NOTICE TO BIDDERS – INFORMAL BIDDING

CITY OF BEVERLY HILLS

CONTRACT DOCUMENTS

FOR

LA CIENEGA COMMUNITY CENTER HVAC REPLACEMENT PROJECT

BID NO. 17-20

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I. NOTICE INVITING BIDS

FOR

LA CIENEGA COMMUNITY CENTER HVAC REPLACEMENT PROJECT

Bid number: 17-20

NOTICE IS HEREBY GIVEN that the City of Beverly Hills, California ("City") invites sealed bids for the Project. The City will receive such bids at City Hall, 455 North Rexford Drive, Suite 190, Beverly Hills, California 90210 up to 2:00 p.m. on April 6, 2017 , at which time they will be publicly opened and read aloud.

All bids must be made on the form furnished by the City. Each bid must be submitted in a sealed package addressed to the City Clerk with the Project name and bid number typed or clearly printed on the lower left corner of the package. Bids must remain valid and shall not be subject to withdrawal for ninety (90) Days after the bid opening date.

INCORPORATION OF STANDARD SPECIFICATIONS

The 2015 edition of "Standard Specifications for Public Works Construction" and the 2016 Supplements (collectively "Standard Specifications") are incorporated into these Contract Documents by this reference, as amended by the provisions of these Contract Documents. The Work described herein shall be done in accordance with the provisions of the Standard Specifications insofar as the same may apply, and in accordance with these Contract Documents.

SCOPE OF WORK

The Project includes, without limitation, furnishing all necessary labor, materials, equipment and other incidental and appurtenant Work necessary to the replace eight (8) water source heat pumps, one (1) boiler and 2 exhaust fans at La Cienega Community Center, located at 1100 Gregory Way, Beverly Hills, California 90211, as more clearly described in the detailed scope of work in Appendix VII. This Work will be performed in strict conformance with the pertinent code requirements, permits from regulatory agencies with jurisdiction, and applicable regulations.

OBTAINING BID DOCUMENTS

A copy of the Contract Documents may be obtained by mail or in person from the Public Works Department, 345 Foothill Road, Beverly Hills, CA 90210, telephone number 310-285-2541. The Contract Documents, including the plans and specifications may also be viewed on, and downloaded from the City's website: www.beverlyhills.org:shortcuts: bid information: bid number 17-20.

PUBLIC CONTRACT CODE – INFORMAL BIDDING

City adopted the Uniform Public Construction Cost Accounting procedures set forth in Article 2 (commencing with Section 22010) of the Public Contract Code for informal bidding of public projects of one hundred seventy-five thousand dollars ($175,000) or less.

In accordance with the Public Contract Code, City maintains a list of qualified contractors, identified according to categories of work. All contractors on the list for the category of work being bid have been mailed a notice inviting informal bids. The mailing of notices to contractors and construction trade journals pursuant to the Public Contract Code was completed more than 10 calendar days before the bids are due. As required by the Public Contract Code, this notice inviting informal bids describes the project in general terms, how to obtain more detailed information about the project, and states the time and place for the submission of bids.

REQUESTS FOR CLARIFICATION

If you discover any error, omission, ambiguity or conflict in the Plans or Specifications and wish to have a clarification, please fax or email your request for clarification to the Project Administrator such that it is received by him or her no later than five (5) working days before Bid opening. Requests for clarification received after this date will be disregarded. Please indicate the Project and bid number in your request for clarification.

REGISTRATION WITH THE DEPARTMENT OF INDUSTRIAL RELATIONS

The Bidder's attention is directed to Labor Code Section 1725.5, which provides that a contractor or subcontractor shall not be qualified to bid on, be listed in a Bid proposal, subject to the requirements of Public Contract Code Section 4104, or engage in the performance of any contract that is subject to Labor Code Section 1720 *et seq*., unless currently registered and qualified to perform a public work pursuant to Labor Code Section 1725.5. This requirement applies to any bid proposal submitted on or after March 1, 2015, and any contract for public work entered into on or after April 1, 2015.

PREVAILING WAGES

In accordance with Labor Code Section 1770 *et seq*., this Project is a "public work," and thus, the Contractor and any Subcontractors must pay wages in accordance with the determination of the Director of the Department of Industrial Relations ("DIR") regarding the prevailing rate of per diem wages. Copies of those rates are on file with the Director of Public Works, and are available to any interested party upon request. Contractor shall post a copy of the DIR's determination of the prevailing rate of per diem wages at each job site.

BONDS

Bid Bond is not required with submission of bid. Upon award of Contract, Contractor shall provide faithful performance and payment Bonds, each in a sum equal to the Contract Price. Bonds must be issued by a California admitted Surety insurer and submitted using the required forms, which are in the Contract Documents. Failure to enter into a valid contract, including the submission of all required Bonds and insurance coverages, with the City within fifteen (15) Days after the date of the delivery of the contract forms to the Bidder, shall constitute a material breach and subject the Bid security to forfeiture to the extent provided by law.

LICENSES

The Bidder shall possess a valid Class C20 Contractor's license issued by California State Contractors License Board at the time of the Bid submission. The successful Contractor must also possess a current City business license.

RETENTION SUBSTITUTION

Five percent (5%) of any progress payment will be withheld as retention. In accordance with Public Contract Code Section 22300, and at the request and expense of the Contractor, securities equivalent to the amount withheld may be deposited with City or with a State or federally chartered bank as escrow agent, which shall then pay such moneys to the Contractor. Upon satisfactory completion of the Contract, the securities shall be returned to the Contractor. Alternatively, Contractor may request that the City make payments of earned retentions directly to an escrow agent at Contractor's expense. No such substitutions shall be accepted until all related documents are approved by the City Attorney.

LIQUIDATED DAMAGES

All Work shall be completed within 45 calendar days following the date specified in the written Notice to Proceed from the City. There will be a $500.00 assessment for each calendar day that Work remains incomplete beyond the time specified for the completion of the Work in the Contract Documents.

BIDDING PROCESS

The City reserves the right to reject any Bid or all Bids and to waive any irregularities or informalities in any Bid or in the bidding and to make awards in all or part in the best interest of the City.

II. INSTRUCTIONS TO BIDDERS

FORM OF PROPOSAL: Proposals shall be made on the Proposal forms found herein. Bidders shall include all forms and fill in all blank spaces, including inserting "N/A" (for non applicable) where necessary. The Proposal shall be enclosed in a sealed envelope bearing the name of the Bidder and the name of the Project as described in the Notice Inviting Bids.

DELIVERY OF PROPOSALS: The Proposal shall be delivered by the time and to the place stipulated in the Notice Inviting Bids. The time of delivery shall be definitively determined by the time-stamping clock located at the City Clerk's office. It is the Bidder's sole responsibility to see that this Proposal is received in proper time, and Bidders assume all risks arising out of the means of delivery. Any Proposal received after the scheduled closing time for receipt of Proposals may be returned to the Bidder unopened. Bidders or their authorized agents are invited to be present for Bid opening.

MODIFICATIONS AND ALTERNATIVE PROPOSALS: Unauthorized conditions, limitations or provisos attached to a Proposal will render it non-responsive and may be cause for rejection. The complete Proposal form must be without interlineations, alterations or erasures. No oral, telegraphic or telephonic Proposals or modifications will be considered.

WITHDRAWAL OF PROPOSAL: The Proposal may be withdrawn upon request by the Bidder without prejudice, provided that the request is in writing, has been executed by the Bidder or his or her duly authorized representative, and is filed with the Project Administrator before the date and time fixed for opening of Bids. No Proposal may be withdrawn during the period of ninety (90) Days after the opening of Proposals.

BIDDER'S SECURITY: Not required

ADDENDA: The Project Administrator may, from time to time, issue Addenda to the Contract Documents. Parties that have obtained the Contract Documents shall be notified of and furnished with copies of such Addenda, either by certified mail, personal delivery, or facsimile during the period of advertising at no additional cost. The City may determine, in its sole discretion, whether an Addendum requires the postponement of the date set for opening Bids. The announcement of the new date, if any, shall be made within the Addenda. **Please Note:** Bidders are primarily and ultimately responsible for ensuring that they have received any and all Addenda. To this end, each Bidder should contact the City to verify that he or she has received all Addenda issued, if any. Bidders must acknowledge receipt of all Addenda, if any, in its Proposal. Failure to acknowledge receipt of all Addenda may cause a Proposal to be deemed incomplete and non-responsive.

DISCREPANCIES IN PROPOSALS: The Bidder shall set forth as to each item of Work, in clearly legible figures, a unit or line item Bid amount for the item in the respective spaces provided for this purpose.

In case of discrepancy between the unit price and the total set forth for the item, the unit price shall prevail. However, if the amount set forth as a unit price is ambiguous, unintelligible or uncertain for any cause, or is omitted, or if the unit price is the same amount as the entry in the "Total" column, then the amount set forth in the "Total" column for the item shall prevail in accordance with the following:

(1) As to lump sum items, the amount set forth in the "Total" column shall be the unit price.

(2) As to unit price items, the amount set forth in the "Total" column shall be divided by the estimated quantity for the item and the price thus obtained shall be the unit price.

In case of discrepancy between words and figures, the words shall prevail.

BIDDER'S EXAMINATION OF SITE AND CONTRACT DOCUMENTS: Each Bidder must carefully examine the site of the Project, the entirety of the Contract Documents and all Addenda issued. Upon submission of a Proposal, it will be assumed that the Bidder has thoroughly investigated the Work and is satisfied as to the conditions to be encountered and the character, quality, and quantities of Work to be performed and materials to

be furnished. Upon Proposal submission, it shall be further assumed that the Bidder is familiar with and agrees to the requirements of the Contract Documents and all Addenda issued. The submission of a Proposal shall be considered conclusive evidence that the Bidder has made such an examination and consents thereto. No information derived from an inspection of records or investigation will in any way relieve the Contractor from his or her obligations under the Contract Documents or any Addenda issued nor entitle the Contractor to any additional compensation. By submitting his or her Proposal, the Contractor agrees not to make any claim against the City based upon ignorance or misunderstanding of any condition of the Work site or of the requirements set forth in the Contract Documents or Addenda.

DISQUALIFICATION OF BIDDERS: No Person shall be allowed to make, file or be interested in more than one Bid for the same project, unless alternate Bids are specifically called for. A Person that has submitted a sub-proposal to a Bidder, or that has quoted prices of materials to a Bidder, is not hereby disqualified from submitting a sub-proposal or quoting prices to other Bidders or making a prime Proposal. If there is a reason to believe that collusion exists among the Bidders, all affected Bids will be rejected.

AWARD OF CONTRACT: The City reserves the right to reject any or all Proposals or any parts thereof or to waive any irregularities or informalities in any Proposal or in the bidding. The award of the Contract, if made, will be to the lowest responsible Bidder within ninety (90) Days after the opening of the Proposals, except that the award may be made after that period if the successful Bidder has not given the City written notice of the withdrawal of his or her Bid.

ADDITIVE OR DEDUCTIVE BIDS: If additive or deductive Bids are required, the lowest Bid shall be the Proposal with the lowest base bid, plus all of the alternate Bids, minus all of the deductive Bids, as listed in the Proposal forms. This determination method shall be used regardless of whether additive or deductive items are included in the project, which shall be at the City's discretion.

LISTING SUBCONTRACTORS: Each Bidder shall submit a list of the proposed Subcontractors on this Project, as required by the Subletting and Subcontracting Fair Practices Act (Public Contract Code Section 4100, *et seq*.). A form for this purpose is furnished with the Proposal.

