



## ATTACHMENT 3 - RECEIPT AND REVIEW OF CONSTRUCTION AGREEMENT

Fort Ord Reuse Authority  
920 2nd Avenue  
Marina, CA 93933

Attention: Peter Said

Re: Surplus II Water/Wastewater cut-off and repair

*Failure to notify FORA of any apparent errors and patent ambiguities in the plans, specifications, and Bid Item List may result in rejection of a bid or rescission of an award.*

The undersigned Bidder certifies they are in receipt of the sample Construction Agreement included with the Contract Documents, have thoroughly reviewed the documents and examined the site, and takes no exception to the contents of the Contract Documents.

\_\_\_\_\_  
PRINT BIDDERS NAME:

\_\_\_\_\_  
DATE:

\_\_\_\_\_  
SIGNATURE OF BIDDER:

**OR**

The Bidder certifies they are in receipt of the sample Construction Agreement included with the Contract Documents, have thoroughly reviewed the documents and examined the site, and takes exception to the following: *(attach additional pages if needed)*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
PRINT BIDDERS NAME:

\_\_\_\_\_  
DATE:

\_\_\_\_\_  
SIGNATURE OF BIDDER:

END OF DOCUMENT

**Sample Construction Agreement No. FC-\_\_\_\_\_**

This Agreement for Construction (this "Agreement") is made by and between the Fort Ord Reuse Authority, a public corporation of the State of California ("FORA") and \_\_\_\_\_, a California \_\_\_\_\_ ("Contractor").

This Agreement relates to the Hazardous Material and Building Removal at the Surplus II (the "**Project**"). The Location of Surplus II is set forth in **S201-ITB3 Notice to Bidders** and may be referred to herein as the "**Project Site**".

**The parties agree as follows:**

1. **SCOPE.** Subject to the terms and conditions set forth in this Agreement, Contractor shall complete the scope of work attached as **Exhibit "A"** to this Agreement (the "Work"). The Work will be rendered at the direction of the Executive Officer of FORA as authorized by the FORA Board of Directors.
2. **PAYMENT TERMS.** FORA shall pay Contractor at the times and in the manner set forth in **Articles 6 through 9**.
3. **GENERAL PROVISIONS.** In the event of any inconsistency between the general provisions set forth in this Agreement and any other terms or conditions set forth in the attachments and exhibits, the terms in the attachments or exhibits shall control only insofar as it is inconsistent with the general provisions.
4. **EXHIBITS.** All exhibits referred to herein are attached hereto and are by this reference incorporated herein.
5. **CONTRACT SUM.** The contract sum for this Agreement is \$\_\_\_\_\_ in accordance with Article 6 of this Agreement.
6. **CONTRACT TERM.** The contract term is not to exceed seventy-five days (75) in accordance with Article 4 this agreement.

NOW, THEREFORE, in consideration of the mutual terms, covenants, and conditions contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Fort Ord Reuse Authority  
920 2<sup>nd</sup> Avenue, Suite A  
Marina, CA 93933  
831-883-3672

CONTRACTOR INFO  
XXXXX  
XXXXX  
XXXXX

By \_\_\_\_\_

By \_\_\_\_\_

Michael A. Houlemard Jr.  
Fort Ord Reuse Authority  
Executive Officer

Contractor Representative, Title  
Street Address  
City, CA XXXX

Date: \_\_\_\_\_

Date: \_\_\_\_\_

<b>ARTICLE 1 - THE WORK AND THE CONTRACT DOCUMENTS</b>	<b>3</b>
<b>ARTICLE 2 - CONTRACTOR'S RESPONSIBILITIES, WARRANTIES AND COVENANTS</b>	<b>6</b>
<b>ARTICLE 3 - PROTECTION OF PERSONS AND PROPERTY</b>	<b>17</b>
<b>ARTICLE 4 - TIME FOR PERFORMANCE</b>	<b>24</b>
<b>ARTICLE 5 - CHANGES IN THE WORK</b>	<b>28</b>
<b>ARTICLE 6 - CONTRACT SUM</b>	<b>38</b>
<b>ARTICLE 7 - PROGRESS PAYMENTS ON AGREEMENT PRICE</b>	<b>40</b>
<b>ARTICLE 8 - SUBCONTRACTORS</b>	<b>43</b>
<b>ARTICLE 9 - ACCEPTANCE AND FINAL PAYMENT</b>	<b>45</b>
<b>ARTICLE 10 - OCCUPANCY BEFORE COMPLETION OF WORK</b>	<b>47</b>
<b>ARTICLE 11 - INDEMNIFICATION</b>	<b>48</b>
<b>ARTICLE 12 - CONTRACTOR'S INSURANCE</b>	<b>49</b>
<b>ARTICLE 13 - CITY OF SEASIDE'S PROPERTY INSURANCE</b>	<b>50</b>
<b>ARTICLE 14 - TERMINATION OF AGREEMENT</b>	<b>50</b>
<b>ARTICLE 15 - STATUS OF FORA CONSTRUCTION MANAGER</b>	<b>52</b>
<b>ARTICLE 16 - INSPECTION AND AUDIT</b>	<b>52</b>
<b>ARTICLE 17 - CONFIDENTIALITY</b>	<b>53</b>
<b>ARTICLE 18 - PROJECT RECORD DOCUMENTS</b>	<b>53</b>
<b>ARTICLE 19 - CONSTRUCTION BY SEPARATE CONTRACTORS</b>	<b>54</b>
<b>ARTICLE 20 - ADDITIONAL PROVISIONS</b>	<b>55</b>
<b>ARTICLE 21 - GENERAL PROVISIONS</b>	<b>58</b>

## ARTICLE 1 - THE WORK AND THE CONTRACT DOCUMENTS

### 1.01 CONTRACTORS PERFORMANCE.

- A. Contractor agrees, for the consideration and under the terms and conditions hereinafter set forth, to provide and furnish all engineering (of means and methods), materials, supplies, apparatus, appliances, equipment, fixtures, tools, implements, shoring, labor, supervision, accounting, transportation, freight, layout, hoisting, uncrating, settling, installation, parking, utilities, insurance, site security, storage, taxes, detailing, shop drawings, submittals, samples, mock-ups and other services required to perform and completely finish the Work at the Project Site required for the construction and completion of the Project.
- B. The Work shall be performed and completed by Contractor in a good and workmanlike manner and in accordance with the Contract Documents, free of any and all liens and claims of laborers, artisans, materialmen, suppliers, and subcontractors.

### 1.02 CONTRACT DOCUMENTS.

- A. As used herein the term "Contract Documents" means this Agreement and all Exhibits, Attachments, Addenda, and the Supplementary Conditions to Construction Agreement, Notice to Bidders, Instructions to Bidders, Project Special Conditions (the "Supplementary Conditions"), now or subsequently attached hereto, the Scope of Work listed in Exhibit A, the plans and drawings ("Drawings") and the FORA Standard Specifications and Special Provisions ("Specifications") prepared by the architect(s), FORA Construction Manager(s) or engineer(s) listed in Exhibit B (collectively, the "FORA Construction Manager"), (or any architect, FORA Construction Manager, engineer or consultant for certain elements of the Work, as applicable) and listed on Exhibit B attached hereto, as the same may be supplemented or modified by Change Order (as defined in Section 5.01), Schedules and any bonds required to be furnished by Contractor pursuant to this Agreement.
- B. The following are Contract Documents and incorporated by reference.

Request for Proposal S201-RFP3: As issued by FORA, dated \_\_\_\_\_  
Attachment 1: Bid Form  
Attachment 2: Bidder's Bond Form  
Attachment 3: Sample Construction Agreement with FORA  
Exhibit A – Scope of Work  
Exhibit B – Plans and Specifications  
Exhibit C – Alternate Bid  
Exhibit D – Schedule for: Substantial Completion, Schedule Date for Final Completion  
Exhibit E – Contractors Project Personnel List  
Exhibit F1- California, Department of Transportation: Labor Surcharge & Equipment Rental Rates  
Exhibit F2 – Allowances  
Exhibit G – Sample Conditional Waiver and Release Upon Progress Payment  
Exhibit H - Sample Unconditional Waiver and Release Upon Progress Payment  
Exhibit I – Sample Conditional Waiver and Release Upon Final Payment  
Exhibit J - Sample Unconditional Waiver and Release Upon Final Payment  
Exhibit K- Change Order Process  
Exhibit L- Insurance Requirements of FORA  
Attachment 4: Certificate of Appropriate License & California Company  
Attachment 5: Schedule of Project Values & Request for Change Form  
Attachment 6: Non-Collusion Declaration  
Attachment 7: Subcontractors List  
Attachment 8: Hauling Schedule

**Sample Construction Agreement No. FC-\_\_\_\_\_**

Attachment 9: Disposal Site Approval

Attachment 10: Building Dossier

Attachment A: Qualification Form

Bid Proposal Form, Company Officer Certification

Addenda: Addenda, if any, including answers to Pre-Proposal Requests for Information (RFI) or clarifications.

- C. The Contract Documents are complementary and what is required by any one shall be as binding as if required by all. The intention of the Contract Documents is to cause Contractor to provide for the Contract Sum (as defined in Article 6) all materials, supplies, apparatus, appliances, equipment, fixtures, tools, implements, labor, supervision, accounting, transportation, utilities, storage and services as may be necessary for the proper execution of the Work. Should added labor, materials, services or other elements, not shown in the Contract Documents but reasonably inferable from the Contract Documents, be necessary to complete the Work, Contractor will furnish the same without any change in the Contract Sum.
- D. The phrase “reasonably inferable” shall mean and include all Work that a Contractor who is highly reputable and experienced in the industry would determine is a natural extension of the information provided in the Contract Documents and/or is appropriate and necessary to complete and accomplish the design intent of the Contract Documents. In determining what is reasonably inferable from the Contract Documents, all such documents shall be construed together and shall not be read by separate trade areas or design divisions.
- E. The later description of the Work in further detail provided by FORA (or it’s representative), through issuance of written specifications, directions or clarifications, the issuance of further and more detailed drawings or otherwise, shall not entitle Contractor to any compensation in addition to the Contract Sum or to any extension of the Completion Date(s) unless and only to the extent that such later description constitutes a “Material Change” in the Work, which is defined as any one of the following:
- a. A later description of the Work that involves work of a materially different nature, character, scope or quality (other than a refinement) than that set forth in and/or reasonably inferable from the Contract Documents described herein; or
  - b. A later description of the Work which involves work expressly excluded from the Contract Sum; or
  - c. Additional work that is required because of a change in applicable Laws after the execution of this Agreement; or
  - d. Additional work that is required because of an event or occurrence affecting the Work subsequent to the execution of this Agreement that is beyond the reasonable control of Contractor and materially interferes with or measurably and adversely impacts the means, methods or sequencing of the Work as evidenced by the requirement of substantially more labor, equipment or time necessary to complete the Work; or
  - e. Additional work that is required because of an emergency threatening life or property at the Project Site, and not due to contractor action, that requires Contractor to take actions not otherwise included in the scope of the Work described in the Contract Documents. In the event of conflicts between Contract Documents, the following shall apply:
    - i. Documents of later date shall govern;
    - ii. Dimensions shown on the Drawings govern even though they may differ from scaled dimensions;
    - iii. Drawings of larger scale shall govern over those of smaller scale of the same or earlier date;
    - iv. Specifications shall govern over Drawings; and

**Sample Construction Agreement No. FC-\_\_\_\_\_**

- v. Except as provided in Section 1.03 below, this Agreement shall govern over all other documents, and later Addenda to this Agreement shall govern over prior inconsistent versions.

**1.03 INSTRUCTION TO BIDDERS AND CONSTRUCTION AGREEMENT.**

- A. The Instruction to Bidders (used by Contractor in making its bid) and this Agreement are intended to complement each other and as far as practicable shall be read consistently with each other. To the extent the instruction to Bidders conflicts with this Agreement or other Construction Documents, the more stringent requirements shall apply.
- B. To the extent the instruction to bidders contains requirements or directions not set forth in this Agreement or other Construction Documents, such requirements shall be considered additional requirements of the Construction Documents to which Contractor shall conform.

**1.04 MODIFICATION OF CONTRACT SUM AND COMPLETION DATE(S).**

- A. Contractor hereby acknowledges and agrees that it shall not be entitled to any increase in the Contract Sum and/or any extension of the Scheduled Date for Substantial Completion (as defined in Section 4.02) or the Scheduled Date for Final Completion (as defined in Section 4.02) as a result of a Material Change unless:
  - a. Contractor makes a claim for an increase in the Contract Sum and/or the completion date(s) with respect to such Material Change within two (2) business days of Contractor becoming aware of the Material Change; and
  - b. FORA authorizes Contractor to proceed with such Work and agrees to an increase in the Contract Sum and/or to an extension of the completion date(s) in advance and thereafter executes a fully executed Change Order;
    - i. Contractor presents a claim in the time and manner required by this Agreement and thereafter prosecutes such claim successfully in the manner required and is finally awarded an increase in the Contract Sum or extension of time; or
    - ii. In the event of an emergency threatening life or property at the Project Site, Contractor shall be entitled to any reasonable amounts necessarily expended to address the emergency.

**1.05 THE WORK AND THE PROJECT.**

- A. As used herein, the term “Work” shall refer to the construction required by the Contract Documents, as they may be amended from time to time, and includes all labor necessary to produce such construction, and all materials and equipment incorporated or to be incorporated in such construction. “Work” also includes everything not specified in the Contract Documents but consistent therewith and reasonably inferable therefrom as being necessary to produce the intended results as provided in Section 1.02.
- B. As used herein the term “Project” means the total construction of which the Work performed under the Contract Documents may be the whole or a part as described in Exhibit A and which may include construction by FORA, its affiliates or its separate contractors.

**1.06 COST BREAKDOWN.**

- A. The “Cost Breakdown” for the Work shall include the names of all Subcontractors heretofore engaged and, as attachments, a list of all subcontracts heretofore executed relating to the Work is attached hereto as **Attachment 7**. The Cost Breakdown shall delineate by each trade employed by contractor and its subcontractors, and include the estimated percentage of the contract for which each trade will be responsible. As a part of the Cost Breakdown the contractor shall provide:

**Sample Construction Agreement No. FC-\_\_\_\_\_**

- a. Base Bid, Additive Bid and Unit Prices
- b. Alternate (Exhibit C) lump sum unit prices which may be added to contract sum by Change Order (Section 5)
- c. Unit Prices. Contractor shall provide lump sum unit pricing for major work activities. Unit prices must be provided prior to the NTP and will be the basis for any additive/deductive change orders.
- d. Company Profit. Company Profit shall be fixed at 5%

**1.07 NOTICE TO PROCEED.**

- A. Notice to Proceed will not be issued until:
  - a. All submittals are approved by FORA or FORA's Engineer.
  - b. FORA has accepted the Critical Path Methodology ("CPM") schedule and the Scheduled Date for Substantial Completion.
  - c. The contractor has provided FORA with a copy of the permits, and written approvals from the appropriate agencies regulating the work.
  - d. The contractor has submitted working drawings depicting means and methods for FORA review and approval to include, but not be limited to, an updated Disinfection Plan, Materials Plan, Health and Safety Plan, Traffic Plan, Fencing Plan, Work Plan, and QSD contact.
  - e. Payments and Performance bonds have been furnished.
  - f. Schedule of Values has been agreed upon, and coordinated with the CPM
- B. Work performed for the Project described in Exhibit A shall not commence until a written Notice to Proceed has been issued by FORA. Contractor shall not invoice FORA for any services performed at a Project Site prior to FORA's issuance of the applicable Notice to Proceed.

**1.08 PERFORMED SERVICES.**

- A. Should portions of the Work be performed prior to the effective date of this Agreement, any such work, and any payments made by FORA for such Work, shall be deemed to have been performed under the terms and conditions of the Agreement. Any payments shall be credited against FORA's payment obligations under this Agreement.

**ARTICLE 2 - CONTRACTOR'S RESPONSIBILITIES, WARRANTIES AND COVENANTS**

**2.01 PERFORMANCE.**

- A. Contractor recognizes the relationship of trust and confidence established between it and FORA by the Contract Documents. In performing the Work, Contractor agrees to furnish its best skill and judgment and to cooperate with FORA and FORA's Representative or FORA's Construction Manager in furthering the interests of FORA. Contractor further agrees to furnish at all times efficient business administration and superintendence and an adequate supply of workmen, equipment and materials, and to perform the Work in a good and workmanlike manner, using only materials that are new and approved by FORA and, if required by FORA, FORA Construction Manager, and in the most expeditious and economical manner consistent with FORA's interests.

2.02 COMPLIANCE WITH DRAWINGS AND SPECIFICATIONS AND APPLICABLE LAWS.

- A. The Work shall be constructed and completed in compliance with the Drawings and Specifications and all laws, ordinances, rules, regulations and requirements of all governmental and public authorities and any Board of Fire Underwriters having jurisdiction over the Project or any aspect thereof, including, without limitation, the Federal Occupational Safety and Health Act, the Americans with Disabilities Act of 1990, Title 24 of the California Code of Regulations, and all other applicable laws, ordinances, rules, regulations and requirements relating to safety or to hazardous materials or substances, and, in addition, the written requirements of any insurance company carrying any insurance coverage required under the Contract Documents (collectively, “Applicable Laws”).
- B. Without limitation of the foregoing, Contractor shall comply with and give notices required by all Applicable Laws, including all environmental laws. In addition, Contractor shall comply with the public works registration and reporting requirements identified in Section 2.15.
- C. Although Contractor is not responsible for assuring the compliance of the Drawings and Specifications with Applicable Laws, Contractor shall promptly notify FORA in writing if Contractor becomes aware during the performance of the Work that the requirements of the Contract Documents do not comply with any Applicable Laws. If Contractor performs Work which it knows, or should know, is not in compliance with Applicable Laws without having given FORA such notice, Contractor shall bear full responsibility for and bear all costs attributable such Work.

2.03 CONSTRUCTION SCHEDULE.

- A. Contractor shall prepare and must submit a detailed critical path schedule in form satisfactory to FORA (as the same may be amended in accordance with the Contract Documents, the “Construction Schedule”) within 10 calendar days of contract award and prior to Notice to Proceed.
- B. The Construction Schedule shall be based on a Critical Path Method Network technique and shall be limited to the construction time allowed by the Contract Documents. It shall include a sequential list of milestone dates of significant events particular to the Project and shall relate those events to the placement of materials and the procurement and delivery of equipment and testing and inspection.
- C. A time scale shall be established in such a way that anyone examining the schedule will know which trades should be represented on the job and what work should be in progress on any workday. The Construction Schedule shall be updated as and when required by the Contract Documents but not less often than monthly.
- D. Any update to the Construction Schedule shall require the prior approval of FORA or FORA’s representative.
- E. Unless otherwise directed by FORA, each Application for Payment shall include a copy of the current Construction Schedule and a report (the “Progress Report”) showing the actual progress of each portion of Work specified in the Contract.

2.04 RECORD COPIES AND “AS-BUILTS”.

- A. Contractor shall maintain at the Project Site one record copy (“Record Copy”) of the Drawings, Specifications, Addenda, Change Orders and other modifications, in good order and marked currently to record all changes made during construction. Contractor shall keep in good order approved Shop Drawings, Product Data and Samples as part of the Record Copy. The Record Copy shall be available to FORA and shall be delivered to FORA prior to acceptance of the Work. Contractor shall also be responsible for maintaining and submitting the “as-built” conditions on Project Site as part of the Record Copy by redlining the Construction Drawings.



- B. As-built redlines shall be updated daily and made available for review by FORA and the FORA Construction Manager upon request. Contractor's compliance with the foregoing shall be a condition to approval of each payment application.
- C. Further, upon completion of the Project and as a condition to final payment, Contractor must deliver to FORA Construction Manager a complete and accurate final set of as-built redline Drawings.

2.05 DAILY REPORTS.

- A. Daily Reports shall be turned into the FORA Construction Manager (CM) and to FORA weekly. Reports shall include a narrative of work started, work completed, and percent complete for each work item, a summary of workforce and Subcontractors on the Project Site, equipment utilization and work activities for all scope of work, including Change Orders. FORA or its CM shall have the right to adjust the required contents and form. Payments may be withheld by FORA if daily reports are not submitted when required. In addition, Contractor agrees that FORA may withhold the payment of the sum of Two Hundred Dollars (\$200) per day from the next payment to Contractor under this Agreement for each day the Contractor delays in delivering a complete and acceptable daily report to FORA.

2.06 CONSTRUCTION MEETINGS.

- A. Contractor's representative and, if required by FORA, representatives of Subcontractors, shall attend weekly meetings with FORA to report on and discuss matters regarding the progress of construction. Contractor must submit an updated CPM schedule and 3 week look ahead at each meeting. Any requests, decisions, or directions shall be memorialized in writing and submitted to the FORA CM.

2.07 DUE CARE AND DILIGENCE.

- A. Contractor warrants that it will exercise due care and diligence in the performance of the Work and that the Work shall be fully and finally completed in accordance with the Contract Documents.

2.08 SUBSTITUTIONS.

- A. Contractor must submit a Materials Plan, identifying all materials to be used on the project and proposed substitutes, to FORA and its representative for approval within ten (10) calendar days of contract award, and prior to issuance of the NTP.
- B. Contractor shall not make any substitution of materials or use any other alternative to an item set forth in the Specifications without the prior written consent of FORA, in FORA's sole discretion. Use of unauthorized substitutions or alternatives shall be deemed defective work and shall constitute a material default by Contractor.
- C. The burden of proof as to the quality and suitability of proposed substitutes or alternatives shall be upon Contractor, and Contractor shall furnish all information required by FORA to evaluate a proposed substitute or alternative. Whenever the specifications expressly permit the substitution of a similar or equivalent material or article, no tests or action relating to the approval of the substitute material will be made until the request for substitution is made in writing by Contractor accompanied by complete data as to the quality of the material or article proposed. The request shall be made in ample time to permit approval without delaying the Work, and in any event no later than thirty-five (35) days after execution of this Agreement.
- D. Contractor shall warrant that any substitution or alternative proposed is, at a minimum, equivalent in performance and quality to the item for which substitution is proposed.

2.09 CONTRACTOR'S WARRANTY.

- A. Contractor's express warranty of herein shall be for One (1) year following the Notice of Completion in addition to, and not in lieu of, any other remedies FORA may have under the Contract Documents, at law, or in equity for defective or nonconforming Work.
- B. No payment made by FORA to Contractor, nor any acceptance, of the Project by FORA or any other person, shall constitute acceptance of any defective Work or any Work not in compliance with the Contract Documents.
- C. Contractor must submit all material warranties to FORA prior to final payment.
- D. All warranties provided in this Section or elsewhere in the Contract Documents shall survive any termination of this Agreement. Contractor shall require the warranty contained in this Section be contained in all subcontracts.

