ARTICLE 9. CHANGES AND CLAIMS

Section 9.01. No Changes Without Consent.
No extra work shall be performed, and no change shall be made, except pursuant to a written Change Order or Proposed Change Order signed by the City, or by CCD signed by either the City or the Owner's Representative, stating that the extra work or change is authorized, and no claim for any addition to the Contract Sum or Contract Time shall be valid unless so authorized; provided, however, that nothing in this Article shall excuse the Contractor from proceeding with the prosecution of the work so changed. The Contractor shall, when required by the Owner's Representative, furnish an itemized breakdown of the quantities and prices used in computing the value of any change requested by the Contractor, or that may have been ordered by the City.

Change Orders shall specify the cost adjustments associated therewith, and in no case shall the City pay or become liable to pay any sums different than those specified or those established under Sections 9.04 and 9.05.

Substitutions are considered change orders.

Section 9.02. Change Orders.
Subject to legal requirements relating to competitive bidding, the City may require changes in, additions to, or deductions from the work to be performed or the materials to be furnished pursuant to the Contract Documents. Changes may be made pursuant to a written Change Order signed by the City, which shall state the agreement of the City, the Contractor, and the Architect or Consulting Engineer upon all of the following:

A. The scope of the change in the Work;

B. The amount of the adjustment in the Contract Sum, if any; and

C. The extent of the adjustment in the Contract Time, if any.

All adjustments to the Contract Sum or the Contract Time must be approved by the City.

Signature by the Contractor on the Change Order constitutes its agreement with and acceptance of the adjustments in the Contract Sum and Contract Time, if any, set forth in the Change Order as full and complete satisfaction of any direct or indirect additional cost and/or time incurred by the Contractor in connection with performance of the change work.

Section 9.03. Construction Change Directive/CCD.
Changes also may be made pursuant to a CCD, which shall direct a change in the Work and state a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. A CCD shall be used in the absence of total agreement on the terms of a Change Order, or when time does not permit processing of a Change Order prior to implementation of the change. CCD's shall be approved by the City and the Architect or Consulting Engineer, but need not be signed by the Contractor. Upon receipt of a CCD, the Contractor shall promptly proceed with the change in the work involved. It is the intent of the City that all CCD's will be converted into a Change Order.

When a CCD is used because time does not permit processing of a Change Order prior to implementation of the change, signature by the Contractor on the CCD constitutes its agreement with and acceptance of the adjustments in the Contract Sum and Contract Time, if any, set forth in the CCD as full and complete satisfaction of any direct or indirect additional cost and/or time incurred by the Contractor in connection with performance of the change work.

Section 9.04. Pricing of Changes.

If a Change Order or CCD provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

A. Lump Sum Price.

The Contractor shall submit a lump sum price proposal with a detailed cost breakdown on all labor and materials proposed to be provided by the Contractor's forces or the forces of Subcontractors or material suppliers. The proposal shall include labor surcharges of twenty-six percent (26%), sales tax and markups as specified in Section 9.05 of these General Provisions.

B. Unit Prices.

If payment for Contract work is based on unit prices, payment for changed work will be made based on actual quantities of work done at the unit prices contained in the Contract or unit prices otherwise agreed upon by the City and Contractor if none are contained in the Contract. Payment will be for actual quantities furnished, as described above. Payment for changed work based on Contract or agreed upon unit prices includes the full cost of the item of work, including profit and overhead, and no additional payment or adjustment will be allowed. If the final quantity of any item of work required under the Contract varies from the Estimated Quantity by twenty-five percent (25%) or more, compensation will be adjusted in accordance with State Specification section 4-1.03B, "Increased or Decreased Quantities."

C. Force Account.

In the absence of either an agreed lump sum price or unit prices for the change, the City may direct the Contractor to proceed with the changed work on a force account basis. The Contractor shall be paid for labor, materials and equipment actually used during the performance of the changed work as set forth below, plus the markups specified in Section 9.05 of these General Provisions.