EXECUTION OF CONTRACT: The Bidder to whom award of the Project is made shall execute a written contract with the City in the form included in these Contract Documents within fifteen (15) Days from the date of mailing of written notice of the award. This Bidder shall also secure all insurance and Bonds as herein specified, and provide copies therefor to the City, within fifteen (15) Days from the date of mailing of written notice of the award. Failure or refusal to enter into the Contract or to conform to any of the stipulated requirements shall be just cause for the annulment of the award and forfeiture of the Bidder's security. In the event the Bidder to whom an award is made fails or refuses to execute the Contract within that time, the City may declare the Bidder's security forfeited, and the City Council may award the Work to the next lowest responsible Bidder, or may call for new Bids. Where the City Council awards the Work to the next lowest responsible Bidder, pursuant to Public Contract Code Section 20174, the amount of the lowest Bidder's security shall be applied to the difference between the lowest and next lowest Bid and the surplus, if any, shall be returned to the lowest Bidder or to his or her Surety. If the second lowest responsible Bidder fails or refuses to execute the Contract, the City Council may award the Contract to the third lowest responsible Bidder pursuant to Public Contract Code Section 20174.

SIGNATURES: The Bidder or his, her or its authorized representative shall execute all documents requiring signatures, including but not limited to various forms in the Proposal, various forms in the Contract, and Bonds. Bidders shall provide evidence satisfactory to the City, such as an authenticated resolution of its Board of Directors or a Power of Attorney, indicating the capacity of the person signing the Proposal to bind the Bidder to each Proposal and to any Contract arising therefrom.

INSURANCE AND BONDS: The Contractor shall not begin Work under the Contract until it has given the City evidence of all required insurance coverage, including all additional insured endorsements. The Contractor also shall not begin Work under the Contract until it has furnished to the City two Bonds: one guaranteeing the Contractor's faithful performance of the Contract, and other securing the payment of claims for labor and material. Each of these Bonds shall be executed in a sum equal to the Contract amount.

INDEMNITY: The indemnity shall be as written in Section 7.B of the Specifications.

INTERPRETATION OF CONTRACT DOCUMENTS: If any Bidder is in doubt as to the intended meaning of any part of the Contract Documents, or finds discrepancies in or omissions from the Contract Documents, he or she may submit to the Project Administrator a written request for an interpretation or correction not later than five (5) working days before Bid opening. The Person submitting the request will be responsible for its prompt delivery, and no requests will be accepted or considered after that time. Any interpretation or correction of the Contract Documents will be made only by an Addendum duly issued and mailed, with a copy of such Addendum faxed or emailed, to each Person receiving a set of the Contract Documents. No oral interpretation of any provision in the Contract Documents shall be binding.

TAXES: Except as may be otherwise specifically provided herein, all sales and/or use taxes assessed by federal, State or local authorities on materials used or furnished by the Contractor in performing the Work hereunder shall be paid by the Contractor. Contractor shall calculate payment for all sales, unemployment, pension and other taxes imposed by federal, State, and local law and shall include these payments in the total Proposal.

CHECKLIST FOR BIDDERS

The following information is required of all Bidders at the time of the Bid:

____ Completed and Signed Proposal

____ Completed and Signed Bid Form

____ Completed, Signed Information Required of Bidders Form

____ Completed Designation of Subcontractors Form

____ Signed Non-Collusion Declaration

____ Completed and Signed Acknowledgement of Addenda

Failure of the Bidder to provide all required information in a complete and accurate manner may be considered non-responsive.

PROPOSAL

CITY OF BEVERLY HILLS

LA CIENEGA COMMUNITY CENTER HVAC REPLACEMENT PROJECT

TO THE HONORABLE MAYOR AND CITY COUNCIL OF THE CITY OF BEVERLY HILLS:

The undersigned, as Bidder, declares that: (1) this Proposal is made without collusion with any other Person and that the only Persons or parties interested as principals are those named herein; (2) Bidder has carefully examined the Contract Documents and all Addenda as well as the site of the proposed Work; and (3) Bidder has investigated and is satisfied as to the conditions to be encountered, the character, quality and quantities of Work to be performed and materials to be furnished. Furthermore, the undersigned agrees that submission of this Proposal shall be conclusive evidence that such examination and investigation have been made and agrees, in the event this Contract be awarded to Bidder, to enter into the Contract with the City of Beverly Hills to perform the proposed Project in accordance with the Contract Documents and all Addenda in the time and manner therein prescribed, and to furnish or provide all materials, labor, tools, equipment, apparatus and other means necessary so to do, except as may otherwise be furnished or provided under the terms of the Contract Documents and Addenda, for the following stated unit prices or lump-sum price as submitted on the Bid herein..

The undersigned also certifies to be properly licensed by the State as a contractor to perform this type of Work. The undersigned possesses California Contractor's License Number _____, Class _____, which expires on _____.

Bidder's name: _____

Signature: _____ Date: _____

BID FORM

CITY OF BEVERLY HILLS

NOTE: Any Alteration or Addition to the Bid Form May Invalidate the Bid

The undersigned, having carefully examined the site conditions and the Contract Documents for

LA CIENEGA COMMUNITY CENTER HVAC REPLACEMENT PROJECT

HEREBY PROPOSES AND AGREES to commence the Work per the Agreement; to furnish all labor, materials, equipment, transportation, service, sales taxes, and other costs necessary to complete the Work as specified herein from the date of Notice To Proceed, in strict conformity with the Contract Documents, at prices indicated below.

1.0 TOTAL LUMP SUM BASE BID:
Bidder agrees to provide and install all base bid work as shown on the Drawings and described in the Contract Documents including licenses, permits, fees, taxes, overhead, bond and insurance for the total lump sum of:

$ _____
Dollars (in words- printed)

$ _____
Dollars (in figures)

NOTE: In the case of any discrepancy between words and figures, the words shall prevail.

2.0 ALTERNATE BIDS - None

3.0 BID ALLOWANCES –

3.1 FIRE ALARM MODIFICATIONS – Provide an allowance in the amount of $12,000.00 to the Lump Sum Base Bid for adding smoke detectors in return air ducts per requirements of latest edition of CBC, CFC & CMC.

4.0 TIME OF PERFORMANCE – Contractor proposes to complete the Work, including the accepted Alternatives, within the calendar days specified in the Contract Documents, commencing from the Date of Notice To Proceed.

5.0 COMPENSATION FOR DELAY (PER DIEM)

Bidder shall determine and provide in the space below the amount of per diem compensation (costs to include any and all of Contractor's overhead, profit and General Conditions as directly related to this project) for any Compensable Delay at any time during the performance of the Work:

$ _____
Per Diem Per Day (in words) Per Diem Per Day (in figures)

Per Diem compensation multiplied by Twenty (20) days =

$ _____
Per Diem (in words) Per Diem (in figures)

6.0 TOTAL PROJECT BID

To determine the low Bidder, the City will calculate the sum of the Base Bid listed in paragraph 1.0, plus the amount of per diem for Compensable Delay listed in paragraph 5.0 multiplied by twenty (20) days. The Contract will then be awarded to the lowest responsive and responsible Bidder.

The Contract Amount may or may not include any or all or the alternatives, at the sole discretion of the City.

The use of the multiplier of twenty (20) days is not intended as an estimate of the number of days of Compensable Delay anticipated by the City. The City will pay the per diem compensation only for the actual number of days of Compensable Delay, as defined in the General Conditions. The actual number of days of Compensable Delay may be lesser or greater than the "multiplier" shown above.

Signature: _____ Title: _____ Date: _____

INFORMATION REQUIRED OF BIDDER

Fill out all of the following information. Attach additional sheets if necessary.

(1) Bidder's name: _____

(2) If the Bidder's name is a fictitious name, who or what is the full name of the registered owner? If the Bidder's name is not a fictitious name, write "N/A" in the response to this question. If you are doing business under a fictitious name, provide a copy of the filed valid Fictitious Business Name Statement.

_____

(3) Business address: _____

(4) Telephone: _____ Facsimile: _____

(5) Type of firm - Individual, Partnership, LLC or Corporation: _____

(6) Corporation organized under the laws of the state of: _____

(7) California State Contractor's License Number and Class: _____

(8) Original Date Issued: _____ Expiration Date: _____

(9) List the name and title of the person(s) who inspected the site of the proposed Work for your firm:

_____

(10) List the name and title of the person(s) who attended the mandatory pre-bid meeting for this Project, including the mandatory site visit, for your firm, if any:

_____

Upon request of the City, the Bidder shall furnish additional information.

The Bidder certifies under penalty of perjury under the laws of the State that the information provided above is true and correct.

Company

Signature: _____

Title: _____

Date: _____

Signature: _____

Title: _____

Date: _____

DESIGNATION OF SUBCONTRACTORS
[Public Contract Code 4104]

List all Subcontractors doing Work in an amount in excess of 0.5% of the Contractor's total Bid or, in the case of Bids or offers for the construction of Streets or highways (including bridges), in excess of 0.5% of the Contractor's total Bid or $10,000, whichever is greater. If all Subcontractors do not fit on this page, attach another page listing all information for all other Subcontractors.

Name under which Subcontractor is Licensed	California Contractor's License Number(s) & Class(es)	Address & Phone Number	Type of Work/Trade (e.g., Electrical)

NONCOLLUSION DECLARATION
TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID
[Public Contract Code 7106]

The undersigned declares:

I am the _____ of _____, the party making the foregoing Bid.

The Bid is not made in the interest of, or on behalf of, any undisclosed Person, partnership, company, association, organization, or corporation. The Bid is genuine and not collusive or sham. The Bidder has not directly or indirectly induced or solicited any other Bidder to put in a false or sham Bid. The Bidder has not directly or indirectly colluded, conspired, connived, or agreed with any Bidder or anyone else to put in a sham Bid, or to refrain from bidding. The Bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the Bid price of the Bidder or any other Bidder, or to fix any overhead, profit, or cost element of the Bid price, or of that of any other Bidder. All statements contained in the Bid are true. The Bidder has not, directly or indirectly, submitted his or her Bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, Bid depository, or to any member or agent thereof, to effectuate a collusive or sham Bid, and has not paid, and will not pay, any Person or entity for such purpose.

Any person executing this declaration on behalf of a Bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the Bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____, at

_____ , _____ ."

Signature _____ Signature _____

Printed Name:_____ Printed Name:_____

Date: _____ Date: _____

ACKNOWLEDGMENT OF ADDENDA

Bidder's Name: _____

The Bidder shall signify receipt of all Addenda here, if any:

Addendum Number	Date Received	Signature

If there are more Addenda than there is room in the chart above, attach another page acknowledging receipt of the Addenda.

III. SPECIFICATIONS

1. TERMS, DEFINITIONS, ABBREVIATIONS, UNITS OF MEASURE, AND SYMBOLS

A. STANDARD SPECIFICATIONS

The Work described herein shall be done in accordance with the provisions of the Standard Specifications (defined in the Notice Inviting Bids) insofar as the same may apply, and in accordance with these Contract Documents.

B. TERMS AND DEFINITIONS

Whenever in the Standard Specifications or in the Contract Documents the following terms are used, they shall be understood to mean the following:

(1) City - The City of Beverly Hills.

(2) City Council - The City Council of the City of Beverly Hills.

(3) Project Administrator- The City Assistant Director of Public Works, acting either directly or through properly authorized agents. Such agents shall act within the scope of the particular duties entrusted to them.

(4) Inspector - An authorized representative of the City, assigned by the City to make inspections of Work performed by or material supplied by the Contractor.

(5) Laboratory - A laboratory authorized by the City to test materials and Work involved in the Contract.

(6) Special Provisions - All Contract Documents.

(7) Project - See Scope of Work in the Notice Inviting Bids.

