ARTICLE 2. BID REQUIREMENTS AND CONDITIONS

Section 2.01. Bid Form.

The City will furnish to each prospective Bidder a bid form which, when properly completed and executed, must be submitted as the Bidder's Bid for the Work. All Bids must be submitted on the City-furnished bid form to be valid and accepted. Bids that are not submitted on the City-furnished bid form will be rejected. The completed bid form shall be in English and legible, and shall be properly signed in longhand; by the Bidder, if an individual, by a member of a partnership, by an officer of a corporation authorized to sign contracts on behalf of the corporation, or by an agent of the Bidder. If submitted by a corporation, the Bid shall show the name of the state under the laws of which the corporation is chartered or organized.

All spaces provided on the bid form shall be filled in. If any space provided is not utilized by the Bidder, that space shall be filled in with the notation “NA” (Not Applicable).

The bid form shall be filled in by typewriter or manually printed in ink.

Bidders shall not make unsolicited notations or statements on the bid form. Alteration of the bid form is not permitted and will result in the Bid being considered non-responsive. All changes to and erasures or crossing out of the Bidder’s entries shall be initialed by the signer of the bid form.

The Bid shall be made on the bid form in clearly legible figures as follows:

A. Unit Price Bid.

Where the bid for an item of work is to be submitted on a unit price basis, the Bidder shall bid a unit price as total compensation for completion of one unit of the work described under that item. This price shall be multiplied by the Estimated Quantity included in the bid form to derive a total bid price for that item. In the case of a discrepancy between the total bid price for an item of work and the unit price for that item of work, the unit price will control. The total amount bid for a unit price contract shall be entered on the space provided on the bid form as a grand total of all individual items. In the case of a discrepancy between the total amount bid for the contract and the actual sum of the bid price for all of the individual items of work, the actual sum will control. The Estimated Quantities included on the bid form are approximate and are only included in the bid form as a basis for comparison of Bids. The City does not, expressly or by implication, represent or agree that the actual amount of work will equal the approximate Estimated Quantities. Payment will be made for the actual quantity of Work performed in accordance with the Contract, at the unit price stated in the bid form. The City reserves the right to increase or decrease the amount of any class or portion of the Work, or to omit portions of the Work, as may be deemed necessary or advisable in the sole discretion of the City. For compensation for alterations in quantities of work, including deviations greater than twenty-five percent (25%), see Section 9.04B, “Pricing of Changes – Unit Prices”, of these General Provisions.

B. Lump Sum Bid.

Where the bid for an item of work is to be submitted on a "Lump Sum" or "Job" basis, a single lump-sum price shall be submitted in the appropriate place on the bid form. Items bid on a lump-sum basis shall result in a complete structure, operating plant, or system, in satisfactory working condition with respect to the functional purposes of the installation, as described in the Contract, and no extra compensation will be paid for anything omitted but fairly implied.

C. Allowances.
Where specific allowance items have been entered on the bid form by the City, the total amount entered on the bid form shall be included in the Total Bid Price. However, the total amount to be paid for the Work included in the Allowance shall be the amount of the Allowance actually utilized in the course of completing the Work.

D. Alternates.
Alternate bids are sums which may be added to or deleted from the base bid amount for the performance of alternate work, as delineated in the Notice to Contractors. All requested Alternates shall be bid, or the Bid shall be considered incomplete.

See also Article 3, Section 3.01 regarding resolution of discrepancies in amount of bid items.

Section 2.02. Preparation and Submission of Bids.
By submission of a Bid, the Bidder acknowledges acceptance of the nature and location of the Work, the general and local conditions, conditions of the Site, the character, quality and scope of work to be performed, the availability of labor, electric power, water, the kind of surface and subsurface materials on the site, the materials and equipment to be furnished, and all requirements of the Contract or other matters which may affect the Work or the cost. Any failure of a Bidder to become acquainted with all of the available information concerning conditions will not relieve the Bidder from the responsibility for observing and considering those conditions that a contractor would have observed and considered during a site visit, estimating properly the difficulties or cost of the Work, or proceeding to perform the Work without additional cost to the City. Further, on the basis of the above information and any further examinations, investigations and studies that the Bidder has made in connection with the Work, the Bidder represents and agrees, by submission of a Bid, that the Plans, Specifications and reports are adequate to the best of the Bidder's knowledge and that the Work can be performed in strict accordance with the terms of the Contract Documents.