2.10 GUARANTY OF CORRECTION

- A. As used herein the term "Correction Period" shall mean the period of time starting from FORA's final acceptance of completion of the Work and completion of all close out documentation to the satisfaction of FORA and ending one (1) year thereafter.
- B. Contractor shall remove from the Project Site portions of the Work and materials which are not in conformance with the Contract Documents and which are not either corrected by Contractor or accepted by FORA. All such corrective work shall be performed at such times as are acceptable to FORA and so as to avoid, to the extent practicable, disruption to the activities of FORA or the operation or use of the Project.
- C. The provisions of this Section shall apply to Work performed by Subcontractors as well as Work done directly by employees of Contractor.
- D. The cost to Contractor of performing any of its obligations under this Section shall be paid for by Contractor, and Contractor shall receive no reimbursement or compensation from FORA for performing any such corrective work. Contractor's obligations under this Section are in addition to and not in limitation of its express warranty under Section 2.09 above, or any other obligation of Contractor under the Contract Documents. Enforcement of Contractor's obligations under this Section shall be in addition to and not in limitation of any other right or remedy of FORA under the Contract Documents or otherwise at law or in equity. The Correction Period for any corrective work completed during the Correction Period shall be extended for one (1) year from the date of completion of such correction.
- E. Notwithstanding the foregoing provisions of this Section, FORA, may, at its option, by notice to Contractor, elect to accept nonconforming or defective Work instead of requiring its removal or correction, in which case the Contract Sum shall be reduced by an amount equal to the difference between the value to FORA of the Work had it been in conformance with the Contract Documents, and the value to FORA of such nonconforming or defective Work. Such election shall be exercised only by written notice to Contractor and shall not be implied by any action or inaction of FORA.
- F. Notwithstanding the foregoing Subparagraph, in the event of an emergency constituting an immediate hazard to health or safety of State employees, property, or licensees, FORA may undertake, at the Contractor's expense and without prior notice, work necessary to correct such hazardous condition(s) when it is caused by work of the Contractor not being in accordance with the requirements of the Contract Documents.

2.11 EXAMINATION OF SITE AND DOCUMENTS.

- A. Contractor shall examine the Project Site, Drawings and Specifications, and must promptly notify FORA of any errors, inconsistencies or omissions discovered therein or in any other Contract Documents, before any Work is done in accordance therewith.
- B. Contractor shall secure a Change Order from FORA before proceeding with any part of the Work affected by any such errors, omissions or inconsistencies. If Contractor fails to secure such Change Order for any error, inconsistency or omission discovered by Contractor or that would be reasonably evident to an experienced Contractor, it shall be considered to have proceeded at its own risk and expense and shall bear all costs resulting therefrom, including costs of correction and additional testing and inspection.
- C. Contractor shall thoroughly review all reports and studies delivered by FORA to Contractor prior to commencing the Work, including but not limited to hazardous material and geotechnical studies, and all Work shall be done in accordance with such reports and studies, unless otherwise directed by FORA in writing.

2.12 VERIFICATION OF DIMENSIONS.

- A. Contractor shall verify all dimensions before laying out and performing any particular portion of the Work and shall be responsible for any errors which might have been avoided thereby. Contractor shall promptly notify FORA of any such errors by using a Request for Information Form ("RFI"). Dimensions of Work as indicated on Drawings are not guaranteed to be as built dimensions.
- B. No measurements shall be scaled from Drawings and used as definite dimensions for layout or fitting Work in place. Dimensions for items to be fitted into constructed conditions or improvements at the Project Site shall be taken at the Project Site.
- C. Whenever a stock size, manufactured item or piece of equipment is specified by its nominal size or dimensions, Contractor shall be responsible to verify measurements thereof and assure proper incorporation into the Work.

2.13 SURVEY AND STAKING.

- A. All layout and staking required for the Work except as set forth hereinabove shall be provided by Contractor.

2.14 SUPERVISION, COORDINATION, AND DIRECTION.

- A. Contractor shall supervise, coordinate and direct the Work using Contractor's best skill and attention. Contractor shall be responsible for and have control over construction means, methods, techniques, sequences, procedures, and the coordination of all portions of the Work, unless otherwise shown or specified in the Contract Documents or directed in writing by FORA Construction Manager.
- B. Contractor shall at all times maintain good discipline and order among its employees and Subcontractors. It shall provide competent, fully qualified personnel to perform the Work.
- C. Upon the written request of FORA, any personnel or other agents of Contractor that are not satisfactory to FORA shall be promptly and lawfully replaced by others satisfactory to FORA.

2.15 LABOR, MATERIALS, EQUIPMENT.

- A. Unless otherwise provided in the Contract Documents, Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work and all sales, consumer, use, and similar taxes.

- B. The Work under this Contract is a public works project (see definition of public works, Labor Code section 1720 et seq.) and must be performed in accordance with the requirements of Labor Code sections 1720 to 1861 and Title 8 California Code of Regulations sections 16000 to 17270, which govern the payment of prevailing wage rates on public works projects. This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations (DIR). Contractor and all Subcontractors must comply with all applicable laws and regulations, and perform all obligations required by the DIR pursuant to such authority.
- C. Contractor shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by Contractor or in any way affect the performance of its service pursuant to this agreement. Contractor shall use reasonable care to comply with applicable laws in effect at the time the Services are performed hereunder, which to the best of Contractor's knowledge, information and belief, apply to Contractor's obligations under this Agreement.
1. The following Labor Code sections are hereby referenced and made a part of this Agreement:
  2. Section 1775 - Penalty for Failure to Comply with Prevailing Wage Rates.
  3. Section 1777.5 and 1777.6 - Apprenticeship Requirements.
  4. Section 1813 - Penalty for Failure to Pay Overtime.
  5. Sections 1810 and 1811 - Working Hour Restrictions.
  6. Section 1775 - Payroll Records.
- D. Contractor must utilize a Labor Compliance Monitoring (LCM) firm from FORA's prequalified list of monitors. The selected LCM must utilize the "ELATION" software and compile payroll records, whether such records are required to be filed with the Department of Industrial Relations or not. Contractor must authorize the LCM to provide FORA access to such Elation Records.
- E. The prevailing wage rates set forth are the minimum that must be paid by the Contractor on a public works contract. Nothing herein contained shall be construed as preventing the Contractor from paying more than the minimum rates set forth. If a worker employed by a Subcontractor on a public works project is not paid the general prevailing per diem wages by the subcontractor, the Contractor is liable for any penalties under section 1775(a), if the Contractor fails to comply with the requirements of section 1775(b). Contractor shall periodically review and monitor all Subcontractors' certified payroll records. If Contractor learns that any Subcontractor has failed to comply with the prevailing wage requirements herein, Contractor shall take corrective action.
- F. Contractor represents and warrants that the Contract Sum includes sufficient funds to allow Contractor and all Subcontractors to comply with all applicable laws and contractual agreements. Contractor shall defend, indemnify and hold FORA, its officers, employees and agents harmless from and against any and all claims, demands, losses, liabilities, and damages arising out of or relating to the failure of Contractor or any Subcontractor to comply with any applicable law in this regard, including, but not limited to, Labor Code section 2810. Contractor agrees to pay any and all assessments, including wages, penalties and liquidated damages (those liquidated damages pursuant to Labor Code section 1742.1) made against FORA in relation to such failure
- G. If applicable, the respondent must demonstrate compliance with the following FORA Prevailing Wage Requirement per FORA Master Resolution §1.01.050 and §3.03.090, as determined by the Director of the Department of Industrial Relations under Division 2, Part 7, Chapter 1 of the California Labor Code to workers performing "First Generation Construction."

- H. No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
- I. No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.
- J. Pursuant to Labor Code sections 1770 et seq., FORA has obtained from the Department of Industrial Relations determinations of the prevailing wage rates and the prevailing wage rates for holiday and overtime work in the locality in which the Work is to be performed. Copies of these prevailing wage rates are on file and available to any interested party upon request at FORA's principal office and on the following Department of Industrial Relations website: <http://www.dir.ca.gov/dlsr/DPreWageDetermination.html>.
- K. Prevailing wage determinations with a single asterisk (\*) after the expiration date remain in effect for the life of the project. Prevailing wage determinations with double asterisks (\*\*) after the expiration date indicate that the basic hourly wage rate, overtime and holiday pay rates, and employer payments to be paid for work performed after this date have been predetermined. If work is to extend past this date, the new rate must be paid and should be incorporated in contracts entered into now. The Contractor should contact the Prevailing Wage Unit, DLSR, to obtain predetermined wage changes. All determinations that do not have double asterisks (\*\*) after the expiration date remain in effect for the life of the project.
- L. If it becomes necessary to employ crafts, classifications or types of workers other than those listed, the Contractor shall immediately notify the FORA Representative who will then inform the Contractor of the prevailing rate which shall be applicable as a minimum from the time of initial employment.

#### 2.16 PERMITS AND APPROVALS.

- A. Contractor shall procure a permit from the respective jurisdictions and agencies prior to the start of work. Contractor shall also obtain all permits (city, state, federal, county local, environmental and governmental), approvals, licenses, and inspections, pay all applicable fees or charges therefor, and give all applicable notices necessary for the proper execution and performance of the Work at no additional cost to FORA.
- B. Contractor shall deliver to FORA all original licenses, permits, and approvals obtained by Contractor in connection with the Work prior to the final payment or upon termination of the Agreement, whichever is earlier.
- C. Contractor shall comply and shall require its Subcontractors to comply with all permits, licenses and related government approvals or directives with respect to the execution and performance of the Work.
- D. Without limitation, Contractor shall timely file (or, at FORA's option, shall prepare for FORA's timely filing of) any Notices of Intent (NOIs) required for construction activities to be covered under applicable storm water permits; shall develop, implement, and update Storm Water Pollution Prevention Plans (SWPPPs); and shall identify, implement and, upon completion of the Work, discontinue and dispose of excess materials required to be removed in accordance with best management practices and as required by the specifications and as contemplated by Applicable Laws and permits, licenses and related governmental approvals or directives.

#### 2.17 CONTRACTOR'S PROJECT PERSONNEL.

- A. Contractor shall employ a competent Project Manager and superintendent and any necessary support staff who shall be in attendance at the Project Site at all times during the performance of the Work. The Project Manager and superintendent shall represent Contractor, and communications given to and received from the Project Manager or superintendent shall be binding on Contractor.

- B. In entering into this Agreement, FORA is relying on the personal expertise and reputation of the persons specified in Exhibit E attached hereto and such persons shall, at all times, be employed in the positions indicated in Exhibit E unless otherwise required or approved by FORA.

2.18 CONFINING OPERATIONS.

- A. Contractor shall confine operations at the Project Site to areas permitted by Applicable Laws and the Contract Documents and shall not unreasonably encumber the Project Site or other property of FORA or its affiliates with materials or equipment. Contractor shall store materials and equipment safely and securing in areas of the Project Site approved by FORA.

2.19 PROJECT SITE PROCEDURES AND SECURITY.

- A. Contractor shall be responsible for site safety and security. Contractor shall comply with any Project Site regulations, noise control and security procedures provided by FORA, including but not limited to hours of operation, during the course of the contract.

2.20 CUTTING AND PATCHING.

- A. Contractor shall refer to Volume 2, Technical Specification 01 79 00 Cutting and Patching

2.21 TESTING.

- A. Tests, inspections, reports and approvals of the Work required by the Contract Documents or by Applicable Law shall be made at appropriate times in the progress of the Work. Contractor shall coordinate with FORA the schedule for all tests and inspections. FORA or its designated representatives may observe such procedures, regardless of whether the tests and inspections are the responsibility of FORA or Contractor. Contractor shall be responsible for notifying the proper governmental agency/inspector and FORA's Representative, or designee, not less than seventy-two (72) hours prior to a required inspection.
- B. Unless otherwise expressly provided in the Contract Documents, Contractor shall make arrangements for all such tests, inspections, reports and approvals with applicable public agencies with jurisdiction or independent testing agencies acceptable to FORA, as the case may be, and FORA shall bear the costs of such tests, inspections, reports and approvals, excluding any overtime costs of Contractor or any of Contractor's employees or Subcontractors; provided, however, that if any inspection or testing reveals a failure to comply with (a) the requirements of the Contract Documents, (b) generally accepted standards of performance of the Work, or (c) any Applicable Laws, Contractor shall bear all costs of detection and correction, including, but not limited to FORA Construction Manager's additional services made necessary by such failure.
- C. If additional testing or inspecting is required due to the fault of Contractor, all costs and expenses for such testing or inspection shall be paid by Contractor.
- D. Contractor is responsible to identify all required sampling, testing and waste profile requirements of the approved disposal sites. Contractor is responsible for all required sampling, testing and waste profiling necessary to gain disposal site approval.

2.22 PRIOR INSPECTION BY CONTRACTOR AND SUBSURFACE UTILITIES.

- A. Contractor represents that it has inspected the Project Site and has satisfied itself as to the condition thereof and that the Contract Sum is just and reasonable compensation for all the Work, including all foreseen or foreseeable risks, hazards, and difficulties in connection therewith.
- B. Contractor shall be responsible for identifying the physical location of any existing subsurface utilities within vicinity of the project site prior to commencements of any portion of the Work that may affect such utilities. Confirmation of the physical location shall include, but not be limited to, hand potholing at all utility line

crossings and tie-in points. Should an interruption in service(s) occur due to Contractor's operations, Contractor shall be responsible to provide for any and all interim conditions during this interruption until complete service is restored.

- C. Contractor shall notify all utility agencies (gas, electrical, telephone, water, sewer, storm, drain, telecommunications, fiber optics, cable tv, etc.) prior to commencing work to ensure jobsite safety and to verify the site is free of underground, unmarked utilities. Contractor shall be responsible for any surface or sub-surface damage to utilities caused by its operations.
- D. Contractor shall carefully review all reports, studies and surveys provided by FORA prior to signing this Agreement and shall report any discrepancies that Contractor may note by RFI.
- E. The contractor shall be responsible to design any required support, protection, and relocation of all major utility lines indicated in the contract documents, and shall be responsible to do the same for minor utility lines found within the project area. Major utilities found in locations not shown on the Construction Documents may be considered a differing site condition; minor utilities will not be considered.
- F. The Contractor must submit working drawings depicting means and methods for FORA review and approval prior to commencing the Work.

#### 2.23 CLEAN-UP.

- A. Contractor shall keep the Project Site and surrounding area free from the accumulation of excess dirt, waste materials, and rubbish on a daily basis during performance of the Work and shall remove all excess dirt, waste material, rubbish, tools, equipment, machinery, and surplus materials from the Project Site attributable to its trades and work and surrounding area. If, in the opinion of FORA, Contractor is not properly performing cleanup, Contractor shall be given a twenty-four (24) hour compliance notice. If, at the end of twenty-four (24) hours, Contractor has not satisfactorily accomplished the cleanup, FORA may proceed to do the cleanup work with its own forces and back charge Contractor. At the end of each shift, each Contractor's work area shall be cleaned to a condition equal to the start of the shift. All construction debris shall be recycled to the greatest extent possible.
- B. Contractor shall promptly remove from the Project Site all unused construction materials, equipment, supplies and debris and shall leave the Work area in a satisfactory condition. Contractor shall provide dump trucks of sufficient size to accommodate this Contractor's daily cleanup and off haul operations. Ongoing cleanup of the City of Seaside streets adjacent to the project to eliminate all dirt and debris generated as a result of this work. Contractor shall maintain cleanliness of surrounding streets. Contractor is responsible for cleaning all mud, dirt, debris, and other material from its vehicles prior to leaving the Project Site. If Contractor fails to take immediate and adequate steps to clean the streets, FORA's Representative will be entitled to conduct such cleanup and back charge Contractor for the cost thereof.
- C. On completion of the Work and prior to submittal of its Final Application for Payment, Contractor shall completely clean the Project Site and leave it trash-free and in neat appearance, as further specified in the Specifications. If Contractor is responsible for any paving as part of the Work, Contractor shall thoroughly sweep streets. If Contractor fails to clean up at the completion of the Work, FORA may do so and the cost thereof shall be charged to Contractor.

#### 2.24 HOURS OF OPERATION.

- A. Regular work hours are 7:00 a.m. to 5.00 p.m., Monday through Friday.
- B. Loud noise making activity may be conducted only between the hours of 8:00 a.m. and 4:30 p.m.
- C. Hours of operation may change per FORA's discretion.

**Sample Construction Agreement No. FC-\_\_\_\_\_**

- D. Any work (including on and off-loading equipment and materials) outside of the regular work hours (8 hours per day, 40 hours per week) must be requested by Contractor at least 48 hours before the requested time and must be approved by FORA's Representative or FORA Construction Manager before work may commence.
- E. Contractor shall be responsible for overtime costs incurred by FORA contractors/Sub-contractors due to Contractor changes in Hours of Operation.
  - a. The contractor must notify FORA of any potential overtime costs at least 48 hours in advance of overtime work.
  - b. The Contractor must propose the overtime schedule in writing. FORA's contractors/sub-contractors must agree to the proposed Hours of Operation in writing prior to approval. If FORA's contractors/sub-contractors do not agree to the proposed Hours of Operation, FORA will not approve.
  - c. Overtime costs will be assessed as a deductive change order plus eleven percent (11%) surcharge.
  - d. The overtime rates are set in agreement between FORA and its contractors/sub-contractors. It is the duty of the Contractor to make themselves aware of the set rates prior to approval of overtime work, as they are non-negotiable.

**2.25 ON-SITE WATER CONTROL.**

- A. Contractor shall provide the means and methods for controlling water runoff and preventing pollutions during construction.
- B. Contractor shall obtain a water discharge permit from the local municipal sewer utility and all costs, including but not limited to, pumps, temporary power, generators, fuel, hoses, desilting tanks and holding tanks shall be provided by Contractor.
- C. Water testing, if required, will be performed by the Contractor at no additional expense to FORA.
- D. Costs incurred by Contractor to implement any other additional measures to mitigate unforeseen contaminated water prior to discharge into the City sewer system shall be considered extra work. Cost of testing of unforeseen contaminated water shall be FORA's responsibility.

**2.26 STORM FLOWS.**

- A. Contractor shall be responsible for providing all necessary means to handle, carry through, or divert around its Work, the work site, and the periphery of the work site, all flows including storm flows and unforeseen subdrain, so as to prevent back-up, by-passing to the Monterey Bay, or flooding damage to property. The RWQCB has the power, derived from the Porter-Cologne Water Quality Control Act, to impose fines up to Twenty-Five Thousand Dollars (\$25,000) per day (or portion thereof) for bypassing of flows to the Monterey Bay, as well as any civil or criminal penalties imposed below pursuant to the Clean Water Act. Contractor shall be responsible for any violation of the RWQCB requirements caused by Contractor's operations.
- B. In addition, provisions of Clean Water Act, Section 3.09 "Federal Enforcement" state that any civil and criminal violations of the Act may result in fines of up to a maximum of One Hundred Thousand Dollars (\$100,000) per day plus imprisonment for any knowing violations.
- C. If an overflow to the Monterey Bay occurs because of Contractor's operations or Contractor's negligence, any fines will be considered direct damages caused by Contractor.
- D. FORA will be entitled to recover such sum from monies due Contractor or directly from Contractor at its option.



2.27 UTILITY INTERRUPTION/SCHEDULING.

- A. Contractor shall schedule and conduct its work in a manner that will not cause interference, except as otherwise specified in the Contract Documents, with existing utilities and services, including, but not limited to sewers, water mains, gas lines, electrical lines, telephone lines, and the normal flow of traffic. Should an interruption in service(s) occur due to Contractor's operations, Contractor shall be responsible to provide for any and all interim conditions during this interruption until complete service is restored.
- B. Contractor shall notify all agencies prior to commencing work to ensure Project Site safety and to verify the Project Site is free of underground, unmarked utilities.
- C. Contractor shall be responsible for any surface or sub-surface damage to utilities caused by its operations and for any loss associated with unauthorized interruption of utilities.

2.28 PROTECTION OF WORK DURING INCLEMENT WEATHER OR SUSPENSION OF CONSTRUCTION.

- A. In the event of suspension of construction, or during inclement weather, or whenever FORA shall direct, Contractor shall carefully protect the Work and materials against damage or injury from the weather.
- B. If, in the opinion of FORA, any work or materials shall have been damaged or injured by reason of failure on the part of Contractor to protect the Work, such Work or materials shall be removed and replaced at the expense of Contractor.

2.29 ROYALTIES AND LICENSE FEES.

- A. Contractor shall pay all royalties and license fees.
- B. Contractor shall defend all suits or claims for infringement of any copyright, trademarks, or patent rights and shall save FORA and FORA Construction Manager harmless from loss on account thereof, except that FORA and/or FORA Construction Manager shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified by FORA or FORA Construction Manager, but if Contractor has reason to believe that the design, process or product specified is an infringement of a patent, Contractor shall be responsible for such loss unless Contractor promptly gives such information to FORA Construction Manager.

2.30 ADVERTISING AND PHOTOGRAPHY.

- A. Contractor shall not take any photographs or videos of the Project, except for use on the Project, or use FORA's name, or photographs or videos of the Project, or to refer to FORA directly or indirectly in any promotion or advertisement, in any news release or release to any general or trade publication or other media without receiving FORA's prior written approval for the specific photograph, video, use or release, which approval may be withheld at the sole and complete discretion of FORA.

2.31 ADDITIONAL REPRESENTATIONS.

- A. In addition to any other representations and warranties contained in the Contract Documents, Contractor hereby represents and warrants the following to FORA, as an inducement to FORA to enter into this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of the Agreement and the final completion of the Work:
  - a. Contractor is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;

- b. Contractor is able to furnish the plant, tools, materials, supplies, equipment, services and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;
- c. Contractor is authorized to do business in the State of California and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and over the Work and the Project Site;
- d. Contractor's execution of this Agreement and its performance of the Contract Documents are within its duly authorized powers;
- e. Contractor has visited the Project Site, is familiar with the local conditions under which the Work is to be performed, and has correlated its observations with the requirements of the Contract Documents; and
- f. The Contract Sum is just and reasonable compensation for all the Work including all foreseeable risks, hazards and difficulties in connection therewith.