The Contractor shall keep and present daily, in such form as the Owner's Representative may prescribe, an itemized accounting together with appropriate invoices and other supporting data of the labor, materials, and equipment used during that day. All labor shall be recorded on separate time sheets clearly identified with the CCD number and scope of extra work involved. These time sheets shall be signed daily by the Project Inspector or the Owner's Representative. No costs will be allowed for time not recorded and signed the same day the work takes place. The Contractor and the Owner's Representative shall discuss and attempt to resolve any disputes concerning the Contractor's daily records at the time the report is submitted.

The Contractor shall on a monthly basis accompanying the progress payment request submit a reconciliation for all work performed on a force account basis during the period of the progress payment. A final reconciliation shall be submitted within 30 days after the force account work is completed. The reconciliation shall recap all costs and appropriate markups for the period. No costs will be allowed for work not included in a reconciliation within the time periods specified.

To facilitate agreement on direct craft labor hours, construction equipment hours, and material quantities, the Contractor shall notify the Owner's Representative not less than four (4) hours prior to starting force account work.

Allowable costs for force account work are as follows:

1. Labor.
   The Contract will be paid the cost of direct labor (foreperson and below) used in the actual and direct performance of the changed work, including working foreman when authorized by the City. Except as otherwise provided, the Contractor will receive no additional compensation for overtime work without prior written authorization of the City. The cost of the labor will be the sum of the following:

   a. Actual Wages: Charges for labor will be the Contractor's actual payroll costs for labor of any classification, including employer payments to or on behalf of the workers for health and welfare, pension, vacation and similar purposes.

   b. Labor Surcharge: A twenty-six percent (26%) surcharge for taxes, insurance, and all other payments made to or on behalf of the employee shall be added to the actual wages.

   c. Subsistence and Travel: The City will pay the Contractor for actual subsistence and travel allowance costs associated with the changed work required by labor agreements or acceptable to the City. Supporting documentation must be provided to the City.

2. Materials.
   Payment will be for the purchaser's actual cost of supplier or vendor furnished materials. If the Contractor does not furnish satisfactory evidence of the cost of such materials, the cost will be the lowest current wholesale price at which such quantities of material are available and delivered to the job site. The City reserves the right to purchase materials for changed work, and the Contractor shall have no claims for costs or profit on such materials.

3. Equipment.
   The prices paid for equipment directly and solely required for performance of the changed work will be those listed in the current edition of the Caltrans

publication, “Labor Surcharge and Equipment Rental Rates”. If the equipment is not shown in this publication, the Contractor shall be paid such hourly rental rates as are agreed upon by the Contractor and the Agency prior to use of the equipment, plus thirty-three and one-third percent (33-1/3%) for the cost of fuel, oil, lubrication, and field repairs and maintenance. In no case shall the hourly rental rates exceed those of established distributors or equipment rental agencies serving the area.

The rate paid for the use of equipment constitutes full compensation to the Contractor for all costs, including fuel, power, oil, lubrication, supplies, small tools, small equipment, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, labor (except for equipment operators) and any and all costs to the Contractor incidental to the use of such equipment for the changed work.

Payment will not be made for the equipment while it is inoperative due to breakdowns or for time in which no changed work was performed. Payment for rentals will include time required to move equipment to the changed work from the nearest available rental source and to return it to the source. However, no moving, loading, or transportation costs will be paid if the equipment is used for any other portion of the Work.

Individual pieces of equipment having replacement value of five hundred dollars ($500) or less shall be considered tools or small equipment and no payment will be made for those pieces of equipment.

4. Subcontracts.
Subcontract costs shall be the actual cost to the Contractor for work performed by a Subcontractor. The provisions set forth above for pricing of force account work apply to the computation of subcontract costs. Subcontractors shall compute markups as set forth in Section 9.05 of these General Provisions.

Section 9.05. Markups for Changed Work.