2. SCOPE AND CONTROL OF THE WORK

Section 2-3.2 (“Self Performance”) of the Standard Specifications is hereby deleted and replaced with the following: "The Contractor shall not be required to perform, with its own organization, Contract work amounting to at least fifty percent (50%) of the Contract Price.”

Otherwise, the provisions below shall supplement but not replace those provisions in Section 2 of the Standard Specifications.

A. ASSIGNMENT

Any purported assignment without written consent of the City shall be null, void, and of no effect, and Contractor shall hold harmless, defend and indemnify the City and its officers, officials, employees, agents and representatives with respect to any claim, demand or action arising from or relating to any unauthorized assignment.

If the City opts to consent to assignment, the City’s consent shall be contingent upon: 1) a letter from the Surety company agreeing to the assignment and assigning all of the Bonds to the assignee without any reduction, or the assignee supplying all new Bonds in the amounts originally required under the Contract Documents; and 2) the assignee supplying all of the required insurance in the amounts required in the Contract Documents. Until the

Surety assigns all of the Bonds or the assignee supplies all of the new Bonds, and until the assignee supplies all of the required insurance, an assignment otherwise consented to in writing by the City shall not be effective. Even if the City consents to assignment, no assignment shall relieve the Contractor of liability under the Contract.

B. BONDS

All Bonds must be submitted using the required forms, which are in the Contract Documents, or on any other form approved by the City Attorney.

C. PRECEDENCE OF THE CONTRACT DOCUMENTS

WITH REGARD TO SECTION 2-5.2 IN THE STANDARD SPECIFICATIONS, THE GENERAL PROVISIONS SHALL CONTROL OVER THE SPECIAL PROVISIONS, AND THE NOTICE INVITING BIDS AND INSTRUCTIONS TO BIDDERS (IN THAT ORDER) SHALL CONTROL OVER THE BID, SUCH THAT THE ORDER OF PRECEDENCE SHALL BE AS FOLLOWS:

1. Permits issued by regulatory agencies with jurisdiction.
2. Change Orders and Supplemental Agreements; whichever occurs last.
3. Contract/ Agreement.
4. Addenda.
5. Notice Inviting Bids.
6. Instructions to Bidders.
7. Bid/ Proposal.
8. General Provisions.
9. Special Provisions.
10. Plans.
11. Standard Plans.
12. Standard Specifications.
13. Reference Specifications.

D. OMITTED

E. OMITTED

F. OMITTED

3. CHANGES IN WORK

The provisions below shall supplement but not replace those provisions in Section 3 of the Standard Specifications.

A. INCREASES, ALTERATION AND DECREASES OF THE WORK TO BE DONE

The City reserves the right to increase or decrease the quantity of any item or portion of the Work described in the Contract Documents or the Proposal form or to alter or omit portions of the Work so described, as may be deemed necessary or expedient by the Project Administrator, without in any way making the Contract void. Such increases, alterations or decreases of Work shall be considered and treated as though originally contracted for, and shall be subject to all the terms, conditions and provisions of the original Contract. The Contractor shall not claim or bring suit for damages, whether for loss of profits or otherwise, on account of any decrease, alteration or omission of any kind of Work to be done.

B. EXTRA WORK

Section 3-3.2.3 (“Markup”) of the Standard Specifications is hereby deleted and replaced with the following:

The term "Net Cost of Extra Work" shall mean the actual costs necessarily incurred by Contractor and all subcontractors that actually perform the Extra Work caused by the change(s) in the Work, and consists of costs of labor, materials and equipment rental only. Overhead and profit allowed under this Article shall be deemed to include all costs and expenses, which the Contractor or any of its subcontractors may incur in the performance of a change in the Work and which are not otherwise specifically recoverable, by them pursuant to this Article 7. The "Net Cost of Extra Work" shall be limited to the following to the extent so incurred:

1. **Labor** - The costs of labor will be the actual straight-time cost for wages prevailing locally for each craft or type of worker at the time the Extra Work is done at the Project Site, plus employer payments collectively referred to as "Fringe Benefits and Payroll Taxes," of payroll, taxes and insurance, health and welfare pension, vacation, apprenticeship funds, and other direct costs resulting from Federal, State or local laws, as well as assessments or benefits required by lawful collective bargaining agreements. The use of a labor classification, which would increase the Net Cost of Extra Work, will not be permitted unless the Contractor establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental. Wages or salaries and Fringe Benefits and Payroll Taxes of necessary supervisory and administrative personnel directly employed at the Project Site for the supervision of the Extra Work are included, but only (1) if the Extra Work requires an extension of Contract Time or requires direct supervision of approved overtime Work and (2) to the extent such personnel are solely engaged in supervising such Extra Work during periods of overtime or extension of the Contract Time.

2. **Material** - The cost of materials reported shall be at invoice or lowest current price at which such materials are locally available and delivered to the jobsite in the quantities involved, plus sales tax, freight and delivery. The City reserves the right to approve materials and sources of supply, or to supply materials to the Contractor, if necessary, for the progress of the work. No mark-up shall be applied to any material provided by the City. Material re-stocking charges shall be limited to 5% of the amount of material.

3. **Tool and Equipment Rental** - No payment will be made for the use of tools which have a replacement value of $500 or less. Regardless of ownership, the rates to be used in determining equipment rental cost shall not exceed listing rates prevailing locally at equipment rental agencies, or distributors, at the time the work is performed. The rental rates paid shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidentals. If equipment is used intermittently, when not in use, it shall be returned to its rental source unless the Contractor elects to keep it at the work site at no expense to the City. The reported rental time for equipment already at the jobsite shall be the duration of its use on the Extra Work, commencing at the time it is first put into actual operation on the Extra Work, plus the time required to move it from its previous site and back, or to a closer site.

4. **Invoices** - Vendors' invoices for material, equipment rental, and other expenditures, shall be submitted with the request for payment. If the request for payment is not substantiated by invoices or other documentation, the City's Representative may establish the cost of the item involved at the lowest price which was current at the time of such submittal.

Net Cost of Extra Work shall NOT include any of the following, which are construed to be included in the Contractor's overhead and profit figures:

1. Wages or salaries and Fringe Benefits and Payroll Taxes of Contractor's and all subcontractors' employees or personnel not directly employed at the Project site for the supervision or performance of Extra Work.

2. Overhead, administrative, or general expenses of any kind including data processing, engineering, estimating and etc. costs incurred in connection with Extra Work.

3. Loss of efficiency or productivity.

4. Capital expenses, including interest on capital employed in connection with Extra Work.

5. Legal costs.

6. Federal, state, or local income and franchise taxes.

C. CONTRACTOR FEE OR MARK-UP

The term "Contractor Fee" or "Mark-up" shall mean the full amount of compensation for all costs and expenses including overhead, profit, bond and insurance not included in the Net Cost of Extra Work. The Contractor Fee, or Mark-up, shall be computed as follows:

1. If the Net Cost of Extra Work is less than or equal to $25,000, the Contractor Fee, or Mark-up, shall be computed as follows:

a. For Extra Work performed directly by the Contractors forces the added cost for all expenses, overhead, profit, bond and insurance shall not exceed fifteen percent (15%) of the Net Cost of the Extra Work.

b. For Extra Work performed by a First Tier subcontractor, the cost for combined expenses, overhead, profit, bond and insurance of both the Contractor and subcontractor shall not exceed twenty percent (20%) of the Net Cost of the subcontractor's Extra Work.

c. For Extra Work performed by any Sub-subcontractor, the cost of combined expenses, overhead, profit, bond and insurance of the Contractor, the subcontractor and the lowest Tier of subcontractor shall not exceed twenty-five percent (25%) of the Net Cost of the lowest Tier subcontractor's Extra Work.

2. If the Net Cost of Extra Work is greater than $25,000 and less than or equal to $100,000, the Contractor Fee or Mark-up shall be computed as follows:

a. For Extra Work performed directly by the Contractor's forces the added cost for all expenses, overhead, profit, bond and insurance shall not exceed twelve percent (12%) of the Net Cost of the Extra Work.

b. For Extra Work performed by a 1st Tier subcontractor, the cost for combined expenses, overhead, profit, bond and insurance of both the Contractor and subcontractor shall not exceed seventeen percent (17%) of the Net Cost of the subcontractor's Extra Work.

c. For Extra Work performed by any Sub-subcontractor, the cost of combined expenses, overhead, profit, bond and insurance of the Contractor, the subcontractor and the lowest tier of subcontractor shall not exceed twenty-two percent (22%) of the Net Cost of the lowest Tier subcontractor's Extra Work.

3. If the Net Cost of Extra Work is greater than $100,000, the Contractor Fee or Mark-up shall be computed as follows:

a. For Extra Work performed directly by the Contractor's forces the added cost for all expenses, overhead, profit, bond and insurance shall not exceed ten percent (10%) of the Net Cost of the Extra Work.

b. For Extra Work performed by a 1st Tier subcontractor, the cost for combined expenses, overhead, profit, bond and insurance of both the Contractor and subcontractor shall not exceed fifteen percent (15%) of the Net Cost of the subcontractor's Extra Work.

c. For Extra Work performed by any Sub-subcontractor, the cost of combined expenses, overhead, profit, bond and insurance of the Contractor, the subcontractor and

the lowest tier of subcontractor shall not exceed twenty percent (20%) of the Net Cost of the lowest tier subcontractor's Extra Work.

4. The Table of Contractor Fees/Mark-ups below is provided as a guide for the convenience of the Contract:

NET COST OF EXTRA WORK									
TIER	$0 – 25,000			$25,000 – 100,000			OVER $100,000		
	GC ONLY	GC w/ SUB	GC, SUB, SUB SUB	GC ONLY	GC w/ SUB	GC, SUB, SUB SUB	GC ONLY	GC w/ SUB	GC, SUB, SUB SUB
General Contractor	15	5	5	12	5	5	10	5	5
Subcontractor		15	5		12	5		10	5
Sub-subcontractor			15			12			10
Totals	**15%**	**20%**	**25%**	**12%**	**17%**	**22%**	**10%**	**15%**	**20%**

4. OMITTED

5. OMITTED

6. PROSECUTION, PROGRESS AND ACCEPTANCE OF THE WORK

The provisions below shall supplement but not replace those provisions in Section 6 of the Standard Specifications.

A. CONSTRUCTION SCHEDULE AND COMMENCEMENT OF THE WORK

1. Construction Schedule

In addition to the construction schedule required pursuant to Section 6-1.1 of the Standard Specifications after notification of the award of the Contract and before any start of the Project, as well as the revised construction schedule in advance of beginning revised operations, Contractor shall submit an updated construction schedule with its monthly invoice every month. Progress payments shall be contingent upon the receipt of monthly updated construction schedules.

2. Pre-Construction Conference

Approximately ten (10) days before the commencement of Work at the site, a pre-construction conference will be held at the City and shall be attended by the Contractor's Project manager, its on-site field superintendent, and any Subcontractors that Contractor deems appropriate. Attendance by Contractor and any Subcontractors designated is mandatory.

Unless previously submitted to the Project Administrator, the Contractor shall bring to the pre-construction conference copies of each of the following:

1) Construction Schedule.
2) Procurement schedule of major equipment and materials and items requiring long lead time.
3) Shop drawing/ sample submittal schedule.
4) Preliminary schedule of values (lump sum price breakdown) for progress payment purposes.
5) Written designation of the on-site field superintendent and the Project manager. Both daytime and emergency telephone numbers shall be included in the written designation.

The purpose of the conference is to designate responsible personnel and establish a working relationship. The parties will discuss matters requiring coordination and establish procedures for handling such matters. The complete agenda will be furnished to the Contractor before the meeting date. The Contractor shall be prepared to

discuss all of the items listed below.