The Bidder declares by the submission of a Bid that the Bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the Bid is genuine and not collusive or a sham; that the Bidder has not directly or indirectly induced or solicited any other Bidder to put in a false or sham Bid, and has not directly or indirectly colluded or agreed with any Bidder or anyone else to put in a sham Bid or to refrain from bidding; that the Bidder has not directly or indirectly sought by agreement, communication, or conference with anyone to fix the Bid price or the Bid price of any other Bidder, or to fix any overhead, profit, or cost element of such Bid price or that of any other Bidder, or to secure any advantage against the City, anyone interested in the Bid as principal, or those named within the Bid; that all statements contained in the Bid are true; that the Bidder has

not directly or indirectly submitted a Bid price or any breakdown thereof or the contents thereof, or divulged information or data relative thereto, to any other person, partnership, corporation or association, except to person or persons as have a direct financial interest in the Bidder's general business.

Bid prices shall include everything necessary for the completion of the Work and fulfillment of the Contract, including but not limited to furnishing all materials, equipment, tools, excavation sheeting, bracing and supports, plant, labor and services, except as may be provided otherwise in the Contract. Bid prices shall include all Federal, State, and local taxes, and all other fees and costs not expressly paid for by the City as stated in the Special Provisions.

The Bid shall be submitted in a sealed envelope as directed in the Notice to Contractors. The Bidder shall plainly mark the exterior of the envelope in which the Bid is submitted to indicate that it contains a Bid for the project for which the Bid is submitted, and the date of the Bid opening therefor. Bids submitted in envelopes that are not properly marked will be rejected.

Bidders shall bear full responsibility for delivering Bids to the location for receipt of Bids by the time and date designated for receipt of Bids. No telephones, fax machines or copy machines will be provided by the City.

Section 2.03. Examination of Plans, Specifications and Site of Work.
The Bidder shall examine carefully the site of the proposed Work and the Plans, Specifications and Bid Documents, and shall be satisfied as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered. The submission of a Bid shall be conclusive evidence that the Bidder is satisfied through the Bidder's own investigation as to the conditions to be encountered; the character, quality, quantity and scope of work to be performed; and the materials and equipment to be furnished. If material discrepancies or apparent material errors are found in the Plans and Specifications prior to the date of bid opening, an Addendum may be issued (see Section 2-9, "Addenda", in this Section of these Specifications). Otherwise, in figuring the Work, Bidders shall consider that any discrepancies or conflict between Plans and Specifications will be governed by Article 4, "Scope and Intent of Contract Documents".

Section 2.04. Subsurface Conditions.
Where investigations of subsurface conditions have been made by the City with respect to subsurface conditions, utilities, foundation, or other structural designs, and that information is shown in the Plans, it represents only a statement by the City as to the character of materials which have actually been encountered by the City's investigation. This information is only included for the convenience of Bidders.

Investigations of subsurface conditions are made for the purpose of design only. The City assumes no responsibility with respect to the sufficiency or accuracy of borings or of the log of test borings or other preliminary investigations or of the interpretation thereof. There is no guaranty, either expressed or implied, that the conditions indicated are representative of those existing throughout the Work, or any part of it, or that unanticipated conditions may not occur. When a log of test borings is included in the Plans, it is expressly understood and agreed that said log of test borings does not constitute a part of the Contract. The log of test borings

represents only an opinion of the City as to the character of the materials to be encountered, and is included in the Plans only for the convenience of the Bidders. Making information available to Bidders is not to be construed in any way as a waiver of the provisions of the first paragraph of this Section, and Bidders must satisfy themselves through their own investigations as to conditions to be encountered.

Section 2.05. Contractors/Subcontractors Required to be Licensed.
The Bidder shall be licensed under the provisions of Chapter 9, Division 3, of the Business and Professions Code to do the type of work contemplated in the project, and shall be skilled and regularly engaged in the general class or type of work called for under the contract. The specific type of license required will be indicated in the Notice to Contractors. Unless specified otherwise in the Special Provisions, the Bidder shall indicate the license number and class in the space provided for that purpose on the bid form.