### ARTICLE 3 - PROTECTION OF PERSONS AND PROPERTY

#### 3.01 SAFETY PRECAUTIONS AND PROGRAMS.

- A. Contractor shall be solely responsible for:
  - a. Conditions of the Project Site under its control including the safety of all persons and property during the performance of the Work, and
  - b. Initiating, establishing, maintaining and supervising all health and safety precautions and programs in connection with its operations and the Work, including, without limitation, a written injury prevention program as required by Labor Code Section 6401.7.
- B. Contractor must submit to FORA a Project Site Security and Health and Safety Plan in accordance with Project Specifications Volume 2 within ten (10) calendar days of Contract Award, and prior to a Notice to Proceed. All safety provisions shall conform to U.S. Department of Labor, the California Occupational Safety and Health Act (Cal/"OSHA"), and all other applicable federal, state, county and local laws, ordinances, codes and any regulations that may be detailed in other parts of these Contract Documents.
  - a. In addition to other safety requirements of the Contract Documents, and at a minimum, Contractor shall comply with all applicable requirements of the latest or last effective edition of the State of California Construction Safety Orders, except where such orders are preempted by more stringent or directly conflicting Federal regulations, in which case the Federal regulations shall govern.
  - b. Contractor and their Subcontractors shall provide all protection devices, safety nets, personal protection equipment and any other safety protection as required by the Contract Documents to safely perform work of this Agreement.
  - c. All safety and protection for Contractor, its workforce, any personnel on site at the invitation of Contractor, and Contractor's materials shall be the sole responsibility of Contractor, including, but not limited to first aid kits, eye protection, hard hats, safety harnesses and lanyards. In the event of hazardous conditions that are not immediately abated and remedied by Contractor, FORA reserves the right to take any necessary corrective action and back charge Contractor for all labor, material, equipment, and other costs incurred by FORA for the corrective measures. Except to the extent covered by insurance, should emergency services be required, Contractor shall pay for it.
  - d. Trench Safety. Attention is directed to the requirements in Section 6705 of the Labor Code concerning trench excavation safety plans.

- C. The Contractor must submit written, detailed pre-task planning 72 hours prior to beginning work, and provide at a minimum:
- a. General pre-task planning:
    - i. Pre-task planning is to be led by the foreman and documented in writing
    - ii. Conducted at least daily or as otherwise defined by project specifications
    - iii. All crew members participate (at the job location) in pre-task planning and shall sign the completed plan
    - iv. Shall include hazards and precautions identified in applicable Job Hazard Analysis (JHA)
    - v. Shall be readily available at the work site (posted and/or placed where crew members have knowledge of its location at the work area)
    - vi. Pre-Task Plans shall be reviewed and revised whenever work conditions (or crew membership) change that may affect the ability to safely complete the work. Analyze the task to be performed.
  - b. Chemical / Materials Handling
  - c. Confined Space Entry
  - d. Hoisting/Rigging Activities: including cranes, derricks, forklifts, etc.
  - e. Demolition Activities: equipment movement, trucking, hauling routes, etc.
  - f. Hazardous Materials Abatement and Assessment: asbestos, lead, biohazards or other chemicals in the workplace
  - g. Fall Hazards: exposures of 5+ feet, overhead work
  - h. Public Exposure and Safety
  - i. Scaffolding
- D. Contractor shall similarly be responsible for requiring similar precautions and programs to be established by its Subcontractors governing their portions of the Work. All health and safety requirements shall apply continuously and shall not be limited to normal working hours.
- E. Contractor and Subcontractors shall have readily accessible copies of the job specific safety manuals in their vehicle or Project Site trailer prior to the commencement of Work on Project Site in accordance with Cal/OSHA requirements.
- F. For each new phase of Work or the arrival of special equipment or new personnel to the Project, Contractor shall hold a special pre-construction safety meeting.
- G. Contractor shall also hold weekly safety meetings. These meeting shall discuss in detail the job specific schedule, procedures, and related safety hazards. Minutes of these meetings shall be kept by Contractor and submitted to FORA with, or prior to, Contractor's submittal of monthly Application for Payment.
- H. The right of FORA or FORA Construction Manager to conduct inspections of the Work or construction review of Contractor's performance, and the existence of any health and safety minimum requirements in FORA's Project Site or building procedures and policies, is not intended to impose responsibility on FORA for the adequacy or inadequacy of Contractor's safety measures on or near the Project Site, or elsewhere on the lands of FORA.

3.02 SAFETY OF PERSONS AND PROPERTY.

- A. Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:
- a. All persons at the Project Site and all other persons who may be affected by the Work;
  - b. All the Work and all materials and equipment to be incorporated therein, whether in storage on or off the Project Site, under the care, custody or control of Contractor or any of its Subcontractors or sub-Subcontractors; and
  - c. Other property at the Project Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
  - d. All Contractors are hereby notified of their responsibility to provide 40 Hour trained HAZWOPR personnel, as required, from within their respective company and/or possible subcontractors for work in/at the Project Site.
  - e. All Contractors are hereby notified of their responsibility to provide all personnel UXO safety training, as required, from within their respective company and/or possible subcontractors for work in/at the Project Site prior to the start of work.
- B. All personnel at the Project Site shall conduct themselves in an appropriate manner, and Contractor agrees to remove any worker deemed objectionable by FORA. Contractor shall prohibit the possession, use and being under the influence of any alcoholic beverage, illegal drug or any substance adversely affecting perception, judgment, ability or performance. Contractor shall further prohibit the possession of any firearms or other assault weapon on the premises.

3.03 GENERAL AND PUBLIC SAFETY.

- A. Contractor must submit in writing a competent person as Contractor's "Project Safety Representative" within ten (10) days of Contract Award and prior to NTP. The duties of Contractor's Project Safety Representative shall include responsibility for implementation of Contractor's safety program and inspecting the conditions of the Project Site and any other areas affected by Contractor's operations on a frequent and regular basis as necessary to insure compliance with all applicable safety standards, orders, and the requirements of the Contract Documents.
- B. Contractor shall give all notices and comply with all Applicable Laws bearing on the health and safety of persons and/or property or their protection from damage, injury or loss. Contractor shall promptly comply with all reasonable requests of FORA and its agents relating to health, safety and protection of property at no additional expense to FORA.
- C. Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying companies and users of adjacent facilities.
- D. Contractor shall conduct its operations in a manner, which causes the least possible obstruction and inconvenience to the safe flow of pedestrian and vehicular traffic. Without limitation of the foregoing, Contractor is responsible for coordinating and obtaining approvals of the location of temporary barricades and/or detours of traffic from the Police and Fire Departments. When entering or leaving roadways carrying public traffic, Contractor's equipment, whether empty or loaded, shall in all cases yield to public traffic.
- E. Contractor shall at all times furnish and maintain adequate safety devices and/or personnel including, but not necessarily limited to, barricades, lights, signs, traffic cones, warning tape, temporary roads, flag persons, as necessary to direct pedestrian, vehicular and bicycle traffic safely through or around the area of Contractor's

operations. All barricades remaining in pedestrian, bicycle or vehicular traffic areas between sunset and sunrise shall be equipped with approved and operating flashers.

3.04 MUNITIONS AND HAZARDOUS MATERIALS.

- A. FORA will retain the services of a Certified Industrial Hygienist (CIH). A CIH will aid in providing, identifying, evaluating and controlling potential health and safety hazards associated with the presence of Hazardous Materials potentially present on the jobsite.
- B. The use, storage, disposal or abandonment of explosives or other hazardous or toxic materials (“Hazardous Materials”) is not permitted on the lands of FORA or its affiliates except as expressly authorized and permitted in the Contract Documents. Should any such materials be so authorized and permitted, Contractor shall submit detailed plans for their care, use and disposal for FORA’s approval prior to commencing the Work and shall comply with all Applicable Laws, including, without limitation, the requirements of all public agencies having jurisdiction over their use.
- C. FORA shall employ a CIH separate from this contract.
  - a. The contractor and FORA’s CIH must approve of Contractors hazardous material removal means and methods.
  - b. FORA’s CIH shall have stop work authority over work pertaining to Hazardous Materials.
  - c. FORA’s CIH must approve the completeness and correctness of work performed prior to FORA acceptance of a request for payment.
- D. In the event that Contractor or any Subcontractor or sub-Subcontractor becomes aware of materials reasonably believed by Contractor to be Hazardous Materials (other than Hazardous Materials authorized and permitted in the Contract Documents) in, under on or about the Project Site, Contractor shall immediately notify FORA and stop the Work unless otherwise directed by FORA. FORA shall issue a written work order in accordance with Article 5 to confirm any work stoppage resulting from the requirements of this Section 3.04(b). FORA’s CIH will investigate, and if appropriate, identify specifications for the removal of Hazardous Materials. Contractor or its subs shall not take any remedial action with regard to Hazardous Materials found at the Project Site or other lands of FORA, without FORA’s express prior written authorization. Contractor shall not enter into any settlement agreement, consent decree or other compromise without first notifying FORA in writing of Contractor’s intention to do so and affording FORA ample opportunity to protect its interests.
- E. Whenever Contractor becomes aware of any of the following actions with regard to Hazardous Materials that are instituted, completed or threatened and that are applicable to the Project, Contractor shall immediately notify FORA in writing:
  - a. Any governmental or regulatory action;
  - b. Any claim against FORA or Contractor; or
  - c. Any report, complaint, notice or warning of asserted violation to any environmental agency.
- F. If Contractor or any of its permitted Subcontractors haul Hazardous Substances under the Contract Documents, such hauler shall comply with all Environmental Laws related to or pertaining to the hauling of such materials, including, without limitation, those promulgated by the United States Environmental Protection Agency or the Department of Toxic Substances Control. In advance of any soil or debris movement activities, the Contractor must provide FORA with a complete list of all Subcontractors expected to haul soils, along with (i) Contractor’s certification that these Subcontractors/transporters are properly registered and licensed as hazardous waste haulers by the California Department of Toxic Substances Control; (ii) a copy of each transporter’s DTSC Registration Certificate; (iii) and each transporter’s EPA identification number.

3.05 CONTRACTOR'S OBLIGATION TO REMEDY.

- A. Contractor shall, at Contractor's expense (except to the extent covered by proceeds of insurance carried under Article 13), promptly remedy all damage or loss to any property caused in whole or in part by Contractor, any Subcontractor, any sub-Subcontractor, or anyone directly or indirectly employed by any of them who or for which they may be liable or for which Contractor is responsible under Section 3.02, except damage or loss attributable solely to the acts of FORA or FORA Construction Manager or anyone employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of Contractor.

3.06 AIR POLLUTION CONTROL

- A. The Contractor shall comply with all air pollution control rules, regulations, ordinances and statutes which apply to any work performed pursuant to the contract, including any air pollution control rules, regulations, ordinances and statutes, specified in Section 11017 of the Government Code.
- B. Unless otherwise provided in the special provisions, material to be disposed of shall not be burned, either inside or outside the highway right of way.

3.07 WATER POLLUTION

- A. The Contractor shall exercise every reasonable precaution to protect streams, lakes, reservoirs, bays, and coastal waters from pollution with fuels, oils, bitumens, calcium chloride and other harmful materials and shall conduct and schedule operations so as to avoid or minimize muddying and silting of streams, lakes, reservoirs, bays and coastal waters. Care shall be exercised to preserve roadside vegetation beyond the limits of construction.
- B. Water pollution control work is intended to provide prevention, control and abatement of water pollution to streams, waterways and other bodies of water, and shall consist of constructing those facilities which may be shown on the plans, Storm Water Pollution and Prevention Plans, specified herein or in the special provisions, or directed by FORA.
- C. In order to provide effective and continuous control of water pollution it may be necessary for the Contractor to perform the contract work in small or multiple units, on an out of phase schedule, and with modified construction procedures. The Contractor shall provide temporary water pollution control measures, including but not limited to, dikes, basins, ditches, and applying straw and seed, which become necessary as a result of the Contractor's operations. The Contractor shall coordinate water pollution control work with all other work done on the contract.
- D. Before starting any work on the project, the Contractor shall submit, for acceptance by FORA, a program to control water pollution effectively during construction of the project. The program shall show the schedule for the erosion control work included in the contract and for all water pollution control measures which the Contractor proposes to take in connection with construction of the project to minimize the effects of the operations upon adjacent streams and other bodies of water. The Contractor shall not perform any clearing and grubbing or earthwork on the project, other than that specifically authorized in writing by the FORA, until the program has been accepted.
- E. If the measures being taken by the Contractor are inadequate to control water pollution effectively, FORA may direct the Contractor to revise the operations and the water pollution control program. The directions will be in writing and will specify the items of work for which the Contractor's water pollution control measures are inadequate. No further work shall be performed on those items until the water pollution control measures are adequate and, if also required, a revised water pollution control program has been accepted.
- F. FORA will notify the Contractor of the acceptance or rejection of any submitted or revised water pollution control program in not more than 5 working days.

- G. The State will not be liable to the Contractor for failure to accept all or any portion of an originally submitted or revised water pollution control program, nor for any delays to the work due to the Contractor's failure to submit an acceptable water pollution control program.
- H. The Contractor may request FORA to waive the requirement for submission of a written program for control of water pollution when the nature of the Contractor's operation is such that erosion is not likely to occur. Waiver of this requirement will not relieve the Contractor from responsibility for compliance with the other provisions of this section. Waiver of the requirement for a written program for control of water pollution will not preclude requiring submittal of a written program at a later time if FORA deems it necessary because of the effect of the Contractor's operations.
- I. Unless otherwise approved by FORA in writing, the Contractor shall not expose a total area of erodible earth material, which may cause water pollution, exceeding 750,000 square feet for each separate location, operation or spread of equipment before either temporary or permanent erosion control measures are accomplished.
- J. Where erosion which will cause water pollution is probable due to the nature of the material or the season of the year, the Contractor's operations shall be so scheduled that permanent erosion control features will be installed concurrently with or immediately following grading operations.
- K. Nothing in the terms of the contract nor in the provisions in this Section shall relieve the Contractor of the responsibility for compliance with Sections 5650 and 12015 of the Fish and Game Code, or other applicable statutes relating to prevention or abatement of water pollution.
- L. When borrow material is obtained from other than commercially operated sources, erosion of the borrow site during and after completion of the work shall not result in water pollution. The material source shall be finished, where practicable, so that water will not collect or stand therein.
- M. The requirements of this section shall apply to all work performed under the contract and to all non-commercially operated borrow or disposal sites used for the project.
- N. The Contractor shall also conform to the following provisions:
- O. Oily or greasy substances originating from the Contractor's operations shall not be allowed to enter or be placed where they will later enter a live stream or storm water systems
- P. Portland cement or fresh portland cement concrete shall not be allowed to enter flowing water of streams or storm water systems.
- Q. Compliance with the provisions in this section shall in no way relieve the Contractor from the responsibility to comply with the other provisions of the contract, in particular the responsibility for damage and for preservation of property.
- R. Full compensation for conforming to the provisions in this section shall be considered as included in the prices paid for the various items of work and no additional compensation will be allowed therefore.

### 3.08 STORM WATER POLLUTION PREVENTION AND PROTECTION

- A. Contractor must retain a Qualified SWPPP Developer (QSD) through the term of the Contract. Contractor must provide FORA the contact information of the QSD within 10 calendar days of contract award and prior to Notice to Proceed.
- B. The Contractor is responsible for securing and paying for the State Stormwater Management Permit and/or local Stormwater Management Permit as may be required. The Contractor is responsible to ensure that all the requirements of either the State or local Stormwater Management Permit are strictly followed during

construction. The Contractor shall review and follow FORA's Illicit Discharge reporting procedures in the event of an occurrence.

- C. FORA may engage a civil engineer to prepare an erosion control plan as part of the overall contract documents. The Contractor can use or modify the contract document plan as necessary in their preparation of the Stormwater Management Permit application. However, this does not relieve the Contractor from preparing their own site-specific plan for application submission if no plan is provided in the contract documents.
- D. FORA or designated Owner's representative may inspect the Stormwater Management plan, project site and Best Management Practices (BMPs) and communicate noted deficiencies for corrective measures at any time during the construction project. The Contractor shall be fined up to \$250 dollars per day in addition to any Federal, State or local fines until deficiencies are corrected.
- E. The Contractor shall coordinate all inspections required by the State or authority having jurisdiction (AHJ). FORA's final acceptance of the project and Contractor de-mobilization does not relieve the Contractor of their responsibilities and duties as required in the permit, (i.e., maintain BMPs, regular and post-event inspections as defined in the permit, etc.) while it is still open. Final acceptance of ground areas including permanent stormwater structures shall only occur after the required vegetation and stabilization has been established. The Contractor is required to conduct monthly inspections of the site and BMPs during this warranty period and make corrective changes to the BMPs or add BMPs as needed, at no additional cost to FORA.
- F. The Contractor will notify FORA in writing when they believe all vegetation and stabilization has reached the contract requirements and they want to close the Stormwater Management Permit. FORA must be allowed the opportunity to review the site and approve the Contractor's request to close the permit. The Contractor cannot apply to close the Stormwater Management permit without FORA's written approval. It is the Contractor's responsibility to remove and dispose of all BMPs after the Stormwater Management Permit has been closed, at no additional cost to FORA.
- G. The Contractor shall provide full-time, qualified, and efficient supervision of the work, using competent skill and attention (The superintendent). The superintendent shall be knowledgeable and completed training in Stormwater Management & Erosion Control and OSHA construction safety. The superintendent shall be knowledgeable of all building codes that govern the construction of the project. The superintendent shall direct, schedule, and coordinate the work. The superintendent is responsible for determining and supervising all temporary and permanent construction sequences, techniques, means and methods. The superintendent shall coordinate the work to ensure that all parts fit together properly and in accordance with the Contract Documents. The superintendent shall carefully study and compare all Contract Documents and other instructions and shall at once report to FORA any error, inconsistency, or omission which they may discover.
- H. The Contractor shall be responsible for all equipment, materials, and labor to plan, implement, control, and monitor BMP's through the term of the contract, at no change in the Contract Sum.

3.09 MINIMIZE DISRUPTION.

- A. Contractor shall exercise maximum effort to avoid disruption of the conduct of business in the areas surrounding the Project Site. This shall include, at a minimum, using all feasible methods and strict discipline to minimize danger, noise, vibration, fumes, dust and other pollution.
- B. Noise shall not exceed 90 decibels at the Limits of Work.



3.10 EMERGENCIES.

- A. In any emergency affecting the safety of persons or property, Contractor shall act, at its discretion, to prevent threatened damage, injury or loss.
- B. Contractor shall report all First Aid, Medical, Lost Time, and Near-Miss accidents, injuries or loss immediately to FORA, or designee.
- C. Any additional compensation or extension of time claimed by Contractor on account of emergency work shall be determined as provided in Article 5 for Changes in the Work.

3.11 COSTS FOR PROTECTION OF PERSONS AND PROPERTY.

- A. Except as otherwise specified, all costs in connection with meeting the requirements of this Article 3 shall be borne by Contractor.
- B. Failure of Contractor to comply with any health and/or safety requirements of the Contract Documents shall be deemed sufficient cause for FORA to, without prior notice to Contractor, take whatever action is, in FORA's opinion, necessary to achieve compliance with such requirements. In lieu of direct reimbursement by Contractor, FORA may, at its option, deduct the costs of any such action by FORA from monies due Contractor.
- C. FORA will notify Contractor of any action taken under the provisions of this subparagraph within five (5) business days.

**ARTICLE 4 - TIME FOR PERFORMANCE**

4.01 COMMENCEMENT; CRITICAL PATH.

- A. The Contractor shall have seventy-five (75) days after Notice to Proceed to achieve substantial completion, unless modified by FORA per Article 5.
- B. The Contractor shall submit an updated Baseline Construction Schedule (Exhibit D) per Section 4.04 no later than ten (10) calendar days after contract award for FORA review and approval. The Notice to Proceed (NTP) will not be issued until approved by FORA.
- C. Upon FORA's issuance of a Notice to Proceed following approval of the Baseline Construction Schedule, Contractor shall commence performance of the Work and thereafter continuously and diligently proceed with the performance of the Work, in accordance with the Construction Schedule, to completion.
- D. Contractor shall be responsible for the Construction Schedule and meet all critical path dates, including but not limited to, any milestone dates contained in the Construction Schedule, subject only to extension for Excused Delays in accordance with Section 4.02. Should Contractor fail to meet any of the critical path dates, including but not limited to any milestone dates identified in the Construction Schedule, upon written notice from FORA, Contractor shall cause its employees, Subcontractors and other parties performing the Work, to perform and work at hours and days, in addition to the normal working hours and days, whatever overtime work is necessary to meet the Construction Schedule.
- E. No adjustment will be made to the Contract Sum for additional compensation paid to Contractor's employees and Subcontractors for overtime or shift work due to Contractor's failure to meet any of the critical path dates, unless such failure is due to an Excused Delay, in which case any additional compensation to Contractor shall be determined by Change Order in accordance with Article 5.
- F. If Contractor shall fail to expedite Work upon demand by FORA in accordance with the foregoing sufficient to eliminate the effect of any critical path delays on the Construction Schedule, Contractor shall be deemed

in default hereunder, and in such event, without limitation of any other right or remedy of FORA, FORA shall have the right to terminate this Agreement as provided in Section 14.01, 14.03, and 15.02 FORA shall also have the right to expedite such Work and charge such costs to Contractor to the extent such costs, together with all other costs of completing the Work, exceed the Contract Sum.

4.02 DELAYS.

- G. Contractor shall carry out the Work continuously and with due diligence in accordance with the Construction Schedule and shall achieve Substantial Completion and Final Completion (as hereinafter defined) of the Work by the dates shown on Exhibit D (the “Scheduled Date for Substantial Completion” and the “Scheduled Date for Final Completion,” respectively); provided, however, that if Contractor is delayed in the performance of the Work by:
- a. The negligence or willful misconduct of FORA or FORA Construction Manager or of any employee, agent or representative of either, or
  - b. Changes in the Work ordered by FORA, or
  - c. Strikes exceeding twenty (20) days, fire, unavoidable casualties, national emergency, Abnormal Weather (as defined below), or
  - d. Any other cause beyond Contractor’s (or any of its Subcontractors’) control and without Contractor’s or any Subcontractor’s fault or negligence (excluding therefrom the financial inability of Contractor or its Subcontractors and any delays that could be mitigated or avoided as hereinafter provided) (any of the foregoing being herein referred to as an “Excused Delay”),
  - e. Then the Scheduled Date for Substantial Completion and, to the extent that such delay affects the Scheduled Date for Substantial Completion, the Construction Schedule shall be extended for a period equal to any delay in Substantial Completion of the Work directly resulting from such Excused Delay, provided that within two (2) business days after the commencement of any such delay, Contractor delivers to FORA or FORA’s Representative a written request for extension for such delay, and such request is approved by FORA, which approval shall not be unreasonably withheld based on the criteria set forth herein.
- H. Contractor agrees that there shall be no extensions for inclement weather other than Abnormal Weather as described below.
- I. Contractor also agrees that there shall be no extensions for delays in deliveries of materials, equipment or supplies to be requisitioned by Contractor, and that it shall be Contractor’s responsibility to assure timely delivery of such items to meet the original agreed Construction Schedule.
- J. It shall also be Contractor’s responsibility to prove to FORA that a delay is an Excused Delay and affects the critical path such that there will be a delay in the actual date of Substantial Completion. Any extension of the Scheduled Date for Substantial Completion allowable hereunder shall be evidenced by a Change Order prepared by at Contractor’s request by the FORA Construction Manager or FORA’s Representative for FORA’s approval and, if approved by FORA, executed by FORA and Contractor in accordance with Article 5 below.
- K. Contractor expressly waives all rights and claims for delay that are not made by Contractor within two (2) business days after the commencement of any such delay. In case of a continuing delay of any nature, Contractor shall be required to make only one request for an extension of the Scheduled Date for Substantial Completion hereunder.