1) Contractor's construction schedule.
2) Notification of local residents before starting any Work and keeping them informed throughout the Project.
3) Procedures for transmittal, review, and distribution of Contractor's submittals.
4) Processing applications for payment.
5) Maintaining record documents.
6) Critical Work sequencing.
7) Maintaining sewage service during construction, including proposed by-passes.
8) NPDES requirements, if any.
9) Field decisions and Change Orders.
10) Use of Project site, office and storage areas, security, housekeeping, and City's needs.
11) Major equipment deliveries and priorities.
12) Traffic control.
13) Any other item that the City representative states is relevant to the meeting.

B. OMITTED

C. TERMINATION OF THE CONTRACT FOR CONVENIENCE

In addition to the reasons for termination listed in Section 6-5 of the Standard Specifications, which allow termination upon any written notice, the City may cancel the Contract for any other reason or for no reason upon thirty (30) days' written notice. The rest of the procedure outlined in Section 6-5 shall apply to such situation, including the Contractor's required immediate notification of Subcontractors and suppliers and the payment. In no event (including termination for impossibility or impracticability, due to conditions or events beyond the control of the City, for any other reason or for no reason) shall the total amount of money to Contractor exceed the amount which would have been paid to Contractor for the full performance of the services described in the Contract.

D. DELAYS AND EXTENSIONS OF TIME

1. Changed Conditions Caused by Acts of God

The Contractor shall not be responsible for the cost of repairing or restoring damage to the Work if the damages have been determined to have been proximately caused by an Act of God and are in excess of five percent (5%) of the Contract amount, provided that the Work damaged was built in accordance with accepted and applicable building standards and the Contract Documents. Per Section 7105(b)(2) of the Public Contract Code, "Acts of God" shall include only earthquakes in excess of a magnitude of 3.5 on the Richter Scale and tidal waves. The Contractor shall notify the City promptly in writing of each such excusable delay, its cause and its expected delay, and shall upon request update such notice. This Section shall not abridge or affect, and shall be read in congruence with, Section 6-6 of the Standard Specifications.

2. Delays

No extension of time will be granted for delay caused by shortage of materials unless the Contractor furnishes to the Project Administrator documentary proof that he or she has diligently made reasonable and timely efforts to obtain such materials from all known sources. No time extension will be granted for delays which do not affect the critical path of the construction schedule provided at the Pre-Construction Conference.

Unless otherwise agreed in writing, an adjustment to the Contract time by reason of a Change Order shall be agreed to at the time the Change Order is issued and accepted by the Contractor. If the Change Order does not reserve the right of the parties, or either of them, to seek an adjustment to the Contract time, then the parties forever relinquish and waive such right and there shall be no further adjustments to the Contract time.

3. Extensions of Time

In the event it is deemed appropriate by the City to extend the time for completion of the Work, any such extension shall not release any guarantee for the Work required by the Contract Documents, nor shall any such extension of time relieve or release the sureties on the Bonds executed. In executing such Bonds, the sureties shall be deemed to have expressly agreed to any such extensions of time. The amount of time allowed by an extension of time shall be limited to the period of the delay giving rise to the same as determined by the City. Notwithstanding any dispute which may arise in connection with a claim for adjustment of the Contract time, the Contractor shall promptly proceed with the Work.

4. Payment for Delays

Notwithstanding any other terms and conditions of the Contract Documents, the City shall have no obligation whatsoever to increase the Contract Price or extend the time for delays.

Unless compensation and/or mark up is agreed upon by the City, the Contractor agrees that no payment of compensation of any kind shall be made to the Contractor for damages or increased overhead costs caused by any delays in the progress of the Contract, whether such delays are avoidable or unavoidable or caused by any act or omission of the City or its agents. Any accepted delay claim shall be fully compensated for by an extension of time to complete the performance of the Work.

This Section shall not apply to compensable delays caused solely by the City. If a compensable delay is caused solely by the City, the Contractor shall be entitled to a Change Order that 1) extends the time for completion of the Contract by the amount of delay caused by the City, 2) compensates the Contractor for the actual costs caused by the delay and 3) pays the Contractor a mark-up for any additional work as set forth in Section 3 of the Standard Specifications and Section 3 of these General Provisions.

E. TIME OF COMPLETION

The Contractor shall complete all Work under the Contract within Forty-five (45) calendar days from the Notice to Proceed. The Contractor shall not be allowed to begin any construction activity at the site before the issuance of the Notice to Proceed. Between the period of the Notice of Award and Notice to Proceed, the Contractor shall process Shop Drawings and begin procuring equipment and materials.

F. COMPLETION, ACCEPTANCE AND WARRANTY

1. Acceptance

The Project will not be considered complete and ready for City Council acceptance until all required Work is completed and all of the following items have been received by the Project Administrator:

(1) "Notice of Completion" indicating approval by City departments and divisions;

(2) All written guarantees and approvals from governing agencies as specified herein;

(3) All "as-builts";

(4) Duplicate copies of all operating instructions and manufacturer's operating catalogs and data, together with such field instructions as necessary to fully instruct City personnel in correct operation and maintenance procedures for all equipment installed listed under the electrical, air conditioning, heating, ventilating and other trades. This data and instructions shall be furnished for all equipment requiring periodic adjustments, maintenance or other operation procedures.

2. Warranty

For the purposes of the calculation of the start of the warranty period, the Work herein contracted for shall be deemed to be completed upon the date of the City's acceptance of the entire Project, which is when the City Council directs staff to file a Notice of Completion. If that direction is contingent on the completion of any items remaining on a punchlist, the Work herein contracted for shall be deemed to be completed upon the date of the Project Administrator's acceptance of the final item(s) on that punchlist.

Contractor shall repair or replace defective materials and workmanship as required in Section 6-8.3 of the Standard Specification at Contractor's own expense. Additionally, Contractor agrees to defend, indemnify and hold the City harmless from claims of any kind arising from damage, injury or death due to such defects.

The parties agree that no certificate given shall be conclusive evidence of the faithful performance of the Contract, either in whole or in part, and that no payment shall be construed to be in acceptance of any defective Work or improper materials. Further, the certificate or final payment shall not terminate the Contractor's obligations under the warranty herein. The Contractor agrees that payment of the amount due under the Contract and the adjustments and payments due for any Work done in accordance with any alterations of the same, shall release the City, the City Council and its officers and employees from any and all claims or liability on account of Work performed under the Contract or any alteration thereof.

G. LIQUIDATED DAMAGES

For the purposes of the calculation of the start of the liquidated damages, the Work herein contracted for shall be deemed to be completed when the same has been actually completed in accordance with the Plans and Specifications therefor and to the satisfaction of the Project Administrator. The Project must be certified by the Project Administrator in accordance with Section 6-8.1 of the Standard Specifications.

Liquidated damages shall be as set forth in Section 6-9 of the Standard Specifications, except that the sum of Two Hundred and Fifty dollars ($250) per calendar day is amended to Five Hundred dollars ($500) per calendar day. Nothing in this Section shall prohibit the Project Administrator or City Council from granting to the Contractor an extension of time and waiving the liquidated damages.

7. RESPONSIBILITIES OF THE CONTRACTOR

Section 7-12 ("Advertising") of the Standard Specifications is hereby deleted and replaced with the following:

> The names, addresses and specialties of Contractor, Subcontractors, architects or engineers may not be displayed on any signage within the public right-of-way. This signage prohibition includes advertising banners hung from truck beds or other equipment.

Otherwise, the provisions below shall supplement but not replace those provisions in Section 7 of the Standard Specifications.

A. LABOR

1. Public Work

Contractor acknowledges that the Project is a "public work" as defined in Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code ("Chapter 1"), and that this Project is subject to (a) Chapter 1, including without limitation Labor Code Section 1771 and (b) the rules and regulations established by the Director of Industrial Relations ("DIR") implementing such statutes. Contractor shall perform all Work on the Project as a public work. Contractor shall comply with and be bound by all the terms, rules and regulations described in (a) and (b) as though set forth in full herein.

2. Copies of Wage Rates

Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages for each craft, classification, or type of worker needed to perform the Project are on file at City Hall and will be made available to any interested party on request. By initiating any Work on this Project, Contractor acknowledges receipt of a copy of the DIR determination of such prevailing rate of per diem wages, and Contractor shall post such rates at each job site covered by these Contract Documents.

3. Failure to Pay Prevailing Rates

Contractor shall comply with and be bound by the provisions of Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. The Contractor shall, as a penalty to the City, forfeit two hundred dollars ($200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any public work done pursuant to these Contract Documents by Contractor or by any Subcontractor.

4. Payroll Records

Contractor shall comply with and be bound by the provisions of Labor Code Section 1776, which requires Contractor and each Subcontractor to (1) keep accurate payroll records and verify such records in writing under penalty of perjury, as specified in Section 1776, (2) certify and make such payroll records available for inspection as provided by Section 1776, and (3) inform the City of the location of the records.

5. Apprentices

Contractor shall comply with and be bound by the provisions of Labor Code Sections 1777.5, 1777.6 and 1777.7 and California Administrative Code Title 8, Section 200 *et seq*. concerning the employment of apprentices on public works projects. Contractor shall be responsible for compliance with these Sections for all apprenticeable occupations. Before commencing Work on this Project, Contractor shall provide City with a copy of the information submitted to any applicable apprenticeship program. Within sixty (60) Days after concluding Work, Contractor and each of its Subcontractors shall submit to the City a verified statement of the journeyman and apprentice hours performed under this Contract.

6. Debarment or Suspension

Contractor and Subcontractors shall not be debarred or suspended throughout the duration of this Contract pursuant to Labor Code Section 1777.1 or 1777.7. If Contractor or any Subcontractor becomes debarred or suspended throughout the duration of the Project, Contractor shall immediately notify City.

7. Hours

Contractor acknowledges that eight (8) hours labor constitutes a legal day's work. Contractor shall comply with and be bound by Labor Code Section 1810. Contractor shall comply with and be bound by the provisions of Labor Code Section 1813 concerning penalties for workers who work excess hours. The Contractor shall, as a penalty to the City, forfeit twenty-five dollars ($25) for each worker employed in the performance of this Project by the Contractor or by any Subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one (1) calendar day and forty (40) hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code. Pursuant to Labor Code Section 1815, work performed by employees of Contractor in excess of eight (8) hours per day, and forty (40) hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than 11/2 times the basic rate of pay.

8. Subcontractors

For every Subcontractor who will perform Work on the Project, Contractor shall be responsible for such Subcontractor's compliance with Chapter 1 and Labor Code Sections 1860 and 3700, and Contractor shall include in the written contract between it and each Subcontractor a copy of the provisions in this Section 7.A of the General Provisions and a requirement that each Subcontractor shall comply with those provisions. Contractor shall be required to take all actions necessary to enforce such contractual provisions and ensure Subcontractor's compliance, including without limitation, conducting a periodic review of the certified payroll records of the Subcontractor and upon becoming aware of the failure of the Subcontractor to pay his or her workers the specified prevailing rate of wages. Contractor shall diligently take corrective action to halt or rectify any failure.

9. Prevailing Wage Indemnity

To the maximum extent permitted by law, Contractor shall indemnify, hold harmless and defend (at Contractor's expense with counsel reasonably acceptable to the City) the City, its officials, officers, employees, agents and independent contractors serving in the role of City officials, and volunteers from and against any demand or claim for damages, compensation, fines, penalties or other amounts arising out of or incidental to any acts or omissions listed in Section 7.A of the General Provisions by any Person (including Contractor, its Subcontractors, and each of their officials, officers, employees and agents) in connection with any Work undertaken or in connection with the Contract Documents, including without limitation the payment of all consequential damages, attorneys' fees, and other related costs and expenses. All duties of Contractor under this Section 7.A.9 shall survive termination of the Contract.