All Subcontractors engaged to perform portions of the Work shall be licensed under the provisions of Chapter 9, Division 3, of the Business and Professions Code to do the type of work for which they are subcontracted, and shall be skilled and regularly engaged in the general class or type of work called for under their subcontracts.

Attention is also directed to the provisions of Public Contract Code section 20103.5, which addresses Contractor licensing requirements. The City may not award the Contract if it cannot be verified that the low Bidder is an appropriately licensed Contractor at the time of Contract award.

Section 2.06. Competency of Bidders.
It is the intention of the City to award a Contract only to a Bidder who furnishes satisfactory evidence that the Bidder has the requisite experience and ability, and has sufficient capital, facilities, and plant to enable the Contractor to prosecute the Work successfully and promptly, and to complete the Work within the time stated in the Contract. If required by the Special Provisions, a statement of experience and business standing, together with that of particular Subcontractors that were designated in the Bid, shall be submitted on a City-provided form by the three (3) apparent low Bidders within seven (7) Calendar Days after the opening of Bids. Bidders in contention for contract awards may be asked to attend a post-bid interview. To determine the experience of a Bidder, the City will consider any relevant evidence that the Bidder, and/or its personnel, has satisfactorily performed on other contracts of similar nature and magnitude or difficulty.

Section 2.07. Joint Venture Bids.
If two or more prospective Bidders desire to bid jointly as a joint venture on a single project, the joint venture Bid must be accompanied by a notarized copy of a valid license issued to the joint venture by the Contractor's State License Board. If a copy of the joint venture license is not filed with the Bid, the Bid will be rejected.

Section 2.08. Subcontractors.
In accordance with the Subletting and Subcontracting Fair Practices Act of the Public Contract Code, section 4100 et seq. (the "Act"), each Bidder shall list in the bid form:

A. The name and the location of the place of business of each Subcontractor whom the Bidder proposes to perform work or labor or render service to the prime Contractor in or about the construction of the Work, or a Subcontractor licensed by the State of California who, under subcontract to the prime Contractor, is proposed by the Bidder to specially fabricate and install a portion of the Work according to detailed drawings contained in the Contract, in an amount in excess of one-half of one percent (0.5%) of the total bid, including additive Alternates, if any, or, in the case of a Bid for the construction of streets or highways, including bridges, in excess of one-half of one percent (0.5%) of the Bidder's total bid, including additive Alternates, or ten thousand dollars ($10,000), whichever is greater.

B. The portion of the Work that will be done by each Subcontractor. The Bidder shall list only one Subcontractor for each portion as is defined by the Bidder in the Bid. If a Bidder fails to specify a Subcontractor for any portion of the Work to be performed under the Contract (or specifies more than one Subcontractor for the same work) as required in Section 2.08(A) above, the Bidder agrees that the Bidder is fully qualified to perform that portion itself and that the Bidder shall perform that portion of the Work.

If after the award of the Contract, the Contractor subcontracts any portion of the Work, except as provided in Section 4107 or 4109 of the Act, the Contractor shall be subject to the penalties specified in Section 4111 of the Act.

The apparent low Bidder shall submit the license numbers of all Subcontractors to the City within ten (10) Calendar Days, not counting Saturdays, Sundays, and holidays, of Bid opening. If the low Bidder is not the apparent low Bidder, the low Bidder shall submit the license numbers of all Subcontractors to the City within ten (10) Calendar Days, not counting Saturdays, Sundays, and holidays, of the date notified.

Section 2.09. Addenda.
The correction of any material discrepancies in, or material additions to/omissions from, the Plans, Specifications, or other Contract, or any interpretation thereof, during the bidding period will be made only by an Addendum issued by the City. A copy of each Addendum issued by the City will be mailed or delivered to each planholder listed on the City planholder list and is a part of the Contract. Any interpretation or explanation not included in the Addenda will not be considered binding. Bids must include acknowledgment of all Addenda issued prior to the bid date.