- L. In no event shall Contractor be entitled to compensation or any increase in the Contract Sum as a result of the causes specified in A.3 or A.4 of this Section 4.02.
- M. As used herein, the term “Abnormal Weather” means actual weather conditions encountered at the Project Site that are at least 200% as severe as the normal average weather encountered at the Project Site over the past twenty (20) years, as evidenced by official weather bureau records, or (ii) FORA determines, in its sole and reasonable discretion, to be abnormal.
- N. Contractor shall be entitled to no extension of time to the extent a delay which would otherwise be excusable could be mitigated or avoided by Contractor, and Contractor shall, at its sole cost and part of the Contract Sum, take all reasonable steps to mitigate any such delay.

#### 4.03 SUBSTANTIAL COMPLETION; FINAL COMPLETION.

- A. As used herein, the term “Substantial Completion” means that all of the following have occurred: (i) the Work shall have been fully completed to FORA’s satisfaction in accordance with the Contract Documents, except for Punch-List Work (as defined in Section 9.01 below); (ii) all required approvals and permits allowing the legal occupancy of the Project or use of the Project and all other certificates, permits and/or licenses of any governmental authority having or claiming to have jurisdiction over the Work or operation of the Project shall have been delivered to FORA; and (iii) all mechanical, utility and other system components of the Project are functioning as required by the Contract Documents.
- B. The date of Substantial Completion of the Work shall be determined as set forth in Article 9.
- C. All Punch-List Work shall be completed by Contractor as provided in Article 9.
- D. As used herein, the term “Final Completion” means the completion of all Work (including Punch List-Work) to FORA’s satisfaction in accordance with the Contract Documents.

#### 4.04 SCHEDULE

- A. Contractor must prepare all schedules using standard scheduling software acceptable to FORA, and must provide the schedules in electronic and paper form as requested by FORA. In addition to the general scheduling requirements set forth below, Contractor must also comply with any scheduling requirements included in the Special Conditions or in the Technical Specifications.
- B. Baseline (As-Planned) Schedule. Contractor must submit, within ten (10) calendar days of Contract Award, a baseline (as-planned) schedule using CPM showing in detail how Contractor plans to perform and fully complete the Work within the Scheduled Date for Substantial Completion and the Scheduled Date for Final Completion (the “Contract Time”).
- C. The Schedule shall include:
  - a. “Work Breakdown Structure” (WBS) and “Baseline” Construction Schedule for FORA’s review and approval.
  - b. The WBS line items must be clearly linked to the Schedule of Values line items.
  - c. The Baseline Schedule must clearly link to the WBS.
  - d. The contractor must provide a list of milestones derived from the CPM schedule. The Baseline schedule must have a single critical path.
  - e. The contractor must identify the “Scheduled Date for Substantial Completion” and the “Scheduled Date for Final Completion,” respectively on the milestone list.

- D. The contractor must identify line item resources such as required labor, equipment, materials and fabricated items. The baseline schedule must show the order of the major items of Work and the start date and completion of each item, including when the materials and equipment will be procured and delivered to the site. The schedule must also include the work of all trades, reflecting anticipated labor or crew hours and equipment loading for the construction activities, and must be sufficiently comprehensive and detailed to enable progress to be monitored on a day-by-day basis. For each activity, the baseline schedule must be dated, provided in the format specified in the Contract Documents or as required by FORA, and must include, at a minimum, a description of the activity, the start and completion dates of the activity, and the duration of the activity.
- E. FORA's Review of Schedules. FORA staff will review and may note exceptions to the baseline schedule, and to the progress schedules submitted as required below, to assure completion of the Work within the Contract Time. Contractor is solely responsible for resolving any exceptions noted in a schedule and must, within seven days, correct the schedule to address them.
- a. Progress Schedules. After FORA staff accepts the final baseline schedule with no exceptions, Contractor must submit an updated progress schedule and three-week look-ahead schedule, in the format specified by FORA, for review and acceptance with each application for a progress payment, or when otherwise specified by FORA staff, until completion of the Work. The updated progress schedule must: show how the actual progress of the Work as constructed to date compares to the baseline schedule; reflect any proposed changes in the construction schedule or method of operations, including to achieve Project milestones within the Contract Time; and identify any actual or potential impacts to the critical path. Contractor must also submit periodic reports to FORA of any changes in the projected material or equipment delivery dates for the Project.
  - b. Float. The progress schedule must show early and late completion dates for each task. The number of days between those dates will be designated as the "float." Any float belongs to the Project and may be allocated by FORA to best serve timely completion of the Project.
- F. Failure to Submit Schedule. Reliable, up-to-date schedules are essential to efficient and cost-effective administration of the Project and timely completion. If Contractor fails to submit a schedule within the time periods specified in this Section or submits a schedule to which FORA has noted exceptions that are not corrected, FORA staff may withhold up to five percent from payment(s) otherwise due to Contractor until the exceptions are resolved, the schedule is corrected and resubmitted, and FORA has accepted the schedule. In addition, Contractor's failure to comply with the schedule requirements will be deemed a waiver of any claims for Excusable Delay or loss of productivity arising when Contractor is out of compliance, subject only to the limits of Public Contract Code section 7102.
- G. Recovery Schedule. If FORA staff determines that the Work is more than one week behind schedule, within seven days following written notice of such determination, Contractor must submit a recovery schedule, showing how Contractor intends to perform and complete the Work within the Contract Time, based on actual progress to date.
- H. Effect of Acceptance. Contractor and its Subcontractors must perform the Work in accordance with the most current FORA-accepted schedule unless otherwise directed by FORA staff. FORA's acceptance of a schedule does not operate to extend the time for completion of the Work or any component of the Work and will not affect FORA's right to assess liquidated damages for Contractor's unexcused delay in completing the Work within the Contract Time.
- I. Specialized Materials Ordering. Within ten (10) calendar days following issuance of the Notice to Proceed, Contractor must order any specialized material or equipment for the Work that is not readily available from material suppliers. Contractor must also retain documentation of the purchase orders date(s).

- J. Posting. Contractor must at all times maintain a copy of the current FORA-accepted progress or recovery schedule posted prominently in its on-site office.
- K. Reservation of Rights. FORA staff reserves the right to direct the sequence in which the Work must be performed or to make changes in the sequence of the Work in order to facilitate the performance of work by FORA or others, or to facilitate FORA's use of its property. The Contract Time or Contract Sum may be adjusted to the extent such changes in sequence actually increase or decrease Contractor's time or cost to perform the Work.

## ARTICLE 5 - CHANGES IN THE WORK

### 5.01 CHANGES.

- A. A "Change Order" is a written instrument prepared by the FORA Construction Manager or FORA's Representative at the request of Contractor for FORA's approval and, if approved by FORA, signed by FORA and Contractor, setting forth their agreement upon:
  - a. A change in the Work, if any;
  - b. The amount of adjustment in the Contract Sum, if any; and
  - c. The amount of any adjustment in the Scheduled Date for Substantial Completion, or Contract Time, if any.
- B. Modifications to the Agreement are valid and legally binding if duly authorized by a written and signed Change Order approved by FORA and Contractor.
- C. FORA may make changes in the Work without invalidating the Agreement. FORA staff may direct changes in the Work, which may include Extra Work or deletion or modification of portions of the Work. Any change in the Work, whether directed by FORA or pursuant to Contractor's request for a Change Order, will not be a valid and binding change to the Agreement unless it is formalized in a Change Order, which may include commensurate changes in the Contract Sum or Contract Time as applicable.
- D. Contractor must promptly comply with FORA-directed changes in the Work in accordance with the original Contract Documents, even if Contractor and FORA have not yet reached agreement as to adjustments to the Contract Sum or Contract Time for the change in the Work or for the Extra Work. Contractor is not entitled to extra compensation pursuant to Public Contract Code section 7101 based on cost reduction changes or "value engineering," unless otherwise specified in the Special Conditions, or unless expressly authorized in advance in writing by FORA. Any such change in the Work shall be affected by a Change Order.
- E. Notwithstanding any provision in the Contract Documents to the contrary, no change in the Work, including, without limitation, a change in the Drawings and Specifications or in any plans, specifications or drawings subsequently approved by FORA, or any extension of time within which to complete the Work, shall be valid without the written approval of the surety that issued Contractor's payment and performance bonds if that surety's approval of the change is required pursuant to the terms of the bonds the surety has issued.

### 5.02 CHANGE ORDER REQUEST.

- A. Contractor shall perform no additional work or change in the Work without a Change Order approved in accordance with the terms of this Article 5 prior to commencing such work. The procedure set forth herein shall not be waivable by FORA or Contractor unless in writing and signed by both parties.
- B. Contractor shall not be entitled to any additional compensation or change in the Scheduled Date for Substantial Completion except in accordance with the procedures set forth herein, or in the case of emergency

if necessary to prevent personal injury or property damage, in which case any additional work performed by Contractor shall be entitled to reasonable compensation and/or a delay in the Scheduled Date for Substantial Completion as determined by FORA.

- C. FORA may initiate a change in the Work by submitting a Request for Change Proposal (RCP) to the Contractor. FORA, or its representative, may issue an RCP setting forth in detail the nature of the proposed change in the Work.
- D. The Contractor may initiate a change order by submitting a Request for Change Order (RFC) to FORA setting forth in detail the proposed means and methods as well as the nature of the proposed change in the Work as follows:
- a. Upon receipt of a RCP, or in submitting an RFC, Contractor shall promptly furnish to FORA cost or pricing data, including that of the major sub-contractors per FAR 15.408 Table 15-2 -- Instructions for Submitting Cost/Price Proposals When Cost or Pricing Data Are Required (Attachment 5A). Cost or Pricing data shall be detailed in Attachment 11 and include, but not be limited to the following:
    - b. Statement setting forth in detail a narrative presenting the existing work, proposed deletions, proposed additions, and evidence for change.
    - c. Line Item Adjustments. Contractor shall present Proposed Line Item Adjustments to the Statement of Values per Attachment 5A.
    - d. Direct Labor Costs. Provide a time-phased (e.g., monthly, quarterly, etc.) breakdown of labor hours, rates, and cost by appropriate category. Attach basis for time estimates, and supporting rate data.
      - i. Contractor shall submit estimated labor hours for each Task per trade or work classification, or agreed upon unit price.
      - ii. Wage rates for each trade or work classification shall correspond with Prevailing Wage classification.
    - e. Material Costs. Provide a consolidated priced summary of individual material quantities included in the various tasks, orders, or contract line items being proposed and the basis for pricing (vendor quotes, invoice prices, etc.). Attach the vendor/subcontractor cost or pricing data as part of your own cost or pricing data.

Adequate Price Competition. For RFC's proposing prices exceeding ten percent (10%) of the prime contractor's initial contract award, provide data showing the competitive basis for establishing the source and reasonableness of price for those acquisitions (such as purchase orders, material order, subcontracts, etc.). In addition, provide a summary of your cost analysis and a copy of cost or pricing data submitted by the prospective source in support of each subcontract. Attach information supporting a competitive selection and reasonableness of price for proposed material vendors or subcontractors.
    - f. Equipment Costs. Provide a consolidated priced summary of equipment proposed for the various tasks, orders, or contract line items being proposed and the basis for pricing (vendor quotes, invoice prices, etc.). Attach the cost or pricing data as part of your own cost or pricing data. Contractor shall submit an itemized accounting of each equipment type, quantity, and daily rate per the State of California, Department of Transportation's "Labor Surcharge & Equipment Rental Rates" guide and the most current version of the State of California, Department of Transportation, Standard Specifications.
    - g. Sub-Contractor Costs. Contractor shall submit a breakdown of the proposed costs for each major sub-contractor performing awarded no less than ten percent (10%) of the total contract amount. Provide a consolidated priced summary of the Specialists required (if any) to complete the various tasks, orders, or contract line items being proposed and the basis for pricing (vendor quotes, invoice prices, etc.). Submit the subcontractor cost or pricing data as part of your own cost or pricing data if

Consolidated Price Summary exceeds ten percent (10%) of the prime contractor's initial contract award.

- i. The Contractor must provide the sub-contractor quote as supporting data.
  - ii. The sub-contractor quote must clearly designate the Direct Labor, Material, Equipment, sub-Contractor Costs
  - iii. All direct subcontract costs may be included.
  - iv. Subcontractor indirect costs shall be excluded. Contractor overhead applied to subcontractor direct costs and or payments are limited to ten percent (10%) unless a higher percentage is justified.
- h. Increased bond or insurance premium costs computed at 1.5% of total of the previous four sums.
- i. Proposed Construction Schedule. The Contractor must submit an updated construction schedule showing the potential impact of a change order on the current schedule, milestones, scheduled date of substantial completion. Proposed Adjustments of time and costs related to unchanged Work resulting from such proposed change.
- E. Contractor shall keep and present, in such form as FORA may prescribe, an itemized accounting together with appropriate supporting data of the proposed cost of such change and revision to the Construction Schedule.
- F. Time for Submission. Any Request for Change in the Contract Sum or the Contract Time must be submitted in writing to FORA within ten (10) calendar days of the date the Contractor first encounters the circumstances, information or conditions giving rise to the request, even if the total amount of the requested change in the Contract Sum or impact on the Contract Time is not yet known at that time.
- G. Certification. All requests must be signed by Contractor and must include the following certification:

“The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Request for Change are true and correct. Contractor warrants that this Request for Change is comprehensive and complete as to the Work or changes referenced herein, and agrees that any costs, expenses, or time extension request not included herein is deemed waived. Contractor understands that submission of claims which have no basis in fact or which Contractor knows to be false may violate the False Claims Act, as set forth in Government Code sections 12650 et seq.”

### 5.03 CHANGE ORDER EVALUATION AND NEGOTIATION

- A. FORA shall respond to Contractor's estimate within a reasonable period of time.
- B. FORA Shall follow the process outlined in Exhibit K.
- C. If a Change Order is done on a time and material or cost plus mark-up basis, Contractor shall not be entitled to any markup for overhead and profit on any Work performed pursuant to a Change Order other than a Change Order initiated by FORA which increases the scope of the Work, and any Contractor's markup for overhead and profit on Work resulting from such Change Order increasing the scope of the Work shall be no greater than the allowable mark-ups for labor, equipment, materials, overhead and profit as defined in the most current version of the State of California, Department of Transportation's "Labor Surcharge & Equipment Rental Rates" guide and the most current version of the State of California, Department of Transportation, Standard Specifications for the actual cost of such additional Work set forth on attached Exhibit F1.
- D. Notwithstanding the foregoing, (i) at FORA's option, Contractor shall perform all additional Work pursuant to a Change Order with unit rate pricing as established on Contractor's submitted Base Bid Work/Schedule of Values Exhibit (as defined in Exhibit C1 and C2), in accordance with the unit rate established at time of

**Sample Construction Agreement No. FC-\_\_\_\_\_**

Contractor's bid, and (ii) no mark up for general conditions, overhead and profit will be allowed on such additional Work covered by unit rate pricing, and (iii) the daily rate for field office and home office overhead charges shall be defined in accordance with Exhibit F1, and shall be established at Five Hundred Dollars (\$500) per day for the duration of the Agreement in determining extended overhead costs for all changes in the Work, claims or other impacts delaying or reducing the overall Project duration.

- a. Adjustments to Contract Sum. The amount of any increase or decrease in the Contract Sum will be determined based on one of the following methods, but in the order provided with unit pricing taking precedence over the other methods:
- b. Unit Pricing. Amounts previously provided by Contractor in the form of unit prices, either in a bid schedule or schedule of values (Exhibit C1 and C2), will apply if unit pricing has previously been provided in Contractor's accepted bid schedule or schedule of values for the affected Work. No additional markup for overhead, profit, or other indirect costs will be added to the calculation.
- c. Lump Sum. A mutually agreed upon lump sum for the affected Work with no additional markup for overhead, profit, or other indirect costs.
- d. Time and Materials. On a time and materials basis, including allowed markup for overhead, profit, and all other indirect costs, and which may include a not-to-exceed limit, calculated as the total of the following sums:
  - i. All direct labor prevailing wages plus 11% markup;
  - ii. All direct material costs, including sales tax, plus 15% markup;
  - iii. All direct plant and equipment rental costs, plus 10% markup;
  - iv. All direct subcontract costs plus ten percent (10%) markup; The Subcontractor shall not be entitled to any markup for overhead and profit on any Work performed pursuant to a Change Order other than a Change Order initiated by FORA which increases the scope of the Work and any Subcontractor's markup for overhead and profit on Work resulting from such Change Order.
  - v. Increased bond or insurance premium costs computed at 1.5% of total of the previous four sums.
- E. At FORA's request, Contractor shall include FORA's representative in the negotiation of Change Order Requests with Subcontractors and material suppliers. Subcontractor shall not be entitled to any markup for overhead and profit on any Work performed pursuant to a Change Order other than a Change Order initiated by FORA which increases the scope of the Work, and any Subcontractor's markup for overhead and profit on Work resulting from such Change Order increasing the scope of the Work shall be no greater than the allowable mark-ups for labor, equipment, materials, overhead and profit as defined in the most current version of the State of California, Department of Transportation's "Labor Surcharge & Equipment Rental Rates" guide and the most current version of the State of California, Department of Transportation, Standard Specifications for the actual cost of such additional work set forth on attached Exhibit F1.

**5.04 CHANGE ORDERS**

- A. Agreement on any Change Order shall constitute a final settlement of all items covered thereby including, without limitation, the additional cost, if any, of performing unchanged Work, and any extension of time to complete the Work, subject to performance thereof and payment therefor pursuant to the terms of the Contract Documents. Contractor agrees that unless the Change Order specifically modifies the time for performance of the Work and the Scheduled Date for Substantial Completion, there shall be no modification thereof, and



**Sample Construction Agreement No. FC-\_\_\_\_\_**

Contractor expressly waives and releases any and all claims, rights, or interests, including but not limited to those for extensions of time, unjust enrichment, impact, disruption, loss of efficiency, or consequential costs, originating directly or indirectly out of and additional or change in Work performed by Contractor except as approved by FORA pursuant to an approved Change Order.

- B. If FORA approves in writing Contractor's proposal, a Change Order shall be issued and signed by FORA and, if applicable, the Contract Sum and/or the Scheduled Date for Substantial Completion shall be adjusted as set forth in such Change Order. Whenever possible, the contractor should sign the Change Order. When the contractor signs a change order, it is referred to as "executed."
- a. If the contractor declines to sign the change order, then FORA may approve it unilaterally. Receipt by the contractor of an approved change order establishes a time for protest. When the contractor does not agree with the method or amount of the payment and/or time adjustment, FORA will process the change order on a time and materials basis.
  - b. If the contractor disagrees with extra work at unit price, extra work at lump sum, or increase in contract items with a payment adjustment, the change order will be on a time and materials basis. If the contractor declines to accept the change order within 7 working days, FORA will process it unilaterally.
  - c. If the contractor agrees with the extra work unit of measurement and method of payment but disagrees with the effect on time proposed by FORA, FORA will execute the change order using deferred time. Deferred time change orders must be closed out within 21 working days of the completed change order work. If the change order is not protested within the specified time, it is considered an executed change order.
- C. Unilateral Change Order. If the parties dispute the terms of a proposed Change Order, including disputes over the amount of compensation or extension of time that Contractor has requested, the value of deleted or changed Work, what constitutes Extra Work, or quantities used, FORA may elect to issue a unilateral Change Order, directing performance of the Work, and authorizing a change in the Contract Sum or Contract Time for the amount of compensation or added time that FORA believes is merited. Contractor's sole recourse to dispute the terms of a unilateral Change Order is to submit a timely Claim.

5.05 EXTRA WORK

- A. FORA may direct Contractor to perform Extra Work related to the Project.
- B. Contractor must promptly perform any Extra Work as directed or authorized by FORA in accordance with the original Contract Documents, even if Contractor and FORA have not yet reached agreement on adjustments to the Contract Sum or Contract Time for such Extra Work.
- C. Contractor must maintain detailed daily records that itemize the cost of each element of Extra Work, and sufficiently distinguish the direct cost of the Extra Work from the cost of other Work performed.
- D. For each day that Contractor performs Extra Work, or Work that Contractor contends is Extra Work, Contractor must submit no later than the following business day, a daily report of the Extra Work performed that day and the related costs, together with copies of certified payroll, invoices, and other documentation substantiating the costs ("Extra Work Report"). FORA will make any adjustments to Contractor's Extra Work Report(s) based on its records of the Work.
- E. When an Extra Work Report(s) is agreed on and signed by both FORA and Contractor, the Extra Work Report(s) will become the basis for payment under a duly authorized and signed Change Order. Failure to submit the required documentation by close of business on the next business day is deemed a full and

complete waiver for any change in the Contract Sum or Contract Time for any Extra Work performed that day.

5.06 CHANGE ORDER DISPUTES

- A. In the event of a dispute over entitlement to or the amount of a change in Contract Time or a change in Contract Sum related to a FORA-directed change in the Work, Contractor must perform the Work as directed and may not delay its Work or cease Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute. In the event that FORA and Contractor dispute whether a portion or portions of the Work are already required by the Contract Documents or constitute Extra Work, or otherwise dispute the interpretation of any portion(s) of the Contract Documents, Contractor must perform the Work as directed and may not delay its Work or cease Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute, as directed by FORA. Contractor's sole recourse for an unresolved dispute related to changes in the Work or performance of any Extra Work is to comply with the dispute resolution provisions.
- B. Remedy for Non-Compliance. Contractor's failure to promptly comply with a FORA-directed change is deemed a material breach of the Agreement, and in addition to all other remedies available to it, FORA may, at its sole discretion, hire another contractor or use its own forces to complete the disputed Work at Contractor's sole expense, and may deduct the cost from the Contract Sum.
- C. Non-Compliance Deemed Waiver. Contractor waives its entitlement to any increase in the Contract Sum or Contract Time if Contractor fails to fully comply with the provisions of this Article. Contractor will not be paid for unauthorized Extra Work.

5.07 FIELD ORDER REQUEST.

- A. If, with respect to any Change Order Request, no agreement can be reached between FORA or FORA's Representative and the Contractor or there is insufficient time for the parties to reach such agreement, then FORA or FORA's Representative nevertheless shall have the right to cause such Change Order Request to constitute a Change Order by giving Contractor written notice thereof in the form of a "Field Order Request" in which case:
  - a. The Contract Sum shall be increased or decreased by an amount equal to the actual increase or decrease, as the case may be, in the actual cost of such additional Work set forth in Exhibit F1. In no event shall Contractor's markup for overhead and profit on work resulting from such Change Order increasing the scope of the Work exceed the allowable mark-ups for labor, equipment, materials, overhead and profit as defined in the most current version of the State of California, Department of Transportation's "Labor Surcharge & Equipment Rental Rates" guide and the most current version of the State of California, Department of Transportation, Standard Specifications for the cost of the Work attributable to such changes based upon the Alternates or the costs for labor and equipment set forth on attached Exhibit F1, as applicable. And,
  - b. The Scheduled Date for Substantial Completion shall be extended or reduced by the length of additional work time or reduction in work time, if any, fairly attributable to such change in the Work as reasonably established by Contractor and approved by FORA in an updated Construction Schedule.
- B. Any change in the Contract Sum or the Scheduled Date of Completion pursuant to a Field Order Request shall be determined as provided below and set forth in writing by FORA and Contractor within thirty (30) days after completion of that portion of the Work covered by such Field Order Request.