10. Registration with the Department of Industrial Relations

The Bidder's attention is directed to Labor Code Section 1725.5, which provides that a contractor or subcontractor shall not be qualified to bid on, be listed in a Bid proposal, subject to the requirements of Public Contract Code Section 4104, or engage in the performance of any contract that is subject to Labor Code Section 1720 *et seq*., unless currently registered and qualified to perform a public work pursuant to Labor Code Section 1725.5. This requirement applies to any bid proposal submitted on or after March 1, 2015, and any contract for public work entered into on or after April 1, 2015.

B. INDEMNIFICATION

The following indemnity provisions shall supersede the indemnity in Section 7-3 of the Standard Specifications.

1. Contractor's Duty.

To the maximum extent permitted by law, Contractor hereby agrees, at its sole cost and expense, to defend with competent defense counsel approved by the City Attorney, protect, indemnify, and hold harmless the City, its elected and appointed officials, officers, employees, volunteers, attorneys, agents (including those City agents serving as independent contractors in the role of City representative), successors, and assigns (collectively "Indemnitees") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, charges, obligations, damages, causes of action, proceedings, suits, losses, stop payment notices, judgments, fines, liens, penalties, liabilities, costs and expenses of every kind and nature whatsoever, in any manner arising out of, incident to, related to, in connection with or resulting from any act, failure to act, error or omission of Contractor or any of its officers, agents, attorneys, servants, employees, Subcontractors, material suppliers or any of their officers, agents, servants or employees, arising out of, incident to, related to, in connection with or resulting from any term, provision, image, plan, covenant, or condition in the Contract Documents, including without limitation, the payment of all consequential damages, attorneys' fees, experts' fees, and other related costs and expenses (individually, a "Claim," or collectively, "Claims"). Contractor shall promptly pay and satisfy any judgment, award or decree that may be rendered against Indemnitees in any such Claim. Contractor shall reimburse Indemnitees for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Contractor or Indemnitees. This indemnity shall

apply to all Claims regardless of whether any insurance policies are applicable or whether the Claim was caused in part or contributed to by an Indemnitees.

2. Civil Code Exception

Nothing in this Section 7.B shall be construed to encompass Indemnitees' sole negligence or willful misconduct to the limited extent that the underlying Contract is subject to Civil Code Section 2782(a) or the City's active negligence to the limited extent that the underlying Contract Documents are subject to Civil Code Section 2782(b), provided such sole negligence, willful misconduct or active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction.

3. Nonwaiver of Rights

Indemnitees do not and shall not waive any rights that they may possess against Contractor because the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to these Contract Documents. This indemnity provision is effective regardless of any prior, concurrent, or subsequent active or passive negligence by Indemnitees and shall operate to fully indemnify Indemnitees against any such negligence.

4. Waiver of Right of Subrogation.

Contractor, on behalf of itself and all parties claiming under or through it, hereby waives all rights of subrogation and contribution against the Indemnitees, while acting within the scope of their duties, from all Claims arising out of or incident to the activities or operations performed by or on behalf of the Contractor regardless of any prior, concurrent or subsequent active or passive negligence by Indemnitees.

5. Survival.

The provisions of this Section 7.B shall survive the term and termination of the Contract, are intended to be as broad and inclusive as is permitted by the law of the State, and are in addition to any other rights or remedies that Indemnitees may have under the law. Payment is not required as a condition precedent to an Indemnitee's right to recover under this indemnity provision, and an entry of judgment against a Contractor shall be conclusive in favor of the Indemnitee's right to recover under this indemnity provision.

C. INSURANCE

Upon award of Contract, Contractor will be obligated to file Certificates of Insurance evidencing coverage as specified in the Contract Documents and in a form acceptable to City.

1. <u>Commencement of Work</u>

The Contractor shall not commence Work under this Contract until all insurance required under this section has been obtained by the Contractor and approved by the City; nor shall the Contractor allow any Subcontractor to commence Work until all similar insurance required of the Subcontractor has been so obtained and accepted.

2. <u>Liability Insurance</u>

Contractor shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work by the contractor, his agents, representatives, employees or subcontractors, pursuant to contractor's bid or any subsequent contract. Insurance shall be of the type, in the amounts and subject to the provisions described below.

Commercial general liability coverage at least as broad as Insurance Services Office Commercial General Liability occurrence coverage ("occurrence" form CGO001, Ed. 11/88) with a limit of not less than $2,000,000 per

occurrence. If the insurance includes a general aggregate limit, that limit shall apply separately to this contract or it shall be at least twice the required per occurrence limit.

Business automobile liability insurance at least as broad as Insurance Services office form CA 0001 (Ed. 12/90) covering Automobile Liability, code I "any auto" and endorsement CA 0029 (Ed. 12/88) with a limit not less than $1,000,000 per accident.

Workers Compensation Insurance as required by the State of California and employer's liability insurance with a limit not less than $1,000,000 per accident.

3. Evidence of Coverage

(a) Prior to commencement of work under this Contract, or within 14 days of notification of award of Contract, whichever is shorter, Contractor shall file certificates of insurance with original endorsements evidencing coverage in compliance with this contract and in a form acceptable to City. The certificate shall be on the City's standard proof of insurance form or on another form approved in writing by City's Risk Manager. Endorsement must be executed on the City's appropriate standard form titled, "Additional Insured Endorsement," copies of which are provided in the Contract Documents.

(b) Contractor shall provide to City, on request, a complete copy, including all endorsements and riders, of any insurance policy.

(c) During the term of this Contract, Contractor shall maintain current valid proof of insurance coverage, with City at all times. Proof of renewals shall be filed prior to expiration of any required coverage and shall be provided on the City's standard proof of insurance form.

(d) Failure to submit any required evidences of insurance within the required time period shall be cause for termination for default, and shall be cause for forfeiture of this bidder's bid security, if applicable.

(e) In the event Contractor does not maintain current, valid evidence of insurance on file with City, City may, at its option, withhold payment of any moneys owed to Contractor, or which it subsequently owes to Contractor, until proper proof is filed.

4. Rating

All insurance coverages shall be provided by insurers with a rating of B+ or better in the most recent edition of Best's Key Rating Guide, Property-Casualty Edition.

5. Notice

Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided or canceled and shall not be reduced in coverage or limits except after 30 days prior written notice provided to the City. Upon prior request of the carrier, the notice period may be reduced to 10 days in the event of non-payment of premium.

6. Additional Insureds

All liability coverages shall name the City, its City Council and every officer, agent and employee of City as additional insureds with respect to work under this bid or any subsequent contract.

7. Primary Coverage

Contractor's insurance and any insurance provided in compliance with these specifications shall be primary with respect to any insurance or self-insurance programs covering the City, its City Council and any officer, agent or employee of City.

8. Waiver of Rights of Subrogation

Where available, the insurer shall agree to waive all rights of subrogation against the City, its City Council and every officer, agent and employee of City.

9. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions shall be declared to be subject to the approval by City. At the option of the City, either the insurer shall reduce or eliminate the deductibles or self-insured retentions as respects the City, or the Contractor shall procure a bond guaranteeing payment of losses and expenses.

10. Replacement Coverage

In the event that Contractor does not provide continuous insurance coverage, the City shall have the right, but not the obligation, to obtain the required insurance coverage at Contractor's cost, and the City may deduct all such costs from moneys the City owes to the Contractor or from moneys which it subsequently owes to the Contractor.

11. Subcontractors

Contractor shall ensure all Subcontractors and their employees are listed as additional insureds on all of Contractor's insurance policies required by this Contract.

12. No Limitation on Indemnity

The insurance provisions shall not be construed to limit the Contractor's indemnity obligations contained in these Contract Documents.

In addition, the Contractor shall guarantee and warranty all Work against defective workmanship and materials furnished by the Contractor for a period of one (1) year from the date the Work was completed and accepted by the City.

D. PERMITS

Contractor will be required to obtain all necessary permits from the City, which may include obtaining a no fee encroachment permit for Work within the public right-of-way, as well as all other permits from all other agencies. Should this Project require construction of trenches or excavations which are five (5) feet or deeper and into which a person is required to descend, the Contractor shall obtain a Cal/OSHA permit and furnish the City with a copy before Work can commence on this Project. Contractor shall bear all cost for fees for all agencies except for the City.

E. OMITTED

8. OMITTED

9. MEASUREMENT AND PAYMENT

The provisions below shall supplement but not replace those provisions in Section 9 of the Standard Specifications.

A. GENERAL PAYMENT

In accordance with Public Contract Code Section 7107, if no claims have been filed and are still pending, the amount deducted from the final estimate and retained by the City will be paid to the Contractor except such amounts as are required by law to be withheld by properly executed and filed notices to stop payment, or as may be withheld for any other lawful purposes.

B. PARTIAL AND FINAL PAYMENT

1. Monthly Closure Date and Invoice Date

In accordance with Section 9-3.2 of the Standard Specifications, the monthly closure date shall be the last calendar day of each month. A measurement of Work performed and a progress estimate of the value thereof based on the Contract and of the monthly payment shall be prepared by the Contractor and submitted to the Project Administrator before the tenth day of the following month for verification and payment consideration.

2. Payments

City shall make payments within thirty (30) Days after receipt of Contractor's undisputed and properly submitted payment request, including an updated construction schedule pursuant to Section 6.A.1 of the General Provisions. City shall return to Contractor any payment request determined not to be a proper payment request as soon as practicable, but not later than seven (7) Days after receipt, and shall explain in writing the reasons why the payment request is not proper.

3. Retention

The City shall withhold not less than five percent (5%) of the Contract Price until final completion and acceptance of the Project.

4. Final Invoice and Payment

Final Payment, constituting the entire unpaid balance of the Contract amount, shall be made by the City to the Contractor when (1) the Contract has been fully performed by the Contractor except for the Contractor's responsibility to correct nonconforming Work as agreed to between the City and the Contractor; and (2) a final Certificate for Payment has been submitted by the Contractor and approved by the City; and (3) the work has been accepted by the City Council of the City of Beverly Hills; and (4) a Notice of Completion has been filed. Final payment shall be made by the City not more than forty (40) days after completion of the above, but only to the extent that no stop notices or other requirements to withhold funds are then in effect.