Only direct costs directly attributable to the performance of the changed work shall be allowed. All other costs shall be included in the allowed markups, including, but not limited, to overhead and profit; preparation of all paperwork related to changes in the Work, including field review, estimating and cost breakdown; coordination and supervision, both office and field, including the project superintendent; vehicles including gas and maintenance; small tools, incidentals and consumables; engineering, detailing, and revisions to shop drawings and as-built drawings; general office and administrative expense; extended and unabsorbed home office overhead; warranty; costs of bonds, liability insurance, and all taxes.

The Contractor’s combined overhead and profit for work performed by its own forces shall not exceed twenty-five percent (25%) for labor, fifteen percent (15%) for materials, fifteen percent (15%) for equipment and two percent (2%) for bonds and insurance.

If the changed work is performed by a Subcontractor, the Subcontractor shall be entitled to an allowance of fifteen percent (15%) of its actual labor, material and rental costs for overhead and profit.

The Contractor shall be allowed to mark-up the Subcontractor's price five percent (5%) for its overhead and profit. Cumulative total markup for all tiers of contractors and subcontractors shall not exceed thirty percent (30%).
If the net value of a change results in a credit from the Contractor or Subcontractor, the credit shall be the actual net cost, plus ten percent (10%) for overhead and profit. When both additions and credits covering related work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease, if any, with respect to the change.

Section 9.06. Construction Incentive Change Proposal (CICP).

A. General.
The Construction Incentive Change Proposal (CICP) Program provides a program for the Contractor to use its expertise to improve Contract performance to create an overall reduction in the total cost of the Contract. Proposing to delete work is not a CICP. Deleted work is addressed in Section 4.11 of these General Provisions. The CICP Program shall not apply to City contracts which have a cost of less than $100,000. The Contractor and subcontractors may participate in the CICP Program. Participation of Subcontractors shall be through the Contractor; the Contractor and Subcontractor must agree upon the sharing agreement; and evidence of such agreement must be submitted with the CICP.

While a CICP is being considered or processed, the Contractor shall proceed with the Work as scheduled.

B. Description.
A CICP is a formally written proposal for a Change Order. A CICP must be initiated, developed and identified as such by the Contractor or Subcontractor. A CICP must result in a net capital cost reduction while causing no increase in the total life cycle cost of the Project and shall comply with the following conditions:

1. Required function, reliability and safety of the Project will be maintained without detracting from the life expectancy or increasing maintenance requirements.

2. The proposed change shall not cause undue interruption of the Work, nor shall it extend the Contract Time.

3. The proposed change shall comply with all applicable permits, regulations and code requirements, and any other requirements set forth in the Contract Documents. The proposed change shall not involve payment of royalties by the City to the Contractor.

C. Submittal.

The Contractor shall submit a brief description of the proposed CICP prior to preparing the detailed submittal as outlined below.

A CICP submittal must contain pertinent information in supporting documents for City evaluation. As a minimum, the following information shall be submitted:

1. Name of individuals associated with the development and preparation of the CICP.

2. A detailed description and duly signed plans and specifications showing work as presently designed and the proposed changes.

3. A clear identification of all advantages and disadvantages for each proposed change.

4. A detailed procedure and schedule for implementing the proposed change. This detailed procedure and schedule shall include all necessary Contract amendments. Also indicated must be the latest date that the CICP can be approved for implementation.

5. A summary of estimated costs, including the following:

    a. Project construction costs before and after the CICP. This shall be a detailed estimate identifying the following items for each trade involved in the CICP: (i) quantities of material and equipment; (ii) unit prices of materials and equipment; (iii) labor hours and rates for installation; (iv) Contractor and Subcontractor markups; (v) operation and maintenance costs before and after the CICP; and (vi) cost for implementing the CICP not included elsewhere.

    b. Contractor's share of savings based on the sharing provision below.

    c. Other data as required by local permits and regulations and code requirements set forth in the Contract.

6. Time required for execution of the proposed change.

To the extent indicated herein, the Contractor may restrict the City's use of any CICP or the supporting data submitted pursuant to this Program. Suggested wording for inclusion in CICP's is as follows:

> "This data furnished pursuant to the construction incentive clause of the Contract shall not be disclosed or duplicated in whole or in part beyond what is necessary to accomplish the review. This restriction does not limit the City's right to use the information if it is available from any source without limitations. The City has the right to duplicate, use and disclose any information if the CICP is accepted."