- C. In the event of any dispute by Contractor concerning a Field Order Request or a Change Order, Contractor shall submit such dispute in writing with a reasonably detailed explanation of the basis of such claim within ten (10) business days of learning of the circumstances of such dispute, or Contractor shall be deemed to have waived any claims against FORA. Any dispute presented by Contractor pursuant to the foregoing shall be resolved in accordance with Article 20.
- D. If FORA or FORA's Representative reduces the scope of the Work, then,
  - a. The Contract Sum shall be reduced by the sum of the actual cost of the Work deleted, and
  - b. The Scheduled Date for Substantial Completion shall be advanced by the length of the reduction in work time, if any, fairly attributable to such reduction in the scope of the Work.
  - c. Unit rates established in the Base Bid Work and Alternates (as defined in Exhibits C1 and C2) may be used to establish the credit amount due to FORA based on a reduction in scope of Work, at FORA's or FORA's Representative's discretion.

5.08 EXECUTION OF CHANGE ORDER.

- A. Contractor shall promptly proceed with any change ordered by FORA or FORA's Representative pursuant to a Change Order including any Field Order Request.
- B. Contractor shall not make any change in the Work or be entitled to any adjustment in the Contract Sum or the Scheduled Date for Substantial Completion, except as provided in a Change Order signed by FORA or FORA's Representative or in accordance with the procedure set forth in Section 5.03 regarding Field Order Requests.
- C. Each Change Order shall reflect payment in full for a change in the Work and in no event shall Contractor be entitled to an increase in the Contract Sum in payment for the cumulative effect of multiple Change Orders.

5.09 CONCEALED AND UNFORESEEABLE CONDITIONS.

- A. If Contractor encounters conditions at the Project Site which are:
  - a. Subsurface or otherwise concealed physical conditions or unknown physical conditions of an unusual nature that vary materially from conditions indicated by the Contract Documents and are of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents, and
  - b. Differ materially from any reports or surveys provided to Contractor prior to execution of this Agreement, then Contractor shall promptly notify FORA's Representative after Contractor discovers or encounters such condition. Thereafter, FORA's Representative shall promptly investigate such condition and Contractor shall perform no work involving or affected by such condition until after having received written directions from FORA or FORA's Representative.
- B. If a condition is encountered by Contractor which satisfies subsections 5.09A(a) and (b) above, Contractor shall be entitled to an extension of the Scheduled Date for Substantial Completion, as reasonably determined by FORA, and an adjustment to the Contract Sum in accordance with the provisions of Article 5.
- C. No increase in the Contract Sum shall be made and no extension of the Scheduled Date for Substantial Completion shall be allowable, however, for any conditions (whether or not indicated by the Contract Documents) ascertainable by a careful Project Site inspection by Contractor.
- D. Contractor acknowledges that any surveys, analysis, testing, geotechnical reports or other information concerning the existing conditions at the Project Site provided by FORA, including any information

concerning the conditions of existing structures, surface and subsurface conditions at the Project Site, have not been performed or developed by FORA or FORA's Representative, but instead by independent contractors and have been made available to Contractor for general information only, not as a representation or warranty of the accuracy, completeness or correctness of the information. Provided that Contractor conducts a careful Project Site inspection and otherwise conforms to the requirements of Article 3, Contractor shall be entitled to reasonably rely on such information.

- E. Contractor's sole remedy against FORA as a result of any such incorrect, inaccurate or incomplete information shall be an extension of the Scheduled Date for Substantial Completion and/or an increase in the Contract Sum as provided hereinabove.
- F. Notwithstanding the foregoing, Contractor shall be responsible for physically verifying the location of any existing subsurface utilities prior to commencement of any portion of the Work that may affect such utilities, including if necessary, hand potholing to confirm location as provided in the Scope of Work (Exhibit A) and Contractor shall not rely on any existing reports that FORA may deliver to Contractor pertaining to the location of subsurface utilities.
- G. Accordingly, Contractor shall be responsible for any damage that Contractor may cause to such utilities and any unauthorized interruption thereof and shall not be entitled to any extension of time or adjustment to the Contract Sum in such case.

5.10 VALUE ENGINEERING CHANGE PROPOSALS (VECP)

- A. General. The Contractor is encouraged to develop, prepare, and submit VECP's voluntarily. The Contractor shall share in any instant contract savings realized from accepted VECP's, in accordance with paragraph (f) below.
- B. Definitions. "Collateral costs," as used in this clause, means FORA's costs of operation, maintenance, logistic support, or furnished property.
  - a. "Collateral savings," as used in this clause, means those measurable net reductions resulting from a VECP in the agency's overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.
  - b. "Contractor's development and implementation costs," as used in this clause, means those costs the Contractor incurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the Contractor incurs to make the contractual changes required by FORA acceptance of a VECP.
  - c. "FORA costs," as used in this clause, means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistic support. The term does not include the normal administrative costs of processing the VECP.
  - d. "Instant contract savings," as used in this clause, means the estimated reduction in Contractor cost of performance resulting from acceptance of the VECP, minus allowable Contractor's development and implementation costs, including subcontractors' development and implementation costs (see paragraph (h) below).
  - e. "Value engineering change proposal (VECP)" means a proposal that --
    - i. Requires a change to this contract, to implement; and
    - ii. Results in reducing the contract price or estimated cost without impairing essential functions or characteristics; provided, that it does not involve a change --
      - 1. In deliverable end item quantities only; or
      - 2. To the contract type only.

- C. VECP preparation. As a minimum, the Contractor shall include in each VECP the information described in subparagraphs (C)(a) through (g) below. If the proposed change is affected by contractually required configuration management or similar procedures, the instructions in those procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:
- a. A description of the difference between the existing contract requirement and that proposed, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, and the effect of the change on the end item's performance.
  - b. A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.
  - c. A separate, detailed cost estimate for
    - i. the affected portions of the existing contract requirement and
    - ii. the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under paragraph (h) below.
  - d. A description and estimate of costs the FORA may incur in implementing the VECP, such as test and evaluation and operating and support costs.
  - e. A prediction of any effects the proposed change would have on collateral costs to the agency.
  - f. A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.
  - g. Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous FORA actions, if known.
- D. Submission. The Contractor shall submit VECP's to the FORA's or FORA's Construction Manager.
- E. FORA action.
- a. FORA will notify the Contractor of the status of the VECP within 45 calendar days after FORA receives it. If additional time is required, FORA will notify the Contractor within the 45-day period and provide the reason for the delay and the expected date of the decision. The FORA will process VECP's expeditiously; however, it will not be liable for any delay in acting upon a VECP.
  - b. If the VECP is not accepted, FORA will notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted by FORA. FORA may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.
  - c. Any VECP may be accepted, in whole or in part, by change order (CO) citing this clause. FORA may accept the VECP, even though an agreement on price reduction has not been reached, by issuing the Contractor a notice to proceed with the change. Until a notice to proceed is issued or a change order applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The decision to accept or reject all or part of any VECP is a unilateral decision made solely at the discretion of the Contracting Officer.
- F. Sharing:
- a. Rates. FORA's share of savings is determined by subtracting FORA costs from instant contract savings and multiplying the result by --
    - i. 30 percent for fixed-price contracts; or
    - ii. 50 percent for cost plus materials contracts.

- b. Payment. Payment of any share due the Contractor for use of a VECP on this contract shall be authorized by a change order to --
- i. Accept the VECP;
  - ii. Reduce the contract sum by the amount of instant contract savings; and
  - iii. Provide the Contractor's share of savings by adding the amount calculated to the contract sum.
- G. Collateral savings. If a VECP is accepted, FORA will increase the instant contract amount by 20 percent of any projected collateral savings determined to be realized in a typical year of use after subtracting any FORA costs not previously offset. However, the Contractor's share of collateral savings will not exceed the contract's firm-fixed-price or estimated cost, at the time the VECP is accepted, or \$100,000, whichever is greater. FORA is the sole determiner of the amount of collateral savings.
- H. Subcontracts. The Contractor shall include an appropriate value engineering clause in any subcontract of \$70,000 or more and may include one in subcontracts of lesser value. In computing any adjustment in this contract's price under paragraph (f) above, the Contractor's allowable development and implementation costs shall include any subcontractor's allowable development and implementation costs clearly resulting from a VECP accepted by the FORA under this contract, but shall exclude any value engineering incentive payments to a subcontractor. The Contractor may choose any arrangement for subcontractor value engineering incentive payments; *provided*, that these payments shall not reduce the FORA's share of the savings resulting from the VECP.
- I. Data. The Contractor may restrict FORA's right to use any part of a VECP or the supporting data by marking the following legend on the affected components:

These data, furnished under the Value Engineering -- Construction clause of contract \_\_\_\_\_, are proprietary and shall not be disclosed outside the FORA or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit FORA's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations.

If a VECP is accepted, the Contractor hereby grants the FORA unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the FORA shall have the rights specified in the contract modification implementing the VECP and shall appropriately mark the data.

#### 5.11 CORRECTION OF WORK

- A. Contractor shall promptly correct work rejected by FORA or Work failing to conform to the requirements of the Contract Documents, whether or not fabricated, installed or completed. Contractor shall bear the costs of correcting such rejected work, including additional testing and inspections required and compensation for FORA's services and expenses made necessary thereby.
- B. In the event of an emergency constituting an immediate hazard to the health or safety of any persons or property, FORA may undertake, at Contractor's expense and without prior notice, work necessary to correct such hazardous condition(s) arising from work performed by Contractor that is not in conformance with the requirements of the Contract Documents.
- C. Contractor shall remove from the Project Site portions of the Work that are not in accordance with the requirements of the Contract Documents, and are neither corrected by Contractor nor accepted by FORA.
- D. If Contractor fails to correct nonconforming work, as per Paragraph 2.10, FORA may correct the nonconforming work by terminating the employment of Contractor; taking possession of the Project Site, materials, equipment, tools, appliances, and construction equipment and machinery owned by Contractor; accepting assignment of Subcontractor agreements, and/or finishing the Work by whatever method(s) FORA may deem expeditious and appropriate. If Contractor does not proceed with correction of such

nonconforming Work, within such time fixed by written notice from FORA, FORA may remove and store the salvageable materials, articles and/or equipment at Contractor's expense. If Contractor does not pay all costs of such removal and storage within 14 days after written notice, FORA may, upon 14 additional calendar days written notice, sell such materials, articles and/or equipment at an auction or private sale, and shall account for the proceeds thereof, after deducting costs and damages that would have been borne by Contractor, including compensation for FORA's services and expenses made necessary thereby. If the proceeds of a sale do not cover all costs that Contractor would have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due Contractor are not sufficient to cover such amount, Contractor shall pay the difference to FORA.

- E. Contractor shall bear the cost of correcting Work executed by FORA or separate contractors, whether fully completed or partially completed, which is caused by Contractor's correction or removal of Work that is not in accordance with requirements of the Contract Documents.
- F. Nothing contained in this Section 5.06 shall be construed to establish a period of limitation with respect to other obligations that Contractor might have in the Contract Documents. Establishment of the time period of 1 year, as described in Section 2.10, relates only to the specific obligation of Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with requirements of the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Contractor's liability with respect to Contractor's obligations other than specifically to correct the Work.
- G. If FORA prefers to accept any or all of the Work that is not in accordance with requirements of the Contract Documents, FORA may do so instead of requiring its correction and/or removal, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment to Contractor has been made.

#### 5.12 DISPUTES

- A. In the event of a dispute over entitlement to or the amount of a change in Contract Time or a change in Contract Sum related to a FORA-directed change in the Work, Contractor must perform the Work as directed and may not delay its Work or cease Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute. In the event that FORA and Contractor dispute whether a portion or portions of the Work are already required by the Contract Documents or constitute Extra Work, or otherwise dispute the interpretation of any portion(s) of the Contract Documents, Contractor must perform the Work as directed and may not delay its Work or cease Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute, as directed by FORA. Contractor's sole recourse for an unresolved dispute related to changes in the Work or performance of any Extra Work is to comply with the dispute resolution provisions.

### **ARTICLE 6 - CONTRACT SUM**

#### 6.01 CONTRACT SUM.

- A. Subject to the provisions of the Contract Documents, FORA agrees to pay Contractor as compensation for the Work the Contract Sum to be payable in installments in accordance with the progress payment provisions of Article 7, subject to any additions and deductions by Change Orders.
- B. The Contract Sum is intended to include all increases in costs, foreseen and unforeseen, including, without limitation, taxes, labor, materials, and transportation costs, all of which are to be borne solely by Contractor.

**Sample Construction Agreement No. FC-\_\_\_\_\_**

- C. All loss or damage arising from any Work performed under this Agreement through unforeseen or unusual conditions, obstructions, difficulties or delays which may be encountered in the prosecution of the Work, or through the action of the elements, shall be borne by Contractor, except as provided in Section 5.05.

**6.02 ACCOUNTING PROCEDURES.**

- A. Contractor shall establish accounting procedures acceptable to FORA and complying with generally accepted accounting principles for all costs incurred by Contractor under this Agreement. Contractor shall permit FORA and its agents to review its accounting procedures and shall make such revisions to its procedures as may reasonably be requested by FORA to verify and control costs incurred under this Agreement. No change shall be made in such accounting procedures except with the prior written approval of FORA.
- B. With each request for progress payments, Contractor shall submit all receipts and invoices, including certified payroll data, justifying the costs incurred by Contractor.
- C. In no event shall FORA be obligated to reimburse Contractor for costs pertaining to any portion of the Work to be billed on a cost-plus basis, such as Change Orders, in excess of prices reasonably obtainable in the local market at the time the products or services were obtained by Contractor, including such discounts as are reasonably obtainable.
- D. Any overpayments pertaining to any portion of the Work to be billed on a cost-plus basis revealed by such audits shall be promptly repaid by Contractor, and any underpayments revealed by such audits shall be promptly paid by FORA. If such audit shall reveal an overpayment in excess of five percent (5%) for the period involved, then the costs of such audit shall be borne by Contractor.

**6.03 SCHEDULE OF VALUES.**

- A. Unless otherwise provided elsewhere in the Contract Documents, Contractor shall submit a schedule of values ("Schedule of Values") to FORA for approval within ten 10 days after contract award and in any event before the first Application for Payment.
- B. The Schedule of Values shall allocate the entire Contract Sum among the various portions of the Work and to the portions of the Work performed by each Subcontractor.
- C. The Schedule of Values shall contain single line item entries, identified for each major item of the Work, and otherwise shall be prepared in such form, and supported by such data, to substantiate its accuracy, as FORA may require.
- D. The Schedule of Values shall contain single line item entries for Hazardous Materials that may be found, identify each material profile and shall be prepared in such form, and supported by such data, to substantiate its accuracy as FORA may require.
- E. The Schedule of Values shall contain reasonable market cost allocations for all items of Work shown in the Construction Schedule.
- F. The Schedule of Values, shall have a separate 'closeout' line item, and shall be separate from the retention payout line item.
- G. The Schedule of Values, when approved by FORA, shall be used as a basis for evaluating Contractor's Applications for Payment and change order work.

**6.04 ALLOWANCES.**

- A. The Contract Sum includes the allowances set forth in Exhibit F2 ("Allowances"). Each Allowance, unless otherwise specified, covers the net cost to Contractor of all services, materials, equipment, freight, unloading,



handling, storage, installation, taxes and other expense incurred in performing the Work described under such Allowance.

- B. If the actual final cost under an Allowance either exceeds or is less than the amount of such Allowance, the Contract Sum shall be increased or decreased, as the case may be, to reflect the amount of the costs actually incurred and properly documented.
- C. Progress payments on account of authorized expenditures under Allowances shall be certified on Contractor's monthly Application for Payment (as defined in Article 7) and must be approved by FORA.
- D. A schedule shall be prepared by FORA Construction Manager to specify when an expenditure under Allowances must be authorized by FORA Construction Manager and FORA.

6.05 ITEMS INCLUDED IN CONTRACT SUM.

- E. Unless otherwise specified, costs associated with gaining required permits, licenses, approvals, certifications to perform the Work shall be the responsibility of the Contractor. All applications, agreements, and permits required to commence and perform the Work shall be obtained by Contractor at Contractor's expense, unless otherwise directed by FORA, and the fees for such applications and permits shall be included in the Contract Sum.
- A. Unless otherwise specified, All Construction testing (including testing required as a result of defective or nonconforming Work, Quality Control testing, material testing, and waste characterization) will be performed by, and at the direct expense of, the contractor, and all fees for such surveying and testing shall be included in the Contract Sum.
- B. Unless otherwise specified, Contractor shall be responsible for additional sampling, testing or waste profiling not identified in the Scope of Work and the Base Bid pursuant to Section 2.11 (B). If not identified in the Scope of Work (Exhibit A) and Base Bid (Exhibit C1), It shall be included in the Contract Sum and the Contractor shall make arrangements for all such tests, inspections, reports and approvals with applicable public agencies with jurisdiction or independent testing agencies acceptable to FORA, as the case may be, and Contractor shall bear the costs of such tests, inspections, reports and approvals, including any overtime costs of Contractor or any of Contractor's employees or Subcontractors.

6.06 ITEMS TO BE CREDITED OR REIMBURSED BY CONTRACTOR.

- A. The following items shall be credited against the Contract Sum or shall be reimbursed by Contractor to FORA:
  - a. The full amount of any deposits originally funded by or charged to FORA that have been returned to Contractor.
  - b. Overtime pay of any of FORA's Consultants or Contractors required to oversee contractor Work.
    - i. Contractor must gain approval from FORA AND the Consultant 72 hours prior any overtime work.

**ARTICLE 7 - PROGRESS PAYMENTS ON AGREEMENT PRICE**

7.01 APPLICATION.

- A. On or before the last day of each month, Contractor shall submit to FORA and FORA Construction Manager a notarized application for payment in electronic format.

- B. The Application for Payment shall set forth in detail, as of the last day of the preceding month, the percentage of the Work completed during such month, the value of such completed Work based on the Schedule of Values, the progress of the Work based on the Construction Schedule, the dollar amount of any retention, as provided herein, and the dollar amount of the Contract Sum due and owing to Contractor for such completed Work under the terms of this Agreement, including amounts due under any Change Orders.
- C. Each Application for Payment shall include in electronic format sworn statements and such other documentation as FORA may require, including but not limited to certified payroll, daily Project Site construction reports and weekly safety meeting minutes, and itemization of all disbursements previously made to Subcontractors and vendors on a monthly basis, and the percentage of completion of the Work as of the last day of the preceding month.
- D. Each Application for Payment shall include a detailed itemization of all amounts charged by Contractor against Contractor's contingency, if any, set forth in the approved Schedule of Values. Contractor shall also submit to FORA with the Application for Payment a copy of the current Construction Schedule and Progress Report referred to in Section 2.03. Absent written direction from FORA to the contrary, each Application for Payment shall be in the form of a notarized AIA Document G702, Application and Certification for Payment, and (when applicable) supported by AIA Document G703, Continuation Sheet. In addition, each Application for Payment shall include a conditional upon payment waiver and release of mechanic's lien from each party (such release being consistent with Exhibit G attached hereto and conforming to the requirements of California Civil Code Section 3262), covering all sums requested in such Application for Payment, and an unconditional waiver and release of mechanic's lien from each party (such release being consistent with Exhibit H attached hereto and conforming to the requirements of California Civil Code Section 3262), covering sums disbursed pursuant to the most recently preceding Application for Payment. Contractor warrants title to all Work, including stored materials and equipment, upon its receipt of payment from FORA, to be free and clear of all liens, claims, security interests or encumbrances.
- E. Applications for Payment may not include requests for payment of amounts Contractor does not intend to currently pay to a Subcontractor because of a dispute or any other reason.
- F. If a correct and complete Application for Payment is not made until after the application date set forth hereinabove, payment shall be made by FORA in the subsequent month.
- G. As to any Application for Payment including payment for a Change Order to be paid on a time and material basis, FORA may require Contractor to submit invoices or invoices with check vouchers attached.

7.02 PAYMENT.

- A. No later than the last day of the month following the month the Application for Payment is received, FORA shall pay the amount of the Application for Payment approved by FORA or FORA's Representative, FORA Construction Manager and FORA's construction lender; provided:
- B. If any item on the Application for Payment is disputed, Contractor shall be promptly notified of such dispute and shall submit verification of such item on a revised Application for Payment. Alternatively, pending resolution of any dispute, FORA shall have the right to withhold payment of the disputed amount.
  - a. FORA shall have the right, but not the obligation, to make payment: (i) directly to Contractor; (ii) jointly to Contractor and any Subcontractor; or (iii) directly to a Subcontractor.
  - b. No certificate for payment, progress payment or partial or entire use or occupancy of the Work by FORA shall constitute an acceptance of the Work or waiver of Contractor's duty to replace unsatisfactory Work or material.

- c. The first Application for Payment shall cover a period beginning on the date construction actually begins.

7.03 USE OF PAYMENT.

- A. Except for Contractor's overhead and profit, Contractor shall use the sums advanced to it pursuant to this Article 7 only for the purpose of performance of the Work and the construction, furnishing, and equipping of the Project in accordance with the Contract Documents.
- B. Contractor shall promptly pay all bills for labor performed and material furnished by others in connection with the performance of the Work.
- C. Contractor agrees to keep the Project free and clear of any and all liens and claims of Subcontractors, materialmen and suppliers, subject to FORA's performance of its own payment obligations. In the event any lien is filed against the Project Site which Contractor is responsible to remove pursuant to the provisions of this Agreement, Contractor shall cause such lien to be fully released and discharged within five (5) business days of demand by FORA. If not fully discharged and released within said five (5) business day period, Contractor shall obtain and post a bond within said five (5) business day period sufficient to release the lien and thereafter shall take all necessary legal action to defend FORA against any legal action related to such lien.
- D. If Contractor shall fail to post such bond within the required time, FORA may, in its sole discretion, pay any sums necessary to discharge, release and satisfy such lien, and in such case, Contractor shall reimburse FORA, on demand, for all monies paid by FORA in releasing, discharging and satisfying such lien, including any attorneys' fees incurred by FORA.
- E. In addition to the foregoing, if any such lien or claim shall be filed at any time during the progress of the Work, FORA may withhold the amount of such lien or claim from payments otherwise due Contractor until such lien or claim is discharged or until FORA is indemnified by bond or other means reasonably satisfactory to FORA.
- F. Final Payment and/or retention shall not be paid until Contractor can show that all liens have been released.
- G. No provision hereof, however, shall be construed to require FORA to ensure the proper disposition or application of sums paid to Contractor hereunder.