5. Substitute Security.

In accordance with Public Contract Code Section 22300, the Contractor may request that it be permitted to substitute securities in lieu of having retention withheld by the City from progress payments when such payments become due or, in the alternative, Contractor may request that the City make payments of earned retentions directly to an agreed upon designated escrow agent at Contractor's expense. If the Contractor selects either one of these alternatives, the following shall control:

a) Substitution of Securities for Performance Retention

At some reasonable time before any progress payment would otherwise be due and payable to Contractor in the performance of Work under these Contract Documents, the Contractor may submit a request to the City in writing to permit the substitution of retentions with securities equivalent to the amount estimated by the City ("estimated amount of retention") to be withheld. Contractor shall deposit such securities with the City or may, in the alternative, deposit such securities in escrow with a State or federally chartered bank in California, as the escrow agent, and at the Contractor's expense. Such securities will be the equivalent or greater in value of the estimated amount of retention. If the Contract is modified by written Modifications or Change Orders or Contractor otherwise becomes entitled to receive an amount more than the Contract amount at the time the securities are deposited, the Contractor shall, at the request of the City, deposit with the City or escrow agent, whichever is applicable, additional securities within a reasonable time so that the amount of securities on deposit with the City or escrow agent is equivalent or greater in value than the amount of retention the City would otherwise be entitled to withhold from progress payments due or to become due to the Contractor as the Work progresses. The City shall withhold any retention amount that exceeds the security amount until the additional securities are deposited and, if the deposit is with an escrow agent, the City has confirmation from that escrow agent of the new total value

of securities. Upon satisfactory completion of the Contract, which shall mean, among other things, that the City is not otherwise entitled to retain proceeds from progress payments as elsewhere provided in the Contract or under applicable law, the securities shall be returned to the Contractor. The City shall, within its sole discretion, determine whether the amount of the securities on deposit with the City or escrow agent is equal to or greater than the amount of estimated retention of progress payments which could otherwise be held by the City if the Contractor had not elected to substitute same with securities.

b) Deposit of Retention Proceeds with an Escrow Agent

As an alternative to the substitution of securities, as provided above, or the City otherwise retaining and holding retention proceeds from progress payments, the Contractor may request the City to make payments of retentions earned directly to an escrow agent with the same qualifications as required in paragraph (1) above and at the expense of the Contractor. At its sole expense, the Contractor may direct the investment of such retention payments into only such securities as mentioned in paragraph (3) below and shall be entitled to interest earned on such investments on the same terms provided for securities deposited by Contractor. Upon satisfactory completion of the Contract, which shall mean when the City would not otherwise be entitled to withhold retention proceeds from progress payments had the Contractor not elected to have such proceeds deposited into escrow, Contractor shall be allowed to receive from the escrow agent all securities, interest and payments deposited into escrow pursuant to the terms of this Section. The Contractor shall pay to each Subcontractor, not later than ten (10) Days of receipt of payment, the respective amount of interest earned, net of costs attributed to retention withheld from each Subcontractor, on the amount withheld to insure performance of the Contractor.

c) Subcontractor Entitlement to Interest

Any Contractor who elects to receive interest on moneys withheld in retention by the City shall, at the request of any Subcontractor performing more than five percent (5%) of the Contractor's total Bid, make that option available to the Subcontractor regarding any moneys withheld in retention by the Contractor from the Subcontractor. If the Contractor elects to receive interest on any moneys withheld in retention by the City, then the Subcontractor shall receive the identical rate of interest received by the Contractor on any retention moneys withheld from Subcontractor by the Contractor, less any actual pro rata costs associated with administering and calculating that interest. In the event that the interest rate is a fluctuating rate, the rate for the Subcontractor shall be determined by calculating the interest rate paid during the time that retentions were withheld from the Subcontractor. If the Contractor elects to substitute securities in lieu of retention, then, by mutual consent of the Contractor and Subcontractor, the Subcontractor may substitute securities in exchange for the release of moneys held in retention by the Contractor. The Contractor shall pay each Subcontractor, not later than ten (10) Days after receipt of escrow moneys, the amount owed to each Subcontractor from the moneys plus the respective amount of interest earned, net of costs attributed to the retention held from each Subcontractor, on the amount of retention withheld to insure performance of the Subcontractor.

d) Securities Eligible for Investment

Securities eligible for investment shall include those listed in California Government Code Section 16430, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed upon between the Contractor and the City. The Contractor shall be the beneficial owner of any securities substituted for any monies withheld and shall receive any interest thereon.

e) Escrow Agreement for Security Deposits in Lieu of Retention

The escrow agreement that shall be used for the deposit of securities in lieu of retention shall substantially conform to the form prescribed in California Public Contract Code Section 22300(f).

f) Inconsistencies with Prevailing Statutory Requirements

If there is any inconsistency between or differences in Public Contract Code Section 22300 and the terms of this provision, or any future amendments thereto, Section 22300 shall control.

C. AUDIT

The City or its representative shall have the option of inspecting and/or auditing all records and other written materials used by Contractor in preparing its billings to the City as a condition precedent to any payment to Contractor or in response to a construction claim or a Public Records Act request. Contractor will promptly furnish documents requested by the City at no cost. Additionally, Contractor shall be subject to State Auditor examination and audit at the request of the City or as part of any audit of the City, for a period of three (3) years after final payment under the Contract.

10. ADDITIONAL TERMS

A. REQUIRED LICENSES

The Contractor shall possess a valid Class B Contractor's license issued by California State Contractors License Board. The Contractor shall also be required to possess a City business license. In accordance with Section 7028.15 of the Business and Professions Code, all Contractors shall be licensed in accordance with the laws of the State of California and any Contractor or Subcontractor not so licensed is subject to the penalties imposed by such laws.

B. DEBARRED OR SUSPENDED SUBCONTRACTORS

Contractor shall not perform Work with any Subcontractor that has been debarred or suspended pursuant to California Labor Code Section 1777.1 or 1777.7.

C. NONDISCRIMINATORY EMPLOYMENT

Contractor shall not unlawfully discriminate against any individual based on race, color, religion, nationality, gender, sex, sexual orientation, age or condition of disability. Contractor understands and agrees that it is bound by and shall comply with the nondiscrimination mandates of all statutes and local ordinances and regulations.

D. NOTICE TO PROCEED

Upon award of this Contract and signing the Contract Documents, the City shall issue the Contractor a Notice to Proceed. The City will not authorize any Work to be done under these Contract Documents before the Contract has been fully executed. Any Work that is done by the Contractor in advance of such time shall be considered as being done at Contractor's own risk and responsibility, and as a consequence will be subject to rejection.

E. CONTRACTOR'S RESPONSIBILITY FOR WORK

Until the final acceptance of the Work by the City as defined in Section 6.F.1 of the General Provisions, by written action of the Project Administrator, the Contractor shall have the charge and care thereof and shall bear the risk of injury or damage to any part of the Work by the action of the elements or any other cause. The Contractor shall rebuild, repair, restore and make good all injuries or damages to any portion of the Work occasioned by any cause before its completion and acceptance and shall bear the expense thereof, except for such injuries or damages arising from the sole negligence of willful misconduct of the City, its officers, agents or employees. In the case of suspension of Work from any cause whatever, the Contractor shall be responsible for all materials and the protection of Work already completed, shall properly store and protect them if necessary, and shall provide suitable drainage and erect temporary structures where necessary.

F. OMITTED

G. OMITTED

H. OMITTED

I. OMITTED

J. WORKING DAYS AND HOURS

Contractor shall do all Work between the hours of 8:00 a.m. to 6:00 p.m., Monday through Friday. No Work will be allowed on Federal or City holidays.

In addition, no Work will be allowed on any special election day which may be declared. Should a special election day be declared, a time extension of one (1) working day will be granted for each such day.

Whenever the Contractor is permitted or directed to perform night Work or to vary the period during which Work is performed during the day, Contractor shall give twelve (12) hours notice to the Inspector so that inspection may be provided. Also, a charge may be made to the Contractor for approved overtime or weekend inspections requested by the Contractor.

K. CLAIM DISPUTE RESOLUTION

In the event of any dispute or controversy with the City over any matter whatsoever, Contractor shall not cause any delay or cessation in or of Work, but shall proceed with the performance of the Work in dispute. Contractor shall retain any and all rights provided that pertain to the resolution of disputes and protests between the parties. The Disputed Work will be categorized as an "unresolved dispute" and payment, if any, shall be as later determined by mutual agreement or a court of law. Contractor shall keep accurate, detailed records of all Disputed Work, claims and other disputed matters.

All claims arising out of or related to the Contract Documents or this Project, and the consideration and payment of such claims, are subject to the provisions of the Division 3.6 (commencing with Government Code Section 810) of Title 1 of the Government Code (the "Government Claims Act") with regard to filing claims and to Article 1.5 (commencing with Section 20104) of Division 2, Part 3 of the Public Contract Code regarding the resolution of public works claims of $375,000 or less. This Contract hereby incorporates those provisions as through fully set forth herein. Thus, Contractor or any Subcontractor must file a claim in accordance with the Government Claims Act as a prerequisite to filing a construction claim in compliance with Article 1.5, and must then adhere to Article 1.5.

L. THIRD PARTY CLAIMS

City shall have full authority to compromise or otherwise settle any claim relating to the Project at any time. City shall timely notify Contractor of the receipt of any third-party claim relating to the Project. City shall be entitled to recover its reasonable costs incurred in providing this notice.

M. COMPLIANCE WITH LAWS

Contractor shall comply with all applicable federal, State and local laws, ordinances, codes and regulations in force at the time Contractor performs pursuant to the Contract Documents.

N. CONTRACTOR'S REPRESENTATIONS

By signing the Contract, Contractor represents, covenants and agrees that: a) Contractor is licensed, qualified, and capable of furnishing the labor, materials, and expertise necessary to perform the services in accordance with the terms and conditions set forth in the Contract Documents; b) there are no obligations, commitments, or

impediments of any kind that will limit or prevent its full performance under the Contract Documents; c) there is no litigation pending against Contractor, and Contractor is not the subject of any criminal investigation or proceeding; and d) to Contractor's actual knowledge, neither Contractor nor its personnel have been convicted of a felony.

O. CONFLICTS OF INTEREST

Contractor agrees not to accept any employment or representation during the term of the Contract or within twelve (12) months after acceptance as defined in Section 6.F.1 of the General Provisions that is or may likely make Contractor "financially interested," as provided in Government Code Section 1090 and 87100, in any decisions made by City on any matter in connection with which Contractor has been retained pursuant to the Contract Documents.

P. APPLICABLE LAW

The validity, interpretation, and performance of these Contract Documents shall be controlled by and construed under the laws of the State of California, excluding California's choice of law rules. Venue for any such action relating to the Contract shall be in the Los Angeles County Superior Court.

Q. TIME

Time is of the essence in these Contract Documents.

R. INDEPENDENT CONTRACTOR

Contractor and Subcontractors shall at all times remain, as to the City, wholly independent contractors. Neither the City nor any of its officials, officers, employees or agents shall have control over the conduct of Contractor, Subcontractors, or any of their officers, employees, or agents, except as herein set forth, and Contractor and Subcontractors are free to dispose of all portions of their time and activities which they are not obligated to devote to the City in such a manner and to such Persons that the Contractor or Subcontractors wish except as expressly provided in these Contract Documents. Contractor and Subcontractors shall have no power to incur any debt, obligation, or liability on behalf of the City, bind the City in any manner, or otherwise act on behalf of the City as agents. Contractor and Subcontractors shall not, at any time or in any manner, represent that they or any of their agents, servants or employees, are in any manner agents, servants or employees of City. Contractor and Subcontractors agree to pay all required taxes on amounts paid to them under the Contract, and to indemnify and hold the City harmless from any and all taxes, assessments, penalties, and interest asserted against the City by reason of the independent contractor relationship created by the Contract Documents. Contractor shall include this provision in all contracts with all Subcontractors.

S. CONSTRUCTION

In the event of any asserted ambiguity in, or dispute regarding the interpretation of any matter herein, the interpretation of these Contract Documents shall not be resolved by any rules of interpretation providing for interpretation against the party who causes the uncertainty to exist or against the party who drafted the Contract Documents or who drafted that portion of the Contract Documents.

T. NON-WAIVER OF TERMS, RIGHTS AND REMEDIES

Waiver by either party of any one or more of the conditions of performance under these Contract Documents shall not be a waiver of any other condition of performance under these Contract Documents. In no event shall the making by the City of any payment to Contractor constitute or be construed as a waiver by the City of any breach of covenant, or any default which may then exist on the part of Contractor, and the making of any such payment by the City shall in no way impair or prejudice any right or remedy available to the City with regard to such breach or default.

U. TERM

The Contract is effective as of the Effective Date listed, and shall remain in full force and effect until Contractor has fully rendered the services required by the Contract Documents or the Contract has been otherwise terminated by the City. However, some provisions may survive the term listed within this Section, as stated in those provisions.