The City may modify, accept or reject the CICP. However, if the CICP is modified or not acted upon with the time allotted in the proposal, the City will not be liable for the Contractor's cost of developing the CICP if it is withdrawn or rejected.

D. Acceptance.
If the CICP is accepted by the City, the processing procedure specified for Change Orders shall be used. Approval of the CICP by the Architect or Consulting Engineer is required. If the CICP is rejected, the Contractor may not, and shall not, appeal the decision.

E. Sharing Provisions.
Upon acceptance of the CICP, the Contractor shall received fifty percent (50%) of the net capital savings based on the following formula:

Net Capital Savings = (Contract Cost Prior to CICP + City's cost incurred in reviewing, redesigning and processing the CICP) – (Revised Contract Cost After CICP + CICP Development Cost + CICP Implementation Cost)

The Contractor's development cost is limited to that directly associated with the preparation of the CICP package. Development costs will be reimbursed after approval. However, the City will reject costs that cannot be satisfactorily substantiated.

Section 9.07. Effect on Sureties.
All changes authorized by the Contract Documents may be made without notice to or consent of the sureties on the contract bonds, and shall not reduce the sureties' liability on the bonds.

The City reserves the right to require additional payment or performance bonds to secure a Change Order.

Section 9.08. Unforeseen Site Conditions.
The Contractor shall promptly, and before the condition is disturbed, notify the Owner's Representative, in writing, of any:

1. Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

2. Subsurface or latent physical conditions at the Site differing materially from those indicated in the Contract Documents.

3. Unknown physical conditions at the Site of any unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.

Upon receipt of notice from the Contractor, the Owner's Representative and the Architect or Consulting Engineer shall promptly investigate the conditions, and if it is determined that the conditions do materially so differ or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the work shall issue a Change Order or CCD under the procedures described in the Contract Documents.

In the event that a dispute arises between the City and the Contractor as to whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract Documents, but shall proceed with all work to be performed under the Contract Documents. The Contractor shall retain any and all rights provided either by the Contract Documents or by law which pertain to the resolution of disputes and protests between the contracting parties.
No contract adjustment which results in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice under this Section.

No contract adjustment will be allowed under the provisions specified in this Section for any effects caused on unchanged work.

Section 9.09. Notice of Potential Claim.
The Contractor shall not be entitled to payment of any additional compensation for any cause, including any disagreement, protest or change, any act or failure to act by the City, or the happening of any event, thing or occurrence, unless the Contractor first has given the City due advance written notice of potential claim as hereinafter specified. The written notice of potential claim shall set forth the reasons for which the Contractor believes additional compensation and/or time will or may be due, the nature of the costs and/or time involved, and, insofar as possible, the amount of the potential claim. The notice must be given to the Owner's Representative prior to the time the Contractor performed the work giving rise to the potential claim for compensation, if based on an act or failure to act by the City, or in all other cases, within fifteen (15) Calendar Days of the happening of the event, thing, occurrence or other cause giving rise to the potential claim.

See Article 7, Section 7.15 for additional notice requirements related to time extensions.

The Contractor hereby agrees that the Contractor shall have no right to additional compensation for any claim that may be based on any such fact, failure to act, event, thing, occurrence or other cause for which no written notice of potential claim as required herein was filed.

Section 9.10. Claims in Excess of $375,000.
For all claims in excess of $375,000, Contractor shall give written notice of claim to the Owner's Representative within thirty (30) Calendar Days of the date of the Owner's Representative's estimate of sums due under Section 8.11 of these General Provisions, stating in detail all grounds alleged by the Contractor to justify an adjustment to the Owner's Representative's estimate and submitting all supporting documents and schedules. Thereafter, Contractor must comply with the requirements of the California Government Code regarding claims against public entities (Government Code Sections 900 and following).