7.04 RIGHT TO WITHHOLD APPROVAL.

- A. Any provision hereof to the contrary notwithstanding, FORA shall be entitled to withhold approval of all or any part of an Application for Payment or nullify all or any part of a previous Application for Payment and withhold that amount on account of any of the following:
  - a. Default by Contractor of any of its obligations under the Contract Documents;
  - b. Work that is defective or was not performed in accordance with the Contract Documents (payment will be made as to the portion of the Work which is not defective and was performed in accordance with the Contract Documents);
  - c. Failure of Contractor to make payments promptly to its Subcontractors or for material or labor used in the Work for which FORA has made payment to Contractor;
  - d. Liens, claims or stop notices filed or reasonable evidence indicating probable filing thereof;
  - e. Reasonable evidence that the Work will not be substantially completed by the Scheduled Date for Substantial Completion;

- f. Damage to FORA or any separate contractor of FORA, their affiliates or their separate contractors;
- g. Reasonable evidence that the portion of the Contract Sum then remaining unpaid will not be sufficient to complete the Work in accordance with the Contract Documents, in which case additional payments will be made to Contractor hereunder only after Contractor, at its sole cost, performs a sufficient portion of the Work so that such portion of the Contract Sum then remaining unpaid is reasonably determined by FORA's construction or permanent lender or by FORA to be sufficient to so complete the Work;
- h. Failure to maintain and update the Record Copy "as built" redlines as required by Section 2.04;
- i. Failure to deliver the Daily Reports as require by Section 2.05;
- j. Any other reasonable cause.

#### 7.05 PAYMENT NOT ACCEPTANCE.

- A. No approval of an Application for Payment nor any payment made hereunder shall be or shall be construed to be final acceptance or approval of that part of the Work to which such Application for Payment or payment relates, nor shall such approval or payment relieve Contractor of any of its obligations hereunder with respect to such part of the Work.

#### 7.06 RETENTIONS

- A. Upon submittal and receipt of a monthly payment request in accordance with Section 7.01 and 7.02 above, the following shall apply:
  - a. Contractor's payment request shall include the total amount of Work completed to date, including materials as verified by FORA, furnished and delivered on the Project Site, not used, or in a secure off-site facility, pursuant to Public Contract Code, Section 10261. All materials included in the Contractor's payment requests furnished and delivered on the Project Site, not used, and /or in a secure off-site facility shall be used exclusively for the Project. It shall be the sole responsibility of the Contractor to maintain, protect and secure such materials.
  - b. FORA shall retain no less than ten (10%) percent of the estimated value of Work completed.
- B. At the request and expense of Contractor, and in accordance with Public Contract Code, Section 10263, the Contractor may provide securities in lieu of retention.

### **ARTICLE 8 - SUBCONTRACTORS**

#### 8.01 SUBCONTRACTS.

- A. All portions of the Work not performed by Contractor shall be performed under written subcontracts with Contractor. Each such subcontract shall require the Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to Contractor by the terms of the Contract Documents, to assume toward Contractor all the obligations and responsibilities which Contractor assumes towards FORA by the Contract Documents, and to perform such portion of the Work in accordance with the Contract Documents.
- B. Each such subcontract shall preserve and protect the rights of FORA under the Contract Documents, with respect to the Work to be performed by the Subcontractor, so that subcontracting thereof will not prejudice such rights.
- C. Each such subcontract shall incorporate the provisions of this Agreement and shall expressly provide that,

- a. The Subcontractor waives all rights that the Subcontractor may have against FORA for damages caused by fire or other perils covered by the property insurance carried by Contractor or the City of Seaside, (ii) the Subcontractor shall not be entitled to any markup for overhead and profit on any Work performed pursuant to a Change Order other than a Change Order initiated by FORA which increases the scope of the Work and any Subcontractor's markup for overhead and profit on Work resulting from such Change Order. Increasing the scope of the Work shall be limited to not more than the allowable mark-ups for labor, equipment, materials, overhead and profit as defined in the most current version of the State of California, Department of Transportation's "Labor Surcharge & Equipment Rental Rates" guide and the most current version of the State of California, Department of Transportation, Standard Specifications for the actual cost of additional Work set forth on attached Exhibit F1. (iii) FORA and entities and agencies designated by the City of Seaside shall have access to and the right to audit and the right to copy at FORA's or the City of Seaside's cost all of the Subcontractor's books, records, Agreements, correspondence, instructions, drawings, receipts, vouchers, purchase orders, and memoranda relating to the Work (the Subcontractor shall preserve all such records and other items for a period of at least three (3) years after Final Completion). (iv) FORA is a third-party beneficiary of such subcontract. (v) Subcontractor shall comply with the public works registration and reporting requirements of SB 854. (vi) the Subcontractor recognizes the rights of FORA under Section 8.04 and agrees, upon notice from FORA that FORA has elected to accept said assignment and to retain the Subcontractor pursuant to the terms of the subcontract, to complete the unperformed obligations under the subcontract and, if requested by FORA, to execute a written agreement confirming that the Subcontractor is bound to FORA under the terms of the subcontract.
- D. Contractor shall cause all first-tier subcontracts to include the provision that the requirements of this Section 8.01 shall be included in all sub-subcontracts entered into by Subcontractors for any part of the Work.
  - E. All subcontracts and agreements with suppliers shall be on a fixed price basis unless otherwise provided in the Contract Documents or approved in writing by FORA or FORA's Representative.

#### 8.02 SUBCONTRACTORS.

- A. All portions of the Work other than the supervision and management thereof, including any portions proposed to be performed by Contractor, shall be subject to competitive bidding unless otherwise approved in writing by FORA
- B. Contractor shall enter into subcontracts or other appropriate agreements with the approved Subcontractors and suppliers in accordance with Section 8.01.
- C. Contractor shall not be permitted to substitute any person or organization for any Subcontractor who has been accepted by FORA nor to permit any subcontract to be transferred or to allow the Work under any subcontract to be performed by any person or organization other than the Subcontractor who has been accepted by FORA, without the prior written consent of FORA.
- D. At any time, upon request of FORA, Contractor shall make available to FORA all bids, proposals, Agreements, subcontracts or other information requested by FORA regarding the Subcontractors and available to Contractor.

#### 8.03 NO CONTRACTUAL RELATIONSHIP.

- A. Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and FORA, except if and only to the extent that FORA elects to accept the assignment of the subcontract with such Subcontractor pursuant to Section 8.04 below.

8.04 ASSIGNMENT OF SUBCONTRACTS.

- A. Contractor hereby assigns to FORA all its interest in all subcontracts and agreements now or hereafter entered into by Contractor for performance of any part of the Work. The assignment will be effective upon acceptance by FORA in writing and only as to those subcontracts, which FORA designates in writing.
- B. FORA may accept said assignment at any time during the course of the Work and prior to Final Completion in the event of a suspension or termination of Contractor's rights under the Contract Documents.
- C. Such assignment is part of the consideration to FORA for entering into the Agreement with Contractor and may not be withdrawn prior to Final Completion.

**ARTICLE 9 - ACCEPTANCE AND FINAL PAYMENT**

9.01 SUBSTANTIAL COMPLETION.

- A. Within ten (10) business days after receipt by FORA Construction Manager of written Notice by Contractor that the Work is substantially completed, FORA Construction Manager shall inspect the Work unless FORA Construction Manager determines that the Work is not sufficiently complete to warrant such inspection, in which case a new notice shall be required under this Section 9.01.
- B. As used herein, "Substantial Completion" shall mean the date upon which all of the following have occurred:
  - a. The applicable Work has been completed in accordance with the Contract Documents (except for Punch-List Work as defined below) and the applicable Work is sufficiently complete to enable FORA to occupy and use the applicable Work for the use for which it is intended without material disruption or interference caused by the need to complete any of the applicable Work remaining to be completed;
  - b. All required approvals and permits for occupancy, use and/or completion of the applicable Work, as applicable to the specific nature of the Work, shall have been issued by appropriate governmental authorities for the applicable Work (except such certificates, permits, approvals or consents that cannot be procured due to reasons beyond the reasonable control of Contractor); and
  - c. All mechanical, utility and support systems that are part of the applicable Work are functioning as required and intended by the Contract Documents
  - d. FORA's Certified Industrial Hygienist has reviewed and verified hazardous materials have been abated and removed from each building in accordance with all applicable laws, regulations and requirements.
- C. In the event that FORA Construction Manager shall find the Work to have reached Substantial Completion and to be in accordance and conformity with the Contract Documents, FORA Construction Manager shall promptly thereafter issue a Certificate of Substantial Completion (which may be in the standard form prepared by the AIA), dated as of the date of such inspection of the Work, setting forth: A statement that the Work has been performed and has reached Substantial Completion as of the date of Substantial Completion set out therein in accordance and in conformity with the Contract Documents and has been accepted by FORA Construction Manager subject to completion of and correction of any Punch List Work listed on the Certificate of Substantial Completion.
- D. As used herein the term "Punch-List Work" means minor incomplete or defective items that do not impede or interfere with the use and occupancy of the Project for its intended purpose and that can be corrected within thirty (30) days. Within thirty (30) days after the issuance of the Certificate of Substantial Completion on a date specified by FORA or FORA's Representative and FORA Construction Manager (and if required

by FORA, any construction lender ) shall conduct a second inspection of the Work to evaluate the completion of the Punch-List Work listed on the Certificate of Substantial Completion and to identify any additional items of defective or nonconforming Work and any such additional items shall be added to the list of Punch-List Work.

- E. All Punch-List Work shall be completed within thirty (30) days after issuance of the Certificate of Substantial Completion, or thirty (30) days after being added to the list of Punch-List Work, as applicable, or such longer period as to which FORA and Contractor may agree in writing.
  - a. A statement that the Work has been completed in compliance with the applicable laws, codes and ordinances for the Project.

9.02 CONTRACTOR'S FINAL COST ESTIMATE.

- A. Within thirty (30) days of the issuance of the Certificate of Substantial Completion by the FORA Construction Manager, Contractor shall submit in writing a proposed final estimate of the total amount payable to Contractor. Such proposed final estimate shall include the total amount owing under the Agreement and any Change Orders, and shall itemize the remaining amount owed for Agreement items, extra items of Work performed under Change Orders and any other basis for payment and shall also show deductions for all prior payments to Contractor, as well as amounts retained by FORA under the provisions of the Agreement.
- B. Amounts not included in such final cost estimate shall not be eligible for submission and payment at a later date.
- C. FORA shall review Contractor's final cost estimate and shall notify Contractor within five (5) business days as to whether FORA accepts or disputes Contractor's final cost estimate.
- D. If FORA disputes Contractor's final cost estimate, FORA may require, and Contractor shall provide, within five (5) business days, further documentation in sufficient amount and detail for FORA to determine the correct cost estimate. Once agreement is reached by FORA and Contractor as to the final cost estimate, such final cost estimate shall be used as the basis for making final payment to Contractor.
- E. Payment to Contractor based on such final cost estimate shall be conclusive and binding against both parties on all questions relating to the amount of work performed and the compensation payable therefor, except as otherwise provided in Article 14 of this Agreement. Any such payment is subject to the conditions listed in Section 9.05 below.

9.03 NOTICE OF COMPLETION.

- A. Within ten (10) days after the Final Punch-List Work, FORA shall file for record a "Notice of Completion" for the Work with the Official Records of the applicable county and evidence of such filing shall be submitted to Contractor.

9.04 PAYMENT.

- A. Upon the expiration of a period of thirty-five (35) days after the filing of such Notice of Completion, subject to the satisfaction of the conditions set forth in Section 9.05, FORA shall pay to Contractor such amount as is shown by the Certificate of Substantial Completion to be the unpaid balance of the Contract Sum; provided, however, (i) that FORA may withhold and retain as an offset against amounts otherwise due Contractor hereunder the amount of any damages or other amounts due to FORA from Contractor hereunder, and (ii) the retention will not be released, in FORA's sole discretion, until the Determination of Completeness is received from the City.

9.05 CONDITIONS TO PAYMENT.

- A. FORA's obligation to pay Contractor pursuant to Section 9.04 is subject to the following conditions:
- a. Contractor shall have submitted to FORA no later than fifteen (15) days prior to payment a complete Application for Payment and a conditional upon final payment waiver and release of mechanic's lien from Contractor and each Subcontractor to receive final payment conforming to the requirements of California Civil Code Section 3262, covering all sums requested in such Application, and an unconditional waiver and release of mechanic's lien (such releases shall be consistent with Exhibit I and Exhibit J attached hereto) upon final payment from Contractor and all Subcontractors, covering sums disbursed pursuant to the most recently preceding Application for Payment, and all other documentation required pursuant to Section 7.01;
  - b. FORA shall have received evidence reasonably satisfactory to FORA and its construction lender, if applicable, including appropriate title insurance endorsements that there are no liens filed relating to the Work. If any mechanic's or materialman's lien or claim has been recorded, FORA may withhold the amount thereof until the lien or claim is removed or until FORA and FORA's construction lender, if applicable, are indemnified against such lien or claim by bond or other means reasonably satisfactory to FORA and the construction lender;
  - c. All items of Punch-List Work shall have been completed to the satisfaction of FORA in accordance with the Contract Documents;
  - d. All related Project close out documentation shall be completed to the satisfaction of FORA;

9.06 NON-WAIVER BY FORA.

- A. The making of final payment by FORA shall not constitute a waiver of claims arising from:
- a. Contractor's obligations to complete any unfinished Punch-List Work;
  - b. Unsettled liens;
  - c. Faulty or defective Work;
  - d. Failure of the Work to comply with the requirements of the Contract Documents; or
  - e. The terms of any guaranties or warranties contained in or required by the Contract Documents; or
  - f. Any claim for which notice was previously given.

9.07 WAIVER BY CONTRACTOR.

- A. The acceptance of final payment by Contractor shall constitute a waiver of all claims by Contractor except those previously made by Contractor and identified by Contractor in the final Application for Payment as unsettled as of the date of the Application for Payment.

**ARTICLE 10 - OCCUPANCY BEFORE COMPLETION OF WORK**

- A. FORA reserves the right, at its option and convenience, to occupy or otherwise make use of all or any part of the Work at any time prior to Substantial Completion upon five (5) days' notice to Contractor and subject to the following conditions:
- a. The FORA Construction Manager will make an inspection of the portion of the Project to be occupied and prepare a list of items to be completed or corrected prior to Final Completion.



- b. Such occupancy or use shall not be construed by Contractor as an acceptance by FORA of that portion of the Work, which is to be occupied or used nor constitute a waiver of existing claims of FORA or Contractor against each other.
- c. FORA shall use its best efforts to prevent any such occupancy or use from interfering with the conduct of Contractor's remaining Work.
- d. Contractor shall not be required to repair damage caused by such occupancy or use.
- e. There shall be no added cost to FORA due to such occupancy or use.

## ARTICLE 11 - INDEMNIFICATION

### 11.01 INDEMNIFICATION.

- A. Contractor shall indemnify, defend and hold harmless FORA and all subsidiary and affiliated entities of FORA, the City of Seaside and any of FORA's and the City of Seaside's real property with respect to which the Work is to be performed (including any lenders identified in the Contract Documents or the applicable Change Order), and each of their respective members, managers, partners, agents, representatives, trustees, directors, officers, shareholders and employees, and each of them (collectively, the "Indemnified Parties" and each, individually, an "Indemnified Party") from and against:
  - a. any and all claims, demands, losses, liabilities, damage, liens, obligations, interest, injuries, penalties, fines, lawsuits or other proceedings, judgments and awards and costs and expenses (including reasonable attorneys' fees and costs, costs of investigations, and expert and consultant fees and costs and court costs) of whatever kind or nature, known or unknown, contingent or otherwise, including the reasonable cost to the Indemnified Parties of carrying out the terms of any judgment, settlement, consent decree, stipulated judgment or other partial or complete termination of an action or proceeding that requires the Indemnified Party or Parties to take any action (collectively, "Claims" arising or resulting from: (i) any misconduct, failure to comply with any provision of this Agreement, or negligent act, error, or omission of Contractor, its Subcontractors, or Contractor's or its Subcontractors' agents, representatives, officers or employees, or any other person or entity directly or indirectly employed or hired by Contractor or such other person or entity in connection with the Work to be performed under the Contract Documents; (ii) any patent or latent defect in the workmanship of any such person in connection with the Work; (iii) any patent or latent defect in any materials used in the Work and/or incorporated into the Project, or (iv) any unauthorized work performed by Contractor;
  - b. any and all penalties imposed on account of the violation of any Applicable Laws, compliance with which is assigned by the Contract Documents to Contractor;
  - c. any and all claims of lien and liens of Contractor or any Subcontractor or any other person or entity directly or indirectly employed or hired by Contractor or any Subcontractor or such other person or entity, brought or filed, arising out of or in any manner directly or indirectly connected with the Work to be performed under the Contract Documents; and
  - d. any and all claims and demands which may be made by reason of any infringement, or alleged infringement, of any patent rights, or claims or demands caused, or alleged to have been caused, by the use of any product, article, apparatus or appliance or portion thereof furnished or installed by Contractor; except that FORA shall be responsible for any and all loss when the product, article, apparatus or appliance or portion thereof is particularly specified in the Contract Documents, but if Contractor has information that the product, article, apparatus or appliance or portion thereof so specified infringes on any patent, Contractor shall be responsible as set forth in the foregoing unless Contractor promptly informs FORA of such infringement.

- B. The foregoing indemnity shall apply to Claims asserted against Indemnified Parties on the basis of concurrent negligence (whether active or passive) or strict or vicarious liability, but shall not apply to any Claims found to be due to the sole negligence or willful misconduct of any Indemnified Party.

11.02 DEFENSE.

- A. Contractor shall, except to the extent covered or compensated by insurance:
- a. at Contractor's own cost, expense and risk, defend in a manner and legal counsel acceptable to the Indemnified Parties, all suits, actions or other legal or administrative proceedings that may be brought or instituted by any third persons or any governmental agencies or officers against any Indemnified Party, on account of any matter indemnified against pursuant to Section 11.01 and 11.03;
  - b. pay and/or satisfy any judgment or decree that may be rendered against any Indemnified Party, in any suit, action or other legal or administrative proceeding; and
  - c. reimburse any Indemnified Party for the cost of, or for any payment made by such party with respect to, any repairs, alterations, or other modifications of or connections to any of the Work undertaken, and for any and all other expenses (including, but not limited to, all legal expenses arising as a result of Contractor's wrongful refusal to perform its duties to indemnify any Indemnified Party) incurred, in connection with any matter indemnified against pursuant to Section 11.03, or in connection with enforcing the indemnity granted in this Section 11.02.

11.03 OBLIGATION NOT LIMITED BY STATUTORY BENEFITS.

- A. In any and all claims against any Indemnified Party by an employee of Contractor, or any of its Subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation of the amount or type of damages, compensation or benefits payable by or for Contractor or its Subcontractors under workers' compensation acts, disability benefit acts or any other employee benefit acts.

11.04 DUTY TO DEFEND.

- A. Contractor acknowledges and agrees that if any one or more claims or actions are asserted against any of the Indemnified Parties giving rise to a duty to defend on the part of Contractor pursuant to this Agreement, the Indemnified Parties shall have the right to elect in its or their sole and absolute discretion whether to contest any such Claims. If any Indemnified Party elect to contest any such Claim, the Indemnified Party or Parties shall have the right to select its or their own legal counsel and control the defense, and Contractor shall bear the cost of employing such counsel and otherwise defending such claims, or to tender the defense to Contractor and to approve the counsel Contractor retains to represent the Indemnified Party or Parties and all actual fees and expenses of such counsel shall be the sole responsibility of Contractor.

11.05 SURVIVAL.

- A. The provisions of this Article 11 shall survive the termination or expiration of this Agreement and shall not be limited by the amount or type of insurance obtained by FORA or Contractor.

**ARTICLE 12 - CONTRACTOR'S INSURANCE**

- A. During the performance of its Work, and until termination of this Agreement, unless otherwise specified, Contractor shall carry and maintain insurance, and shall comply with the insurance requirements of FORA in accordance with Exhibit L attached hereto and incorporated herein.

## ARTICLE 13 - PROPERTY OWNER'S INSURANCE

### 13.01 CONTRACTOR'S RESPONSIBILITY.

- A. FORA conducts work in coordination with Property Owners.
- B. Contractor shall have full responsibility to evaluate the protection provided by the property owners insurance and to carry its own insurance against losses not covered.
  - a. Copies of the property owner's insurance policies shall be made available for Contractor's and/or its Subcontractor's review at FORA's office.
  - b. The property owner's insurance does not cover theft or loss against Contractor's tools and equipment and Contractor shall be responsible for any such loss, however caused, and for providing any insurance with respect thereto.

## ARTICLE 14 - TERMINATION OF AGREEMENT

### 14.01 TERMINATION BY CONTRACTOR.

- A. If FORA fails to perform any of its material obligations hereunder, Contractor shall have the right to give FORA a written notice stating the nature of the default. If FORA fails to cure such default within thirty (30) days after receipt of such notice or within such longer time as is reasonable under the circumstances, Contractor shall have the right to terminate this Agreement by giving FORA written notice of such termination at any time thereafter while such default remains uncured.
- B. Contractor shall similarly have the right to terminate this Agreement upon thirty (30) days' notice if the Work is suspended by FORA for a period of ninety (90) consecutive days or more from causes not the fault of Contractor and without the agreement of Contractor.
- C. If this Agreement shall be terminated by Contractor pursuant to this Section 14.01, FORA shall pay Contractor the pro rata portion of the Contract Sum applicable to the portion of the Work theretofore completed and any proven loss sustained by Contractor upon any materials, equipment, tools, construction equipment and machinery, and for reasonable demobilization costs (but in no event shall the total amount exceed the Contract Sum).
- D. Contractor, as a condition of receiving payment under this Section 14.01, shall execute and deliver all such papers and take all such steps, including the assignment of any of its contractual rights pertaining to the Work or to the Project, and the delivery to FORA of all Project record documents, as FORA may reasonably require.
- E. The payment provided under this Section 14.01 shall be Contractor's sole and exclusive remedy in the event of termination by Contractor and Contractor shall be entitled to no other compensation of damages.