V. NOTICE

Except as otherwise required by law, any notice or other communication authorized or required by these Contract Documents shall be in writing and shall be deemed received on (a) the day of delivery if delivered by hand or overnight courier service during the City's regular business hours or (b) on the third business day following deposit in the United States mail, postage prepaid, to the addresses listed on Contractor's Bid and
City Hall, or at such other address as one party may notify the other.

W. SEVERABILITY

If any term or portion of these Contract Documents is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of these Contract Documents shall continue in full force and effect.

CHECKLIST FOR EXECUTION OF CONSTRUCTION CONTRACT

TO BE SUBMITTED BY SUCCESSFUL BIDDER:

____ Two executed copies of the Contract

____ Payment Bond in amount of the Contract

____ Performance Bond in amount of the Contract

____ Workers' Compensation Certificate

____ Liability insurance certificate naming the City as a co-insured

____ Automobile insurance certificate naming the City as a co-insured

____ General aggregate insurance certificate naming the City as a co-insured

____ Copy of City business license

____ Additional insured endorsement – comprehensive general liability

____ Additional insured endorsement – automobile liability

____ Additional insured endorsement -- excess liability

IV. CONTRACT

CONTRACT

CITY OF BEVERLY HILLS

CONTRACT FOR

LA CIENEGA COMMUNITY CENTER HVAC REPLACEMENT PROJECT

BID No. 17-20

THIS CONTRACT ("Contract") is made and entered this _____ day of _____, 20___ ("Effective Date"), by and between the CITY OF BEVERLY HILLS, a California municipal corporation ("City") and _____ ("Contractor"). Contractor's license number is _____.

In consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

1. Contract Documents. The Contract Documents consist of this Contract, the Notice Inviting Bids, Instructions to Bidders, Bid (including documentation accompanying the Bid and any post-Bid documentation submitted before the Notice of Award), the Bonds, permits from regulatory agencies with jurisdiction, General Provisions, Special Provisions, Plans, Standard Plans, Standard Specifications, Reference Specifications, Addenda, Change Orders, and Supplemental Agreements. The Contract Documents are attached hereto and incorporated herein by reference. In the event of any conflict between the terms of this Contract and any incorporated documents, the terms of this Contract shall control.

2. Scope of Services. Contractor shall perform the Work in a good and workmanlike manner for the project identified as La Cienega Community Center HVAC Replacement Project ("Project"), as described in this Contract and in the Contract Documents.

3. Compensation. In consideration of the services rendered hereunder, City shall pay Contractor a not to exceed amount of _____ dollars ($_____) in accordance with the prices as submitted in Contractor's Proposal, attached hereto and incorporated herein by this reference.

4. Incorporation by Reference. All of the following documents are attached hereto and incorporated herein by this reference: Workers' Compensation Certificate of Insurance; Additional Insured Endorsement (Comprehensive General Liability); Additional Insured Endorsement (Automobile Liability); and Additional Insured Endorsement (Excess Liability).

5. Antitrust Claims. In entering into this Contract, Contractor offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the California Business and Professions Code) arising from purchases of goods, services, or materials pursuant to the Contract. This assignment shall be made and become effective at the time the City tenders final payment to Contractor without further acknowledgment by the parties.

6. Prevailing Wages. City and Contractor acknowledge that this Project is a public work to which prevailing wages apply. The provisions of Section 7.A of the General Provisions shall apply and are mandatory for this Project.

7. Workers' Compensation. California Labor Code Sections 1860 and 3700 provide that every contractor will be required to secure the payment of compensation to its employees. In accordance with the provisions of California Labor Code Section 1861, by signing this Contract, the Contractor certifies as follows:

> "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to under take self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the

Work of this Contract."

8. Titles. The titles used in this Contract are for convenience only and shall in no way define, limit or describe the scope or intent of this Contract or any part of it.

9. Authority. Any person executing this Contract on behalf of Contractor warrants and represents that he or she has the authority to execute this Contract on behalf of Contractor and has the authority to bind Contractor to the performance of its obligations hereunder.

10. Entire Agreement. This Contract, including any other documents incorporated herein by specific reference, represents the entire and integrated agreement between City and Contractor. This Contract supersedes all prior oral or written negotiations, representations or agreements. This Contract may not be modified or amended, nor any provision or breach waived, except in a writing signed by both parties which expressly refers to this Contract.

11. Counterparts. This Contract may be executed in counterpart originals, duplicate originals, or both, each of which is deemed to be an original for all purposes.

IN WITNESS WHEREOF, the parties hereto have executed the Contract the day and year first above written.

CITY OF BEVERLY HILLS

By: _____
_____, Mayor

ATTEST:

By: _____
BYRON POPE, City Clerk

Dated: _____

_____
("CONTRACTOR")

By: _____

Printed Name: _____

Title: _____

By: _____

Printed Name: _____

Title: _____

APPROVED AS TO FORM:

By: _____
LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

By: _____
MAHDI ALUZRI
City Manager

By: _____
GEORGE CHAVEZ
Assistant City Manager/ Director of Public Works

By: _____
SHARON L'HEUREUX DRESSEL
Interim Risk Manager

V. BONDS

Bond No. _____

PAYMENT BOND
(LABOR AND MATERIALS)

KNOW ALL PERSONS BY THESE PRESENTS that:

WHEREAS the City of Beverly Hills ("City"), State of California, has awarded to _____

_____

_____("Principal")

(Name and address of Contractor)

a contract (the "Contract") for the Work described as follows**:**

LA CIENEGA COMMUNITY CENTER HVAC REPLACEMENT PROJECT PROJECT

(Project name)

WHEREAS, under the terms of the Contract, the Principal is required before entering upon the performance of the work, to file a good and sufficient payment bond with the City to secure the claims to which reference is made in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code.

NOW, THEREFORE, we, the undersigned Principal, and _____

_____

_____

(Name and address of Surety)

("Surety") a duly admitted surety insurer under the laws of the State of California, as Surety, are held and firmly bound unto the City and all contractors, subcontractors, laborers, material suppliers, and other persons employed in the performance of the agreement and referred to in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code in the penal sum of _____

Dollars ($_____), for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this work or labor, that the surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by City in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this Bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this Bond.

Should the condition of this Bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or the specifications accompanying the same shall in any manner affect its obligations on this Bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety, on the date set forth below, the name of each corporate party being hereto affixed and these presents duly signed by its undersigned representative(s) pursuant to authority of its governing body.

Dated: _____

"Principal"	"Surety"
_____	_____
_____	_____
By: _____ Its	By: _____ Its
By: _____ Its	By: _____ Its
(Seal)	*(Seal)*

APPROVED AS TO FORM:

By: _____
Laurence S. Wiener, City Attorney

Note: This Bond must be executed in duplicate and dated, all signatures must be notarized, and evidence of the authority of any person signing as attorney-in-fact must be attached. IF CONTRACTOR IS A PARTNERSHIP, ALL PARTNERS MUST EXECUTE BOND. DATE OF BOND MUST NOT BE PRIOR TO DATE OF CONTRACT. Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the project is located.

Bond No. _____

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS that:

WHEREAS the City of Beverly Hills ("City"), has awarded to _____

_____

_____ ("Principal")

(Name and address of Contractor)

a contract (the "Contract") for the Work described as follows**:**

LA CIENEGA COMMUNITY CENTER HVAC REPLACEMENT PROJECT PROJECT

(Project name)

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

NOW, THEREFORE, we, the undersigned Principal, and _____

_____

_____,

(Name and address of Surety)

("Surety") a duly admitted surety insurer under the laws of the State of California, as Surety, are held and firmly bound unto the City in the penal sum of _____

_____

Dollars ($_____), this amount being not less than the total Contract Price, in lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors executors and administrators, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the hereby bounded Principal, his, her or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the Contract and any alteration thereof made as therein provided, on the Principal's part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or of the Work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligations under this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Work or to the specifications. Surety hereby waives the provisions of California Civil Code 2845 and 2849. The City is the principal beneficiary of this Bond and has all rights of a party hereto.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety, on the date set forth below, the name of each corporate party being hereto affixed and these presents duly signed by its undersigned representative(s) pursuant to authority of its governing body.

Dated: _____

"Principal"	"Surety"
_____	_____
_____	_____
By: _____	By: _____
Its	Its
By: _____	By: _____
Its	Its
(Seal)	*(Seal)*

APPROVED AS TO FORM:

By: _____
Laurence S. Wiener, City Attorney

Note: This Bond must be executed in duplicate and dated, all signatures must be notarized, and evidence of the authority of any person signing as attorney-in-fact must be attached. IF CONTRACTOR IS A PARTNERSHIP, ALL PARTNERS MUST EXECUTE BOND. DATE OF BOND MUST NOT BE PRIOR TO DATE OF CONTRACT. Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the project is located.

VI. INSURANCE

WORKERS' COMPENSATION
CERTIFICATE OF INSURANCE

WHEREAS, the City of Beverly Hills ("City") has required certain insurance to be provided by:

_____

NOW THEREFORE, the undersigned insurance company does hereby certify that it has issued the policy or policies described below to the following named insureds and that the same are in force at this time:

1. This certificate is issued to:

   City of Beverly Hills
   City Hall
   455 North Rexford Drive, Suite 190
   Beverly Hills, California 90210

2. The insureds under such policy or policies are:

   _____

3. Workers' Compensation Policy or Policies in a form approved by the Insurance Commissioner of California covering all operations of the named insureds as follows:

Policy Number	Effective Date	Expiration Date
_____	_____	_____
_____	_____	_____
_____	_____	_____

_____

_____

_____

By: _____
Its Authorized Representative

ADDITIONAL INSURED ENDORSEMENT
COMPREHENSIVE GENERAL LIABILITY

Name and address of named insured ("Named Insured"):

Name and address of Insurance Company ("Company"):

General description of agreement(s), permit(s), license(s), and/or activity(ies) insured:

Notwithstanding any inconsistent statement in the policy to which this endorsement is attached (the "Policy") or in any endorsement now or hereafter attached thereto, it is agreed as follows:

1. The City of Beverly Hills ("City"), its elected officials, officers, attorneys, agents, employees, and volunteers are additional insureds (the above named additional insureds are hereafter referred to as the "Additional Insureds") under the Policy in relation to those activities described generally above with regard to operations performed by or on behalf of the Named Insured. The Additional Insureds have no liability for the payment of any premiums or assessments under the Policy.

2. The insurance coverages afforded the Additional Insureds under the Policy shall be primary insurance, and no other insurance maintained by the Additional Insureds shall be called upon to contribute with the insurance coverages provided by the Policy.

3. Each insurance coverage under the Policy shall apply separately to each Additional Insured against whom claim is made or suit is brought except with respect to the limits of the Company's liability.

4. Nothing in this contract of insurance shall be construed to preclude coverage of a claim by one insured under the policy against another insured under the policy. All such claims shall be covered as third-party claims, i.e., in the same manner as if separate policies had been issued to each insured. Nothing contained in this provision shall operate to increase or replicate the Company's limits of liability as provided under the policy.

5. The insurance afforded by the Policy for contractual liability insurance (subject to the terms, conditions and exclusions applicable to such insurance) includes liability assumed by the Named Insured under the indemnification and/or hold harmless provision(s) contained in or executed in conjunction with the written agreement(s) or permit(s) designated above, between the Named Insured and the Additional Insureds.

6. The policy to which this endorsement is attached shall not be subject to cancellation, change in coverage, reduction of limits (except as the result of the payment of claims), or non-renewal except after written notice to City, by certified mail, return receipt requested, not less than thirty (30) Days before the effective date thereof. In the event of Company's failure to comply with this notice provision, the policy as initially drafted will continue in full force and effect until compliance with this notice requirement.