The Contractor's notice of claim shall be certified under penalty of perjury and in compliance with the California False Claims Act, as set forth in Section 9.12 below. Failure to include these required certifications will constitute grounds for immediate rejection of the claim and shall be deemed a waiver and absolute bar of the claim, including any right to pursue the claim further.

Failure to comply with these notice and/or time requirements shall constitute a waiver of the claim and an absolute bar against further pursuing the claim.

Section 9.11. Claims of $375,000 or Less.

All claims under this Contract of $375,000 or less shall be resolved in accordance with Section 20104 et seq. of the Public Contract Code, except that the claim must be submitted no later than thirty (30) Calendar Days of the date of the Owner's Representative's estimate of sums due under Section 8.11 of these General Provisions. The Contractor's claim shall be certified under penalty of perjury and in compliance with the California False Claims Act, as set forth in Section 9.12 below. Failure to include these required certifications will constitute grounds for immediate rejection of the claim and shall be deemed a waiver and absolute bar of the claim, including any right to pursue the claim further.

Failure to comply with the time requirements set forth above shall constitute a waiver of the claim and an absolute bar against further pursuing the claim.

Section 9.12. Claim Certification.

Contractor acknowledges that it has read and is familiar with the provisions of the False Claims Act (California Government Code §12650 et seq.). Submission by Contractor of any claim (as the term "claim" is defined in False Claims Act) to the City in connection with the Project, whether on its behalf or on behalf of a Subcontractor or material supplier, shall constitute a representation by Contractor to the City that submission of the claim does not in any respect, violate the False Claims Act. Any party with an interest in the claim, including Contractor and any Subcontractor or material supplier, shall certify under penalty of perjury the validity and accuracy of any claim submitted to the City, as provided below. Compliance with this claims certification requirement shall be a condition precedent to any obligation City might otherwise have to review the claim and failure to provide such certification shall constitute a waiver of the claim.

The claim certification required by this section shall provide as follows:

CLAIM CERTIFICATION

Under penalty of perjury, and with specific reference to the California False Claims Act, Government Code sections 12650, et seq. I certify that submission of the attached claim is made in good faith; that the supporting data prepared by the undersigned company are accurate and complete to the best of my knowledge and belief; that submission of the claim to the City does not violate the False Claims Act; and that I am duly authorized to certify the claim on behalf of the claimant.

Dated: _____ Company _____

Signature _____

Title _____

ARTICLE 10. SAFETY, CONFINED SPACES, TRAFFIC CONTROL, UTILITIES AND TRENCHING

Section 10.01. General Safety Requirements.
The Contractor shall comply with all safety requirements in the General Provisions, as well as with all applicable occupational safety and health standards and rules set up to help eliminate or limit workplace hazards proven or suspected by research or experience to be harmful to personal safety and health.

The Contractor shall have on record with the City the following twenty-four (24) hour emergency contact numbers:

A. Traffic control device supplier: Supplier of barricades, steel plates, delineators, channelizers, construction signs, and other traffic control equipment to be used during construction.

B. Contractor representative: An employee of the Contractor having the authority to make decisions and the ability to respond to an emergency on the project at any time.

C. Safety Representative: The Contractor's Safety Representative shall have the authority to make decisions regarding safety and health concerns on the project and to direct the Contractor's personnel to abate any hazard identified by the City.

Section 10.02. Work During Hours of Darkness. Working areas utilized by the Contractor during the hours of darkness shall be illuminated to conform to the minimum illumination intensities established by California Occupational Safety and Health Administrational Construction Safety Orders.

Section 10.03. Sewers and Appurtenances/Contaminations.
The Contractor is warned that when the work involves existing sewers and appurtenances that have been exposed to sewage and industrial wastes, these facilities shall be considered contaminated with disease-causing organisms. Personnel in contact with contaminated facilities, debris, wastewater or similar items shall be advised by the Contractor of the necessary precautions that must be taken to avoid becoming diseased. It is the Contractor's responsibility to urge its personnel to observe a strict regiment of proper hygienic precautions, including any inoculations recommended by the local public health officer.