### 14.02 TERMINATION FOR CAUSE BY FORA.

- A. In the event that:
  - a. An order for relief shall be entered against Contractor under the United States Bankruptcy Code; or
  - b. Contractor shall make a general assignment for the benefit of its creditors, or fail to pay its debts as the same become due; or
  - c. A receiver shall be appointed to take charge of Contractor's property; or

- d. The progress of the performance of any material category of the Work shown in the Construction Schedule shall be at any time two (2) weeks or more behind the timing set forth in the Construction Schedule for such category; or
  - e. Contractor shall refuse or fail to supply enough properly skilled workers or proper materials to prosecute the Work as provided herein; or
  - f. Contractor shall fail to make prompt payment of amounts properly due to its Subcontractors or for materials or labor after receiving payments from FORA; or
  - g. Contractor shall disregard applicable laws or ordinances or otherwise be in default of any material obligation under the Contract Documents; (and only in the case of any event described in subparagraphs 14.02.A.5,6, or 7 Contractor fails to cure such problem within seven (7) days after the effective date of a written notice from FORA to Contractor)
- B. then FORA may terminate this Agreement and take possession of the Project Site, materials, supplies, equipment, and tools and finish the Work by whatever method FORA may deem expedient, and, at its option, FORA may assume any or all of the subcontracts now or hereafter executed by Contractor hereunder.
- C. If requested by FORA, Contractor shall remove any part or all of Contractor's materials, supplies, equipment, tools and construction equipment and machinery from the Project Site and if Contractor fails to do so, FORA may remove and store, and within ninety (90) days sell, any of the same at Contractor's expense.
- D. If this Agreement shall be terminated by FORA as provided in this Section 14.02, Contractor shall not be entitled to receive any further payment except with respect to Work theretofore completed, less any sums due FORA on account of damages suffered by FORA as a result of the conduct permitting termination or of the termination itself and Contractor shall not be entitled to receive such payment, if any, until the expiration of thirty-five (35) days after Final Completion and acceptance of all Work by FORA.
- E. No termination or action taken by FORA after termination shall prejudice any other rights or remedies of FORA provided by law or by the Contract Documents upon such termination, and FORA may proceed against Contractor to recover all damages suffered by FORA. Contractor shall execute and deliver all such papers and take all such steps, including, without limitation, the legal assignment of its contractual rights, as FORA may require for the purpose of fully vesting in FORA the rights and benefits of Contractor under any agreements, commitments, or agreements that Contractor has previously undertaken or incurred in connection with the Work, and executing and delivering such papers and taking such steps shall be a condition to Contractor's receiving any payments under this Section 14.02.

14.03 TERMINATION BY FORA FOR CONVENIENCE.

- A. FORA may, at its option, terminate this Agreement, in whole, or from time to time in part, at any time by giving written notice to Contractor. In such event, Contractor waives any claims for damages, including loss of anticipated profits, on account thereof, and, as the sole right and remedy of Contractor, FORA shall pay Contractor in accordance with Section 14.01.
- B. Upon receipt of notice of termination pursuant to this Section 14.03, Contractor shall, unless otherwise directed in the notice, (i) discontinue the Work to the extent specified in the notice; (ii) place no further orders or subcontracts for materials, equipment, services, or facilities, except as may be necessary for completion of such portion of the Work as is not discontinued; (iii) promptly cancel, on the most favorable terms reasonably possible, all subcontracts to the extent they relate to the performance of the discontinued portion of the Work; and (iv) thereafter do only such Work as may be necessary to preserve and protect Work already in progress and to protect materials, plants, and equipment on the Project Site or in transit thereto.

- C. Upon such termination, the obligations of Contractor shall continue as to portions of the Work already performed and, subject to Contractor's obligations under this Section 14.03, as to bona fide obligations assumed by Contractor prior to the date of termination.

14.04 SUSPENSION BY FORA FOR CONVENIENCE.

- A. FORA may, at any time and from time to time, without cause, order Contractor, in writing, to suspend, delay, or interrupt the Work in whole or in part for such period of time, up to ninety (90) days, as FORA may determine, with such period of suspension to be computed from the date of delivery of the written order. Such order shall be specifically identified as a "Suspension Order" under this Section 14.04.
- B. The Work may be stopped for such further period as the parties may agree.
- C. Upon receipt of a Suspension Order, Contractor shall, at FORA's expense, comply with its terms and take all reasonable steps to minimize costs allocable to the Work covered by the Suspension Order during the period of Work stoppage.
- D. Within ninety (90) days after the issuance of the Suspension Order, or such extension to that period as is agreed upon by Contractor and FORA, FORA shall either cancel the Suspension Order or delete the Work covered by such Suspension Order by issuing a Change Order.
- E. If the Suspension Order is canceled or expires, Contractor shall continue with the Work. A Change Order will be issued to cover any adjustments in the Contract Sum or the Scheduled Date for Substantial Completion necessarily caused by such suspension.
- F. The provisions of this Section 14.04 shall not apply if a Suspension Order is not issued by FORA.
- G. A Suspension Order shall not be required to stop the Work as permitted or required under any other provision of the Contract Documents.

**ARTICLE 15 - STATUS OF FORA CONSTRUCTION MANAGER**

- A. FORA Construction Manager is an agent of FORA with respect to the Work. Whenever a right to approve or make a determination or other right is reserved hereunder to FORA or its representative, it is understood that FORA may delegate the exercise of such right to FORA Construction Manager, FORA's representative or any other entity in writing, and Contractor shall be wholly protected in relying upon any action taken by such representative in the exercise of such right, unless Contractor is earlier notified in writing by FORA to the contrary. FORA may, at its option, issue instructions to Contractor through FORA Construction Manager or concurrently to both Contractor and FORA Construction Manager.
- B. Contractor acknowledges and agrees that any agreements between FORA Construction Manager are not intended for the benefit of Contractor or any Subcontractor and that Contractor, and any Subcontractor, is not a third party beneficiary of any such Agreements or the parties' performance thereunder. Contractor waives any right, claim, or cause of action Contractor may have as an alleged third-party beneficiary of any agreements between FORA Construction Manager.

**ARTICLE 16 - INSPECTION AND AUDIT**

16.01 RIGHT TO AUDIT.

- A. FORA from time to time during normal business hours and upon request shall have access to, and the right to inspect, copy and audit all Contractor's books, records, time cards, reports, contracts, correspondence, instructions, drawings, receipts, invoices, payments, waivers, vouchers, quotes, and memoranda relating to the Work at no cost to FORA.

- B. The Contractor shall keep accurate and complete accounting records. Upon no less than ten (10) days written notice, FORA may audit or use a reputable accounting firm to audit, the Contractor's records relating to its performance under this Agreement.
- C. Costs of any audits conducted under the authority of this right to audit and not addressed elsewhere will be borne by the Contractor. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Contractor's records shall be made within a reasonable amount of time (not to exceed 60 days) from the presentation of the FORA's findings to the contractor.
- D. Contractor shall preserve auditable records for a period of seven (7) years after the final payment hereunder.

16.02 FORA CONSTRUCTION MANAGER ACCESS.

- A. At all times, FORA Construction Manager shall have access to the Work for inspection thereof, but shall not be obligated to conduct any such inspection.
- B. Marina Coast Water District Representatives shall have access to the Work for inspection thereof, but shall not be obligated to conduct any such inspection.
- C. Contractor shall provide proper and safe facilities for such access and inspection.
- D. If any of the Work is required to be inspected or approved by any public authority, Contractor shall cause such inspection to be performed or approval to be obtained.

16.03 LENDER'S ACCESS.

- A. Contractor understands and acknowledges that any permanent or Construction Lenders, Granting Agencies, or Funding Agencies, for the Project may require periodic inspection and certification by an independent design professional or other representative designated and engaged by such lender, and certification by the Board of Fire Underwriters. Consequently, Contractor agrees to make the Work, wherever it is in progress, available at all reasonable times for inspection by any lender's design professional or other representative and shall coordinate with FORA's Representative to make the Work available at appropriate times for inspection by representatives of the Board of Fire Underwriters.

16.04 NO DEEMED WAIVER OR APPROVAL.

- A. No inspection performed or not performed by FORA hereunder shall be a waiver of any of Contractor's obligations hereunder or be construed as an approval or acceptance of the Work or any part thereof.

**ARTICLE 17 - CONFIDENTIALITY**

17.01 KEEP CONFIDENTIAL.

- A. Contractor shall treat all information relating to the Project and all information supplied to Contractor by FORA or FORA Construction Manager as confidential and proprietary information of FORA or FORA Construction Manager and shall not permit release of such information to other parties or make any public announcement or publicity releases without FORA's prior written authorization.

**ARTICLE 18 - PROJECT RECORD DOCUMENTS**

18.01 FINAL DOCUMENTS.

- A. Concurrently with the final Application for Payment, Contractor shall furnish FORA with final drawings showing the exact locations of all structures and water, sewer, gas and electric lines and mains and of all easements for such utilities then existing. At that time Contractor shall also furnish FORA with two complete

sets of Record Documents of as-built built conditions covering all the Work for review and approval. Record Documents shall be submitted in the Form of 6 hard copies, and 1 digital copy or in a form acceptable to FORA.

- B. Concurrently with the final Application for Payment, Contractor shall furnish FORA with all pertinent manifests, weight tickets, dump logs, and shipping information pertaining to the disposal of hazardous materials. Manifests and weight tickets shall be submitted in the form of 1 hard bound binder and 1 digital copy or in a form acceptable to FORA.
- C. Concurrently with the final Application for Payment, Contractor shall furnish FORA with copies of all materials receipts and warranties and submitted in the form of 1 hard bound binder and 1 digital copy or in a form acceptable to FORA.
- D. Final payment and payment of Retainer shall be contingent upon:
  - a. Engineer's approval of as-built record documents
  - b. Receipt of all submittals
  - c. CM approval of Work Completed
  - d. City Approval of Work Completed
  - e. MCWD approval of work completed

#### 18.02 FORA'S PROPERTY.

- A. All the Contract Documents, all permits, licenses and applications obtained in connection with the Work, and all manuals, drawings, specifications, computations, sketches, test data, survey results, models, photographs, renderings, plans, shop and proposal drawings, material specifications, as-built, red-line drawings, and other materials related to the Work and prepared by Contractor or any other person are the property of FORA. Upon FORA's request, and at no expense to FORA, copies of any and all such documents shall be delivered to FORA.
- B. As a condition to final payment, originals of all such permits, licenses and applications and copies of any or all such other materials shall be delivered to FORA upon final acceptance of the Work by FORA, or upon termination of the Agreement (and Contractor shall see that all such materials are obtained from Subcontractors, materialmen and suppliers and delivered to FORA).
- C. Such materials shall not be used by Contractor or any other person in any way connected with any other work.

### **ARTICLE 19 - CONSTRUCTION BY SEPARATE CONTRACTORS**

#### 19.01 SEPARATE CONTRACTORS.

- A. FORA may perform work on the Project Site, including work, which has been deleted from the Agreement by Change Order, with FORA's own forces or with separate contractors. Contractor shall cooperate fully with FORA's forces and separate contractors at the Project Site and coordinate the scheduling and performance of the Work with the scheduling and performance of the work to be performed by FORA's forces and separate contractors. Contractor shall afford FORA's forces and separate contractor's reasonable opportunity to bring in and store materials and equipment on the Project Site.



## ARTICLE 20 - DISPUTE RESOLUTION

### 20.01 CLAIMS

*This Section applies to and provides the exclusive procedures for any Claim arising from or related to the Agreement or performance of the Work.*

- A. Definition. "Claim" means a separate demand by Contractor, submitted in writing by registered or certified mail with return receipt requested, for change in the Contract Time, including a time extension or relief from Liquidated Damages, or a change in the Contract Sum, that has previously been submitted to FORA in accordance with the requirements of the Contract Documents, and which has been rejected or disputed by FORA, in whole or in part.
- B. Limitations. A Claim may only include the portion of a previously rejected demand that remains in dispute between Contractor and FORA. With the exception of any dispute regarding the amount of money actually paid to Contractor as Final Payment, Contractor is not entitled to submit a Claim demanding a change in the Contract Time or the Contract Sum, which has not previously been submitted to FORA in full compliance with Section 5 and Section 6, and subsequently rejected in whole or in part by FORA.
- C. Scope of Section. This Section is intended to provide the exclusive procedures for submission and resolution of Claims of any amount, and applies in addition to the provisions of Public Contract Code Section 9204 and Sections 20104 et seq., which are incorporated by reference herein.
- D. No Work Delay. Notwithstanding the submission of a Claim or any other dispute between the parties related to the Project or the Contract Documents, Contractor must perform the Work and may not delay or cease Work pending resolution of the Claim or other dispute, but must continue to diligently prosecute the performance and timely completion of the Work, including the Work pertaining to the Claim or other dispute.

### 20.02 CLAIMS SUBMISSION

- A. Substantiation. The Claim must be submitted to FORA in writing, clearly identified as a "Claim" submitted and must include all of the documents necessary to substantiate the Claim including the Change Order request that was rejected in whole or in part, and a copy of FORA's written rejection that is in dispute. The Claim must clearly identify and describe the dispute, including relevant references to applicable portions of the Contract Documents, and a chronology of relevant events. Any Claim for additional payment must include a complete, itemized breakdown of all labor, materials, taxes, insurance, and subcontract, or other costs. Substantiating documentation such as payroll records, receipts, invoices, or the like, must be submitted in support of each claimed cost. Any Claim for an extension of time or delay costs must be substantiated with a schedule analysis and narrative depicting and explaining claimed time impacts.
- B. Claim Format. A Claim must be submitted in the following format:
  - a. General introduction, specifically identifying the submission as a "Claim" submitted under this Section.
  - b. Relevant background information, including identification of the specific demand at issue, and the date of FORA's rejection of that demand.
  - c. Detailed explanation of the issue(s) in dispute. For multiple issues, separately number and identify each issue and include the following for each separate issue:
    - i. The background of the issue, including references to relevant provisions of the Contract Documents;



- ii. A succinct statement of the matter in dispute, including Contractor's position and the basis for that position;
  - iii. A chronology of relevant events;
  - iv. The identification and attachment of all supporting documents (see subsection (A), above, on Substantiation); and
  - v. Use of a separate page for each issue.
  - vi. Summary of issues and damages.
- d. The following certification, executed by Contractor's authorized representative:
- e. "The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Claim are true and correct. Contractor warrants that this Claim is comprehensive and complete as to the matters in dispute, and agrees that any costs, expenses, or delay claim not included herein are deemed waived. Contractor understands that submission of a Claim which has no basis in fact or which Contractor knows to be false may violate the False Claims Act (Government Code Section 12650 et seq.)."

C. Submission Deadlines.

- a. A Claim must be submitted within 12 calendar days following the date that FORA notified Contractor in writing that a request for a change in the Contract Time or Contract Sum has been rejected in whole or in part.
- b. With the exception of any dispute regarding the amount of Final Payment, any Claim must be filed on or before the date of Final Payment, or will be deemed waived.
- c. A Claim disputing the amount of Final Payment must be submitted within 15 days of the effective date of Final Payment.
- d. Strict compliance with these Claim submission deadlines is necessary to ensure that any dispute may be mitigated as soon as possible, and to facilitate cost-efficient administration of the Project. Any Claim that is not submitted within the specified deadlines will be deemed waived by Contractor.

20.03 FORA RESPONSE

- A. FORA will respond within 35 days of receipt of the Claim with a written statement identifying which portion(s) of the Claim are disputed, unless the 35-day period is extended by mutual agreement of FORA and Contractor or as otherwise allowed under Public Contract Code Section 9204. However, if FORA determines that the Claim is not adequately documented, FORA may first request in writing, within 21 days of receipt of the Claim, any additional documentation supporting the Claim or relating to defenses to the Claim that FORA may have against the Claim.
- B. Additional Information. If additional information is thereafter required, it may be requested and provided upon mutual agreement of FORA and Contractor.
- C. Non-Waiver. Any failure by FORA to respond within the times specified above may not be construed as acceptance of the Claim in whole or in part, or as a waiver of any provision of these Contract Documents.

20.04 MEET AND CONFER

- A. If Contractor disputes FORA's written response, or FORA fails to respond within the specified time, within 15 days of receipt of FORA's response, or within 15 days of FORA's failure to respond within the applicable 30-day time period, Contractor may notify FORA of the dispute in writing sent by registered or certified mail, return receipt requested, and demand an informal conference to meet and confer for settlement of the issues in dispute. If Contractor fails to dispute FORA's response in writing within the specified time, Contractor's Claim will be deemed waived.
- B. Schedule Meet and Confer. Upon receipt of the demand to meet and confer, FORA will schedule the meet and confer conference to be held within 30 days, or later if needed to ensure the mutual availability of each of the individuals that each party requires to represent its interests at the meet and confer conference.
- C. Location for Meet and Confer. The meet and confer conference will be scheduled at a location at or near FORA's principal office.
- D. Written Statement After Meet and Confer. Within ten working days after the meet and confer has concluded, FORA will issue a written statement identifying which portion(s) of the Claim remain in dispute, if any.
- E. Submission to Mediation. If the Claim or any portion remains in dispute following the meet and confer conference, within ten working days after FORA issues the written statement identifying any portion(s) of the Claim remaining in dispute, Contractor may identify in writing disputed portion(s) of the Claim, which will be submitted for mediation, as set forth below.

20.05 MEDIATION AND GOVERNMENT CODE CLAIMS.

- D. Mediation. Within ten working days after FORA issues the written statement identifying any portion(s) of the Claim remaining in dispute following the meet and confer, FORA and Contractor will mutually agree to a mediator, as provided under Public Contract Code section 9204. Mediation will be scheduled to ensure the mutual availability of the selected mediator and all of the individuals that each party requires to represent its interests. If there are multiple Claims in dispute, the parties may agree to schedule the mediation to address all outstanding Claims at the same time. The parties will share the costs of mediation equally, except costs incurred by each party for its representation by legal counsel or any other consultants.
- E. Government Code Claims.
  - a. Timely presentment of a Government Code Claim is a condition precedent to filing any legal action based on or arising from the Agreement.
  - b. The time for filing a Government Code Claim will be tolled from the time Contractor submits its written Claim until the time that Claim is denied in whole or in part at the conclusion of the meet and confer process, including any period of time used by the meet and confer process. However, if the Claim is submitted to mediation, the time for filing a Government Code Claim will be tolled until conclusion of the mediation, including any continuations, if the Claim is not fully resolved by mutual agreement of the parties during the mediation or any continuation of the mediation.

20.06 TORT CLAIMS.

- A. This Section does not apply to tort claims and nothing in this Section is intended nor will be construed to change the time periods for filing tort-based Government Code Claims.

20.07 ARBITRATION.

- A. It is expressly agreed, under California Code of Civil Procedure section 1296, that in any arbitration to resolve a dispute relating to this Agreement, the arbitrator's award must be supported by law and substantial evidence.

20.08 DAMAGES.

- A. Contractor bears the burden of proving entitlement to and the amount of any claimed damages. Contractor is not entitled to damages calculated on a total cost basis, but must prove actual damages. Contractor is not entitled to consequential damages, including home office overhead or any form of overhead not directly incurred at the Project Site; lost profits; loss of productivity; lost opportunity to work on other projects; diminished bonding capacity; increased cost of financing for the Project; extended capital costs; non-availability of labor, material or equipment due to delays; or any other indirect loss arising from the Agreement. The Eichleay Formula or similar formula may not be used for any recovery under the Agreement.

20.09 OTHER DISPUTES.

- A. The procedures in this Section will apply to any and all disputes or legal actions, in addition to Claims, arising from or related to this Agreement, unless and only to the extent that compliance with a procedural requirement is expressly and specifically waived by FORA.

**ARTICLE 21 - GENERAL PROVISIONS**

21.01 ASSIGNMENT.

- B. Contractor shall not assign this Agreement, nor shall Contractor assign any monies due or to become due to Contractor hereunder, without the prior written consent of FORA, which consent may be withheld at the absolute discretion of FORA. Any purported assignment or delegation without the required consent shall be null and void and of no force or effect.
- C. The parties understand and agree that FORA may assign its interest in this Agreement to an affiliate or successor in interest of FORA and effective upon such assignment, all references to "FORA" herein shall refer to such affiliate or successor.
- D. In addition, Contractor hereby consents to the assignment of FORA's interest hereunder by FORA to any applicable construction lender/grantor in connection with the funding of any construction loan/grant for the Project.

21.02 NOTICES.

- A. All notices required or permitted hereunder shall be in writing and shall be personally delivered, delivered by commercial courier or sent by certified or registered United States mail, postage prepaid, return receipt requested, and addressed to the parties at the addresses specified on the signature page to this Agreement.
- B. Notices not requiring enclosures, not costing over \$500 or increasing the project schedule may also be delivered by email, provided that such notices are confirmed received by 5:00 p.m.; if any such notice is received after 5:00 p.m., it shall be deemed received the next business day.
- C. Either party may change its address from time to time by written notice to the other party given as provided herein.
- D. Such notices shall be effective upon personal delivery to the addressee or upon the date of receipt as indicated on the return receipt, if sent by registered or certified U.S. mail.

21.03 COMPLETE AGREEMENT.

- A. This Agreement, including Exhibits hereto, and the other Contract Documents represent the full and complete understanding of the parties and supersede any previous agreements, representations or understandings, oral or written, with respect to the subject matter hereof.

- B. The Contract Documents may be modified or altered only by a Change Order issued pursuant to Article 5 or other written instrument signed by the parties.

21.04 SUCCESSORS.

- A. This Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of FORA and the successors and assigns of Contractor. Notwithstanding the foregoing, if Contractor is a sole proprietor, Contractor's death shall automatically terminate this Agreement.
- B. Governing Law. The Contract Documents shall be governed by and construed in accordance with the laws of the State of California.

21.05 BONDS.

- A. Contractor, as part of the Contract Sum, shall provide, and must submit to, FORA with the bid surety, payment, and performance bonds, in forms satisfactory to FORA per Exhibit L, and in amounts equal to one hundred percent (100%) of the Contract Sum plus the aggregate additive dollar amount of all approved Changed Orders, from a surety acceptable to FORA per Exhibit L.

21.06 CONTRACTOR'S NOTICE.

- A. The following notice is included in the Contract Documents as required by California law: "Contractors are required by law to be licensed and regulated by Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act of omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractor's State License Board, and P. O. Box 26000, Sacramento, California 95826."

21.07 ATTORNEYS' FEES.

- B. In any proceeding is brought by one party hereto against the other to enforce or interpret the terms of the Contract Documents, or to resolve any dispute concerning the performance or conduct of services provided or to be provided under the Contract Documents, the party prevailing in such proceeding shall be entitled to an award of the reasonable fees and disbursements of its attorneys in addition to such other relief as the court may grant. The prevailing party shall be determined by the court or arbitrator, as applicable, based upon an assessment as to which party's major arguments or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's or arbitrator's decision.

21.08 NO WAIVER.

- A. No failure to exercise, and no delay in exercising, any right, power or remedy hereunder shall impair any right, power or remedy that any party hereto may have, nor shall such failure or delay be construed to be a waiver of any of such rights, powers or remedies, or an acquiescence in any breach or default hereunder, nor shall any waiver of any breach or default of any party hereto be deemed a waiver of any default or breach subsequently occurring.

