

You agree to maintain all required or compulsory insurance in any such country up to the minimum limits required by local law. Your failure to comply with compulsory insurance requirements will not invalidate the coverage afforded by this policy, but we will only be liable to the same extent we would have been liable had you complied with the compulsory insurance requirements.

- (d) It is understood that we are not an admitted or authorized insurer outside the United States of America, its territories and possessions, Puerto Rico and Canada. We assume no responsibility for the furnishing of certificates of insurance, or for compliance in any way with the laws of other countries relating to insurance.

G. WAIVER OF DEDUCTIBLE – GLASS

The following is added to Paragraph D., **Deductible**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

No deductible for a covered "auto" will apply to glass damage if the glass is repaired rather than replaced.

H. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT

The following replaces the last sentence of Paragraph A.4.b., **Loss Of Use Expenses**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

However, the most we will pay for any expenses for loss of use is \$65 per day, to a maximum of \$750 for any one "accident".

I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT

The following replaces the first sentence in Paragraph A.4.a., **Transportation Expenses**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

We will pay up to \$50 per day to a maximum of \$1,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type.

J. PERSONAL PROPERTY

The following is added to Paragraph A.4., **Coverage Extensions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

Personal Property

We will pay up to \$400 for "loss" to wearing apparel and other personal property which is:

- (1) Owned by an "insured"; and

- (2) In or on your covered "auto".

This coverage applies only in the event of a total theft of your covered "auto".

No deductibles apply to this Personal Property coverage.

K. AIRBAGS

The following is added to Paragraph B.3., **Exclusions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

Exclusion 3.a. does not apply to "loss" to one or more airbags in a covered "auto" you own that inflate due to a cause other than a cause of "loss" set forth in Paragraphs A.1.b. and A.1.c., but only:

- a. If that "auto" is a covered "auto" for Comprehensive Coverage under this policy;
- b. The airbags are not covered under any warranty; and
- c. The airbags were not intentionally inflated.

We will pay up to a maximum of \$1,000 for any one "loss".

L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS

The following is added to Paragraph A.2.a., of **SECTION IV – BUSINESS AUTO CONDITIONS**:

Your duty to give us or our authorized representative prompt notice of the "accident" or "loss" applies only when the "accident" or "loss" is known to:

- (a) You (if you are an individual);
- (b) A partner (if you are a partnership);
- (c) A member (if you are a limited liability company);
- (d) An executive officer, director or insurance manager (if you are a corporation or other organization); or
- (e) Any "employee" authorized by you to give notice of the "accident" or "loss".

M. BLANKET WAIVER OF SUBROGATION

The following replaces Paragraph A.5., **Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

5. Transfer Of Rights Of Recovery Against Others To Us

We waive any right of recovery we may have against any person or organization to the extent required of you by a written contract signed and executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of operations contemplated by

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such contract. The waiver applies only to the person or organization designated in such contract.

N. UNINTENTIONAL ERRORS OR OMISSIONS

The following is added to Paragraph **B.2., Concealment, Misrepresentation, Or Fraud**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

The unintentional omission of, or unintentional error in, any information given by you shall not prejudice your rights under this insurance. However this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