Section 2.10. Assignment of Antitrust Actions.
The Bidder is required to comply with Public Contract Code section 7103.5(b), which addresses assignment of antitrust actions.

Section 2.11. Bid Guarantee.
The Bid shall be accompanied by a bid guarantee in the form of a bidder's bond, cash, a certified check or a cashier's check in an amount not less than ten percent (10%) of the bid amount, including additive Alternates, if any. A bid bond shall be executed in favor of the City by a surety

company authorized to do business in California, and the attorney-in-fact who executes the bond on behalf of the surety shall attach to the bond a certified, current copy of its Power of Attorney. A certified or cashier's check must be made payable to the City. The bid guarantee shall pledge that the Bidder will enter into a contract with the City in accordance with the terms stated in the bid form and Agreement for Construction and will furnish required performance and payment bonds and insurance certificates. The City is authorized to forfeit the bid guarantee as necessary to reimburse the City for costs incurred for failure of the successful Bidder to enter into the contract and/or furnish the required performance and/or payment bond and/or insurance certificates. The amount of the bid guarantee shall not be deemed to constitute a penalty or liquidated damages. The City is not precluded by a bid guarantee from recovering from the defaulting Bidder damages in excess of the amount of said bid guarantee incurred as a result of the failure of the successful Bidder to enter into the contract with the City for the Work or the failure of the successful Bidder to provide the required bonds and/or insurance certificates.

Section 2.12. Modification or Withdrawal of Bid.
A Bid may be modified or withdrawn at any time prior to the hour fixed in the Notice to Contractors for the submission of Bids by a written request of the Bidder filed with the City at the location where the Bid was submitted. Modifications and/or withdrawals shall be in writing. Telephone or fax modifications will not be accepted. The withdrawal of a Bid will not prejudice the right of a Bidder to file a new Bid within the time prescribed.

Section 2.13. Public Opening of Bids.
Bids will be opened and read publicly at the time and place indicated in the Notice to Contractors or in a subsequent Addendum. Bidders or their authorized representatives and other interested parties are invited to be present.

Section 2.14. Rejection of Bids.
The City reserves the right to reject any and all Bids. The City reserves the right to waive irregularities in a Bid and to make an award in the best interest of the City. Bids containing omissions, erasures, alterations, conditions, or additions not called for may be rejected.

Section 2.15. Disqualification of Bidders.
More than one Bid from any individual, firm, partnership, corporation or association, under the same or different names, will not be considered. Reasonable ground for believing that any Bidder is interested in more than one Bid for the Work will cause rejection of all Bids in which such Bidder is interested. If there is reason to believe that collusion exists among Bidders, none of the participants of such collusion will be considered.

Any Bid in which the prices obviously are unbalanced may be rejected.

Section 2.16. Relief of Bidders.
Attention is directed to Public Contract Code sections 5100 through 5107, concerning relief of Bidders and in particular to the requirement therein that if the Bidder claims a material mistake was made in its Bid, the Bidder shall give the City written notice within five (5) days after the opening of the Bids (excluding Saturdays, Sundays, or City holidays) of the alleged mistake, explaining in the notice in detail how the mistake occurred.

Section 2.17. Bid Protests.

As set forth in the Resolution of Disputes Regarding the Bidding Process form to be included with the bids, any Bidder may file a protest against the award of the Contract to any other Bidder. All Bidders shall be provided with notice of the date and time of the City Council meeting at which the award of the Contract for the Project shall be considered. All Bidders will be provided with an opportunity to bring to the City Council's attention disputes and/or protests regarding the bidding process. No Bidder may bring any action or proceeding challenging the bidding process unless the alleged grounds for the dispute and/or protest are presented to the City Council before or during the meeting referenced herein, and before action by the City Council on award of the Contract. Any Bidder complying with these procedures may bring an action within sixty (60) Calendar Days from the action of the City Council, in accordance with Section 860 of the California Code of Civil Procedure, to determine the validity of the City Council's action on the award of the Contract.

See form for Resolution of Disputes Regarding the Bidding Process governing the procedures for disputes and/or protests regarding the bidding process.