21.09 SEPARABILITY OF PROVISIONS.

- A. In case any one or more of the provisions contained herein should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

21.10 REPRESENTATIVES.

- A. Contractor's Representative shall be designated in writing to FORA and shall have full authority to execute any and all instruments requiring Contractor's signature and to act on behalf of Contractor with respect to all matters arising out of this Agreement. Contractor's representative shall be the person specified on Exhibit E unless and until Contractor notifies FORA in writing that some other person shall be Contractor's representative and FORA approves such replacement person.

21.11 EQUAL OPPORTUNITY.

- A. No Discrimination/Harassment. During the performance of the Contract Documents, Contractor shall not discriminate against or harass any employee or applicant for employment because of sex, race, creed, color, national origin, age, ancestry, religion, marital status or handicap. Contractor shall provide equal opportunity to ensure that applicants are employed and treated during employment without regard to their sex, race, creed, color, national origin, age, ancestry, religion, marital status or handicap. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay, or other forms of compensation; and selection for training, including apprenticeship. Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this Section 21.11(A).
- B. Job Solicitations. Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants shall receive consideration for employment without regard to sex, race, creed, color, national origin, age, ancestry, religion, marital status or handicap.
- C. Selection of Subcontractors. Contractor shall not discriminate in the selection of Subcontractors or suppliers because of sex, race, creed, color, national origin, age, ancestry, religion, marital status or handicap.
- D. Compliance with Applicable Laws. Contractor shall be solely responsible for complying with all local, state, or federal regulations, laws, guidelines, or policies regarding non-discrimination and equal opportunity, which are applicable to the Work.

21.12 FORA'S ADDITIONAL COSTS.

- A. Unless otherwise agreed in writing, FORA, at its own expense, shall furnish all testing and inspection (unless related to claimed unsatisfactory performance of Work or defective Work, which if sustained, shall be paid by Contractor), civil and soil engineering tests, and rights-of-way and easements for permanent structures or permanent changes in existing facilities.

21.13 HEADINGS.

- E. Captions and headings used in this Agreement are for the purpose of convenience only and shall not be construed to limit or extend the meaning of any part of this Agreement.

21.14 LIQUIDATED DAMAGES.

- A. FORA and Contractor recognize that time is of the essence of this Agreement and that FORA will suffer financial loss in the form of lost revenues and contract administration expenses (including project management and consultant's expenses), delay and loss of public use if Work is not completed by the Scheduled Date for Substantial Completion plus any extensions thereof allowed in accordance with the Contract Documents.
- B. Contractor and FORA agree that because of the nature of the Project, it would be impractical or extremely difficult to fix the amount of actual damages incurred by FORA because of a delay in completion of the Work. Contractor and FORA also recognize the delays, expense and difficulties involved in calculation and proof of the actual loss suffered by FORA if Work is not completed on time.

- C. Accordingly, instead of requiring such proof, FORA and Contractor agree that as liquidated damages for delay and as their reasonable estimate of the damage caused by such delay, Contractor shall pay FORA **\$5,000 per calendar day** that expires after the time specified in the Construction Schedule for each milestone listed therein, including the Scheduled Date for Substantial Completion, until the Work is finally complete, which measure of liquidated damages shall be presumed to be the damages suffered by FORA resulting from delay in completion of the Work. Liquidated damages shall be cumulative for each milestone that is missed.
- a. Setoff. FORA is entitled to deduct the amount of Liquidated Damages assessed against any payments otherwise due to Contractor, including unreleased retention. If there are insufficient unexpended funds remaining in the Contract Sum to cover the full amount of liquidated damages assessed, FORA is entitled to recover the balance from Contractor or its performance bond surety.
  - b. Other Remedies. FORA's right to Liquidated Damages under this Section applies only to damages arising from Contractor's Non-Excusable Delay or failure to complete the Work within the Contract Time. FORA retains its right to pursue all other remedies under the Agreement for other types of damage, including damage to property or persons, or for defective materials or workmanship.
  - c. Occupancy or Use. Occupancy or use of the Project in whole or in part prior to Final Completion does not constitute FORA's acceptance of the Project and will not operate as a waiver of FORA's right to assess Liquidated Damages for Contractor's Non-Excusable Delay in achieving Final Completion.
- D. Liquidated damages for delay shall only cover damages suffered by FORA as a result of delay.
- E. Liquidated damages shall not cover the cost of completion of the Work, attorneys' fees, damages resulting from defective work, damages suffered by others who then seek to recover their damages from the City or FORA (for example, delay claims of other contractors, Subcontractors, third-party developers or tenants) or defense costs thereof.

## ARTICLE 22 - SPECIAL PROVISIONS

### 22.01 PERMITS

- A. Contractor shall submit to FORA all permits necessary to perform the Work in streets, highways, railways or other rights-of-way prior to the issuance of the NTP. The Contractor shall obtain and pay for all costs incurred for permits, approvals and permissions necessitated by its operations such as, but not limited to, those permits required for water use, night work, demolition, and disposal. The Contractor shall pay all business taxes or license fees that are required for the Work.

### 22.02 RIGHT-OF-WAY.

- A. Rights-of-way, easements, or rights-of-entry for the Work will be provided by the Agency. Unless otherwise specified, the Contractor shall make arrangements, pay for, and assume all responsibility for acquiring, using, and disposing of additional work areas and facilities temporarily required. The Contractor shall indemnify and hold the Agency harmless from all claims for damages caused by such actions.

### 22.03 COOPERATION AND COLLATERAL WORK.

- A. The Contractor shall be responsible for ascertaining the nature and extent of any simultaneous, collateral, and essential work by others. The Agency, its workers and contractors and others, shall have the right to operate within or adjacent to the Work site during the performance of such work.
- B. The Agency, the Contractor, and each of such workers, contractors and others, shall coordinate their operations and cooperate to minimize interference.

- C. The Contractor shall include in its Bid all costs involved as a result of coordinating its work with others. The Contractor will not be entitled to additional compensation from the Agency for damages resulting from such simultaneous, collateral, and essential work. If necessary, to avoid or minimize such damage or delay, the Contractor shall redeploy its work force to other parts of the Work.
- D. Should the Contractor be delayed by the Agency, and such delay could not have been reasonably foreseen or prevented by the Contractor, the Engineer will determine the extent of the delay, the effect on the Work, and any extension of time.

22.04 THE CONTRACTOR'S EQUIPMENT AND FACILITIES.

- A. General. The Contractor shall furnish and maintain in good condition all equipment and facilities as required for the proper execution and inspection of the Work. The Contractor shall provide and maintain enclosed toilets for the use of employees engaged in the Work. These accommodations shall be maintained in a neat and sanitary condition, and regularly pumped out.
- B. Temporary Utility Services. The Contractor shall, at its own expense, make all arrangements necessary for the provision of temporary utility services necessary for its own use during performance of the Work. The Contractor shall not draw water from any fire hydrant (except to extinguish a fire), without obtaining permission from the water utility owner.
- C. Crushing and Screening Operations. Unless otherwise specified in the Special Provisions, the establishment and operation of portable screens and crushers will not be allowed on or adjacent to the Work site.

Haul Routes. Contractor shall submit Haul routes for vehicle movement on and off-site. Unless otherwise specified in the Special Provisions, haul routes shall be determined by the Contractor.

22.05 PROTECTION AND RESTORATION

- A. Contractor shall be responsible for the protection of public and private property adjacent to the Work and shall exercise due caution to avoid damage to such property.
- B. The Contractor shall repair or replace all existing improvements within the right-of-way which are not designated for removal (e.g., curbs, sidewalks, driveways, fences, walls, signs, utility installations, pavement, structures, etc.) which are damaged or removed as a result of its operations. Repairs and replacements shall be at least equal to existing improvements and shall match them in finish and dimension.
- C. The Contractor shall give reasonable notice as to the start of work, and nature of work, to occupants or owners of adjacent property.

22.06 TRAFFIC CONTROL

- A. Contractor shall be responsible for all Temporary Traffic Control per the Specifications and per California Manual on Uniform Traffic Control Devices (California MUTCD). If a discrepancy occurs between the contract plans and specifications and the California MUTCD, the plans and specifications govern. Flaggers shall follow procedures for directing motorists in accordance with California Code of Regulations, Title 9, Section 1599, "Flaggers," and Chapter 6E, "Flagger Control" of the California MUTCD.
- B. The Contractor must submit a Traffic Control Plan (TCP) within ten (10) calendar days of contract approval for FORA review and approval, and prior to the NTP. which should include, but not be limited to:
  - a. The control zones.
  - b. The type and location of construction area signs for the entire project, and for each stage of the project. The Contractor shall not mix different types of TTCD on the same alignment

- c. The methods and equipment the contractor will use for closing lanes, ramps, and roadways, and for flagging and controlling one-way traffic.
  - d. The plan for handling emergency vehicles in the control zones.
  - e. Verification that Temporary Traffic Control Devices (TTCD) conform to the ATSSA Quality Guidelines for Temporary Traffic Control Devices and Features. The Contractor shall maintain all traffic control devices in good working order throughout the project's life at contractors expense.
- C. Contractor shall implement the TCP prior to the start of work.
- D. Contractor shall make field adjustments to the traffic handling plan at no cost to FORA.

22.07 LOADING.

- A. Vehicle Code. Pursuant to the authority contained in Vehicle Code Section 591, the Department has determined that within those areas that are within the limits of the project and are open to public traffic, the Contractor shall comply with all the requirements set forth in Divisions 11, 12, 13, 14 and 15 of the Vehicle Code.

Attention is directed to the statement in Vehicle Code Section 591 that this section shall not relieve the Contractor or any person from the duty of exercising due care. The Contractor shall take all necessary precautions for safe operation of the Contractor's equipment and the protection of the public from injury and damage from the Contractor's Equipment.

- B. Unless expressly permitted in the special provisions, construction equipment or vehicles of any kind which, laden or unladen, exceed the maximum weight limitations set forth in Division 15 of the Vehicle Code, shall not be operated over completed or existing treated bases, surfacing, pavement or structures in any areas within the limits of the project, whether or not the area is subject to weight limitations under the "Vehicle Code," except as hereinafter provided in this Section.
- C. After application of the curing seal, no traffic or Contractor's equipment will be permitted on cement treated base or lean concrete base for a period of 72 hours. After 72 hours, traffic and equipment operated on the base shall be limited to that used in paving operations and placing additional layers of cement treated base. No traffic or Contractor's equipment will be permitted on treated permeable base except for that equipment required to place the permeable base and the subsequent layer of pavement. Trucks used to haul treated base, Portland cement concrete, or asphalt concrete shall enter onto the base to dump at the nearest practical entry point ahead of spreading equipment. Empty haul trucks shall exit from the base at the nearest practical exit point. Entry and exit points shall not be more than 1,000 feet ahead of spreading equipment except in locations where specifications prohibit operation of trucks outside the area occupied by the base or where steep slopes or other conditions preclude safe operation of hauling equipment. In those locations, entry and exit points shall be established at the nearest point ahead of spreading equipment permitted by specifications and allowing safe operation of hauling equipment. Damage to curing seal or base shall be repaired promptly by the Contractor, at the Contractor's expense, as directed by the Engineer.
- D. Within the limits of the project and subject to the control of FORA, and provided that the Contractor, at the Contractor's expense, shall provide such protective measures as are deemed necessary by the FORA, or its representatives, and shall repair any damage caused by the operations, the Contractor will be permitted to:
- a. Make transverse crossings of those portions of an existing public road or street that are within the highway right of way, with construction equipment which exceeds the size or weight limitations set forth in Division 15 of the Vehicle Code.
  - b. Make transverse crossings of treated bases, surfacing or pavement which are under construction or which have been completed, with construction equipment which exceeds the size or weight limitations set forth in Division 15 of the Vehicle Code.



**Sample Construction Agreement No. FC-\_\_\_\_\_**

- c. Cross bridge structures that are not open to public traffic and which are designed for HS20-44 Live Loading (culverts and pipes excluded), with construction equipment which exceeds the size or weight limitations set forth in Division 15 of the Vehicle Code, but not exceeding the load limitations hereinafter specified, provided that the Contractor furnishes to the Engineer the dimensions and maximum axle loadings of equipment proposed for use on bridge structures.
  - d. Move equipment within the limits of the project over completed or existing base, surfacing, pavement and structures, whether or not open to the public, in accordance with the limitations and conditions in the "Permit Policy" of the Department of Transportation.
- E. Within the limits of the project and subject to the condition that the Contractor shall repair, at the Contractor's expense, any damage caused thereby, the Contractor will be permitted to cross culverts and pipes with construction equipment which exceeds the size or weight limitations set forth in Division 15 of the Vehicle Code in accordance with the conditions set forth on the plans. If the conditions are not set forth on the plans, the provisions in the first paragraph in this Section 3.07-B will apply.

22.08 FENCING.

- A. Contractor must submit a fencing plan within ten (10) calendar days of contract approval identifying the location and type of fence for FORA review and approval prior to an NTP.
- B. In addition to any fencing shown or specified elsewhere in the Contract Documents, Contractor shall provide temporary fencing and gates around the work area and any lay down or storage area provided by FORA.
- C. Such fencing shall be of the temporary chain link type nominally six (6) feet in height with 'green screens' and locking gates. Such fencing shall be provided with reflectors, flashers, warning signs, danglers and/or barricades, both during construction and after completion until removal, as required by FORA. Contractor shall, on a daily basis, inspect, maintain, and repair, if necessary, all fencing erected by it at no cost to FORA.
- D. If approved to work at night by FORA, Contractor shall provide night lighting to the Project Site and immediate adjacent walkways.
- E. Contractor shall provide FORA with the combination code to all locks used to secure site.

22.09 REMOVAL

- A. Material removed shall be disposed of outside of the Work area per the appropriate federal and state requirements. The Work area shall be left with a neat and finished appearance.

22.10 CONCRETE AND MASONRY IMPROVEMENTS.

- A. Concrete Pavement. Concrete pavement, which has not been overlaid with asphalt concrete, shall be removed to neatly sawed edges. Saw cuts shall be made to a minimum depth of 1-1/2 inches (37.5 mm). If a saw cut falls within 3 feet (1 m) of a construction joint, cold joint, expansion joint, or edge, the concrete shall be removed to the joint or edge. The edges of existing concrete pavement adjacent to trenches, where damaged subsequent to saw cutting of the pavement, shall again be saw cut to neat, straight lines for the purpose of removing the damaged pavement areas. Such saw cuts shall be either parallel to the original saw cuts or shall be cut on an angle that departs from the original saw cut not more than 1 inch (25 mm) in each 6 inches (150 mm).
- B. Concrete Curb, Walk, Gutters, Cross Gutters, Curb Ramps, Driveway, and Alley Intersections. Concrete shall be removed to neatly sawed edges with saw cuts made through the entire thickness. Concrete sidewalk or driveway to be removed shall be neatly sawed in straight lines either parallel to the curb or at right angles to the alignment of the sidewalk. No section to be replaced shall be smaller than 30 inches (750 mm) in either length or width. If the saw cut in sidewalk or driveway would fall within 30 inches (750 mm) of a construction

joint, expansion joint, or edge, the concrete shall be removed to the joint or edge, except that where the saw cut would fall within 12 inches (300 mm) of a score mark, the saw cut shall be made in and along the score mark. Curb and gutter shall be sawed on a neat line at right angles to the curb face.

#### 22.11 UTILITIES

- A. Location. Known utilities and their respective owners are shown on the Plans or specified in the Special Provisions. Where underground utilities are shown on the Plans, the Contractor shall assume every property parcel will be served by a service connection for each type of utility.
- a. Pursuant to Section 4216 of the Government Code, the Contractor shall contact the appropriate regional notification center and obtain an inquiry identification number at least 2 Working Days, but not more than 14 Days prior to commencing any excavation required for the Work. Caltrans and certain other agencies are not required to become a member of a regional notification center. The Contractor shall contact non-member agencies directly and request they locate and mark their subsurface installations. Pursuant to Section 4216.2, when any proposed excavation is within 10 feet of a "high priority subsurface installation" the Contractor shall coordinate with the operator.
  - b. Before starting the Work, the Contractor shall physically locate subsurface installations within 36 inches of all side of excavations required for the Work. The Contractor shall determine the horizontal and vertical location, alignment, depth, material type, and size of each subsurface installation. Excavation shall be performed pursuant to Section 4216.4. The Contractor shall provide the subsurface installation location data to the Engineer within 24 hours.
  - c. The Contractor shall notify the Engineer in writing immediately after identifying potential physical conflicts between existing subsurface installations and the Work. The written notification shall include;
    - i. date of locating,
    - ii. method of locating,
    - iii. type, size, and material of subsurface installation,
    - iv. horizontal location,
    - v. elevation (or depth from existing pavement or ground surface) of the top and bottom of the subsurface installation, and
    - vi. presumed owner.
  - d. The Contractor shall complete excavation, backfill, and placement of temporary resurfacing on the same Day. Backfill shall conform to Greenbook Section 306-12 Temporary resurfacing shall conform to Greenbook Section 306-13.1. Permanent resurfacing shall be placed within 10 Working Days unless otherwise specified in the Special Provisions or directed by the Engineer. Permanent resurfacing shall conform to 306-13.2.
- B. Protection. The Contractor shall not interrupt the service function or disturb the support of any utility without authority from the utility owner or direction from the Engineer. Valves, switches, vaults, and meters shall be maintained readily accessible for emergency shutoff.
- a. Where protection is required to ensure support of utilities located as shown on the Plans or in accordance with the Contract Documents the Contractor shall, unless otherwise specified, furnish and place the necessary protection at its expense.
  - b. Upon learning of the existence and location of any utility omitted from or shown incorrectly on the Plans, the Contractor shall immediately notify the Engineer in writing. When authorized by the Engineer, support or protection of the utility will be paid for as provided in the Contract.
  - c. The Contractor shall immediately notify the Engineer and the utility owner if any utility is disturbed or damaged. The Contractor shall bear the costs of repair or replacement of any utility damaged if located in accordance with 8.0.

- d. When placing concrete around or contiguous to any non-metallic utility installation, the Contractor shall at its expense:
    - i. Furnish and install a 2-inch (50 mm) cushion of expansion joint material or other similar resilient material; or
    - ii. Provide a sleeve or other opening which will result in a 2-inch (50 mm) minimum-clear annular space between the concrete and the utility; or
    - iii. Provide other acceptable means to prevent embedment in or bonding to the concrete.
  - e. Where concrete is used for backfill or for structures which would result in embedment, or partial embedment, of a metallic utility installation; or where the coating, bedding or other cathodic protection system is exposed or damaged by the Contractor's operations, the Contractor shall notify the Engineer and arrange to secure the advice of the affected utility owner regarding the procedures required to maintain or restore the integrity of the system.
- C. Removal. Unless otherwise specified, the Contractor shall remove all interfering portions of utilities shown on the Plans as "abandoned" or "to be abandoned in place". Before starting removal operations, the Contractor shall ascertain from the Agency whether the abandonment is complete, and the costs involved in the removal and disposal shall be included in the Bid for the items of work necessitating such removals.
- D. Relocation. When feasible, the owners responsible for utilities within the area affected by the Work will complete their necessary installations, relocations, repairs, or replacements before commencement of the Work by the Contractor. When the Plans or Special Provisions indicate that a utility installation is to be relocated, altered, or constructed by others, the Agency will conduct all negotiations with the owners and utility work will be done at no cost to the Contractor, except as otherwise specified in 403-1. Utilities which are relocated in order to avoid interference shall be protected in their position and the cost of such protection shall be included in the Bid for the items of work necessitating such relocation.
- a. After award of the Contract, portions of utilities which are found to interfere with the Work will be relocated, altered or reconstructed by the utility owners, or the Engineer may order changes in the Work to avoid interference. Such changes will be paid for in accordance with 7-3 or 7-4.
  - b. When the Plans or Special Provisions provide for the Contractor to alter, relocate, or reconstruct a utility, all costs for such work shall be included in the Bid for the items of work necessitating such work. Temporary or permanent relocation or alteration of utilities requested by the Contractor for its convenience shall be its responsibility and it shall make all arrangements and bear all costs.
  - c. The utility owner will relocate service connections as necessary within the limits of the Work or within temporary construction or slope easements. When directed by the Engineer, the Contractor shall arrange for the relocation of service connections as necessary between the meter and property line, or between a meter and the limits of temporary construction or slope easements. Payment for the relocation of such service connections shall be in accordance with 7-3 or 7-4. Payment will include the restoration of all existing improvements which may be affected thereby. The Contractor may agree with the owner of any utility to disconnect and reconnect interfering service connections. The Agency will not be involved in any such agreement.
- E. Delays due to utility conflicts. The Contractor shall notify the Engineer of its construction schedule insofar as it affects the protection, removal, or relocation of utilities. Said notification shall be included as a part of the construction schedule in accordance with 6-1. The Contractor shall notify the Engineer in writing of any subsequent changes in the construction schedule which will affect the time available for protection, removal, or relocation of utilities.
- a. The Contractor will not be entitled to damages or additional payment for delays attributable to utility relocations or alterations if correctly located, noted, and completed in accordance with 402-1.

- b. The Contractor may be given an extension of time for unforeseen delays attributable to unreasonably protracted interference by utilities in performing work correctly shown on the Plans.
  - c. The Agency will assume responsibility for the timely removal or relocation of existing main or trunk line utility facilities within the area affected by the Work if such utilities are not identified in the Contract Documents. The Contractor will not be assessed liquidated damages for any delay caused by failure of the Agency to provide for the timely removal, relocation, or protection of such existing facilities.
  - d. If the Contractor sustains loss due to delays attributable to interferences, relocations, or alterations not covered by 402-1, which could not have been avoided by the judicious handling of forces, equipment, or plant, there shall be paid to the Contractor such amount as the Engineer may find to be fair and reasonable compensation for such part of the Contractor's actual loss as was unavoidable and the Contractor may be granted an extension of time.
- F. Cooperation. When necessary, the Contractor shall so conduct its operations as to permit access to the Work site and provide time for utility work to be accomplished during the progress of the Work.

22.12 COOPERATION AND COMPLIANCE.

- A. Contractor agrees to cooperate with FORA in complying with the payment and other procedures of any grantor relating to the Project and provide all documents, reports, and other information requested by FORA, the construction lender or any escrow or title insurer of FORA.

22.13 FORA'S ADDITIONAL TERMINATION RIGHTS.

- A. It is expressly understood and agreed that, in addition to FORA's termination rights pursuant to Article 14 of this Agreement, FORA shall be entitled to terminate this Agreement by written notice to Contractor if, for any reason whatsoever, the proposed construction financing for the Project is no longer available or fails to be available within such period of time as determined by FORA in its sole discretion.
- B. If this Agreement shall be terminated by FORA as provided in this Section, FORA shall reimburse Contractor for all Costs of Work theretofore incurred and shall pay to Contractor that portion of Contractor's Fee payable as of the date of such termination.