7. Company hereby waives all rights of subrogation and contribution against the Additional Insureds, while acting within the scope of their duties, from all claims, losses and liabilities arising out of or incident to the perils insured against in relation to those activities described generally above with regard to operations performed by or on behalf of the Named Insured regardless of any prior, concurrent, or subsequent active or passive negligence by the Additional Insureds.

8. It is hereby agreed that the laws of the State of California shall apply to and govern the validity, construction, interpretation, and enforcement of this contract of insurance.

9. This endorsement and all notices given hereunder shall be sent to City at:

City Manager
City of Beverly Hills
City Hall
455 North Rexford Drive, Suite 190
Beverly Hills, California 90210

10. Except as stated above and not in conflict with this endorsement, nothing contained herein shall be held to waive, alter or extend any of the limits, agreements, or exclusions of the policy to which this endorsement is attached.

TYPE OF COVERAGES TO WHICH THIS ENDORSEMENT ATTACHES	POLICY PERIOD FROM/TO	LIMITS OF LIABILITY

11. Scheduled items or locations are to be identified on an attached sheet. The following inclusions relate to the above coverages. Includes:

□ Contractual Liability
□ Owners/Landlords/Tenants
□ Manufacturers/Contractors
□ Products/Completed Operations
□ Broad Form Property Damage
□ Extended Bodily Injury
□ Broad Form Comprehensive General Liability Endorsement
□ Explosion Hazard
□ Collapse Hazard
□ Underground Property Damage
□ Pollution Liability
□ Liquor Liability
□ _____
□ _____
□ _____

12. A □ deductible or □ self-insured retention *(check one)* of $_____ applies to all coverage(s) except: _____ *if none, so state)*. The deductible is applicable □ per claim or □ per occurrence *(check one)*.

13. This is an □ occurrence or □ claims made policy *(check one)*.

14. This endorsement is effective on _____ at 12:01 a.m. and forms a part of Policy Number _____.

I, _____ *(print name)*, hereby declare under penalty of perjury under the laws of the State of California, that I have the authority to bind the Company to this endorsement and that by my execution hereof, I do so bind the Company.

Executed _____, 20___

_____
Signature of Authorized Representative

(Original signature only; no facsimile signature or initialed signature accepted)

Telephone No.: (_____) _____

ADDITIONAL INSURED ENDORSEMENT
AUTOMOBILE LIABILITY

Name and address of named insured ("Named Insured"): _____

_____

Name and address of Insurance Company ("Company"): _____

_____

General description of agreement(s), permit(s), license(s), and/or activity(ies) insured:

Notwithstanding any inconsistent statement in the policy to which this endorsement is attached (the "Policy") or in any endorsement now or hereafter attached thereto, it is agreed as follows:

1. The City of Beverly Hills ("City"), its elected officials, officers, attorneys, agents, employees, and volunteers are additional insureds (the above named additional insureds are hereafter referred to as the "Additional Insureds") under the Policy in relation to those activities described generally above with regard to operations performed by or on behalf of the Named Insured. The Additional Insureds have no liability for the payment of any premiums or assessments under the Policy.

2. The insurance coverages afforded the Additional Insureds under the Policy shall be primary insurance, and no other insurance maintained by the Additional Insureds shall be called upon to contribute with the insurance coverages provided by the Policy.

3. Each insurance coverage under the Policy shall apply separately to each Additional Insured against whom claim is made or suit is brought except with respect to the limits of the Company's liability.

4. Nothing in this contract of insurance shall be construed to preclude coverage of a claim by one insured under the policy against another insured under the policy. All such claims shall be covered as third-party claims, i.e., in the same manner as if separate policies had been issued to each insured. Nothing contained in this provision shall operate to increase or replicate the Company's limits of liability as provided under the policy.

5. The insurance afforded by the Policy for contractual liability insurance (subject to the terms, conditions and exclusions applicable to such insurance) includes liability assumed by the Named Insured under the indemnification and/or hold harmless provision(s) contained or executed in conjunction with the written agreement(s) or permit(s) designated above, between the Named Insured and the Additional Insureds.

6. The policy to which this endorsement is attached shall not be subject to cancellation, change in coverage, reduction of limits (except as the result of the payment of claims), or non-renewal except after written notice to City, by certified mail, return receipt requested, not less than thirty (30) Days before the effective date thereto. In the event of Company's failure to comply with this notice provision, the policy as initially drafted will continue in full force and effect until compliance with this notice requirement.

7. Company hereby waives all rights of subrogation and contribution against the Additional Insureds, while acting within the scope of their duties, from all claims, losses and liabilities arising out of or incident to the perils insured against in relation to those activities described generally above with regard to operations performed by or on behalf of the Named Insured regardless of any prior, concurrent, or subsequent active or passive negligence by the Additional Insureds.

8. It is hereby agreed that the laws of the State of California shall apply to and govern the validity, construction, interpretation, and enforcement of this contract of insurance.

9. This endorsement and all notices given hereunder shall be sent to City at:

City Manager
City of Beverly Hills
City Hall
455 North Rexford Drive, Suite 190
Beverly Hills, California 90210

10. Except as stated above and not in conflict with this endorsement, nothing contained herein shall be held to waive, alter or extend any of the limits, agreements, or exclusions of the policy to which this endorsement is attached.

TYPE OF COVERAGES TO WHICH THIS ENDORSEMENT ATTACHES	POLICY PERIOD FROM/TO	LIMITS OF LIABILITY

11. Scheduled items or locations are to be identified on an attached sheet. The following inclusions relate to the above coverages. Includes:

- Any Automobiles
- All Owned Automobiles
- Non-owned Automobiles
- Hired Automobiles
- Scheduled Automobiles
- Garage Coverage
- Truckers Coverage
- Motor Carrier Act
- Bus Regulatory Reform Act
- Public Livery Coverage
- _____
- _____

12. A □ deductible or □ self-insured retention *(check one)* of $_____applies to all coverage(s) except: _____ *(if none, so state)*. The deductible is applicable G per claim or G per occurrence *(check one)*.

13. This is an □ occurrence or □ claims made policy *(check one)*.

14. This endorsement is effective on _____ at 12:01 a.m. and forms a part of Policy Number _____.

I, _____ *(print name)*, hereby declare under penalty of perjury under the laws of the State of California, that I have the authority to bind the Company to this endorsement and that by my execution hereof, I do so bind the Company.

Executed _____, 20____

_____
Signature of Authorized Representative
(Original signature only; no facsimile signature or initialed signature accepted)

Telephone No.: (_____) _____

ADDITIONAL INSURED ENDORSEMENT
EXCESS LIABILITY

Name and address of named insured ("Named Insured"): _____

_____

Name and address of Insurance Company ("Company"): _____

_____

General description of agreement(s), permit(s), license(s), and/or activity(ies) insured:

Notwithstanding any inconsistent statement in the policy to which this endorsement is attached (the "Policy") or in any endorsement now or hereafter attached thereto, it is agreed as follows:

1. The City of Beverly Hills ("City"), its elected officials, officers, attorneys, agents, employees, and volunteers are additional insureds (the above named additional insureds are hereafter referred to as the "Additional Insureds") under the Policy in relation to those activities described generally above with regard to operations performed by or on behalf of the Named Insured. The Additional Insureds have no liability for the payment of any premiums or assessments under the Policy.

2. The insurance coverages afforded the Additional Insureds under the Policy shall be primary insurance, and no other insurance maintained by the Additional Insureds shall be called upon to contribute with the insurance coverages provided by the Policy.

3. Each insurance coverage under the Policy shall apply separately to each Additional Insured against whom claim is made or suit is brought, except with respect to the limits of the Company's liability.

4. Nothing in this contract of insurance shall be construed to preclude coverage of a claim by one insured under the policy against another insured under the policy. All such claims shall be covered as third-party claims, i.e., in the same manner as if separate policies had been issued to each insured. Nothing contained in this provision shall operate to increase or replicate the Company's limits of liability as provided under the policy.

5. The insurance afforded by the Policy for contractual liability insurance (subject to the terms, conditions and exclusions applicable to such insurance) includes liability assumed by the Named Insured under the indemnification and/or hold harmless provision(s) contained in or executed in conjunction with the written agreement(s) or permit(s) designated above, between the Named Insured and the Additional Insureds.

6. The policy to which this endorsement is attached shall not be subject to cancellation, change in coverage, reduction of limits (except as the result of the payment of claims), or non-renewal except after written notice to City, by certified mail, return receipt requested, not less than thirty (30) Days before the effective date thereto. In the event of Company's failure to comply with this notice provision, the policy as initially drafted will continue in full force and effect until compliance with this notice requirement.

7. Company hereby waives all rights of subrogation and contribution against the Additional Insureds, while acting within the scope of their duties, from all claims, losses and liabilities arising out of or incident to the perils insured against in relation to those activities described generally above with regard to operations performed by or on behalf of the Named Insured regardless of any prior, concurrent, or subsequent active or passive negligence by the Additional Insureds.

8. It is hereby agreed that the laws of the State of California shall apply to and govern the validity, construction, interpretation, and enforcement of this contract of insurance.

9. This endorsement and all notices given hereunder shall be sent to City at:

City Manager
City of Beverly Hills
City Hall
455 North Rexford Drive, Suite 190
Beverly Hills, California 90210

10. Except as stated above and not in conflict with this endorsement, nothing contained herein shall be held to waive, alter or extend any of the limits, agreements, or exclusions of the policy to which this endorsement is attached.

TYPE OF COVERAGES TO WHICH THIS ENDORSEMENT ATTACHES	POLICY PERIOD FROM/TO	LIMITS OF LIABILITY

□ Following Form
□ Umbrella Liability

□ _____

11. Applicable underlying coverages:

INSURANCE COMPANY	POLICY NO.	AMOUNT

12. The following inclusions, exclusions, extensions or specific provisions relate to the above coverages:

13. A □ deductible or □ self-insured retention *(check one)* of $_____ applies to all coverage(s) except: _____ *(if none, so state)*. The deductible is applicable □ per claim or □ per occurrence *(check one)*.

14. This is an □ occurrence or □ claims made policy *(check one)*.

15. This endorsement is effective on _____ at 12:01 a.m. and forms a part of Policy Number _____.

I, _____ *(print name)*, hereby declare under penalty of perjury under the laws of the State of California, that I have the authority to bind the Company to this endorsement and that by my execution hereof, I do so bind the Company.

Executed _____, 20___

_____
Signature of Authorized Representative
(Original signature only; no facsimile signature or initialed signature accepted)

Telephone No.: (_____) _____

VII. APPENDIX I

SCOPE OF WORK

1.0 SCOPE OF WORK

1.1 Scope of Work shall be as described in the Scope of Work:

1.2 The scope of work includes:
Remove and replace existing HVAC equipment, exhaust fans with new units to match existing
As outlined but not limited to:

- Remove and replace eight (8) water source heat pumps, include spring isolation hangers
- Provide and install isolation valves and valve hose kits.
- Relocate (5) WSHP units to allow for code required access.
- Install all electrical conduits and conductors to the relocated units.
- Modify and install new duct work to support the new units and locations.
- Modify and install piping to support the new unit's locations.
- Provide required flow switches and strainers.
- Provide and install overflow pans.
- Provide and install new T-24 electronic thermostats.
- Provide startup and testing for the new units.
- Remove the decommissioned steel tube boiler and properly discard.
- Provide and install new Raypack 502 Boiler with piping, electrical and flue.
- Modify the condenser water piping to support the required primary, secondary configuration required by the boiler manufacturer.
- Provide (1) new boiler primary pump.
- Provide and install (1) DDC controller to be installed in the existing control panel.
- Provide the required sensors, relays and peripherals to monitor and control the pumps, tower and boiler.
- Start up new controller and test the operations.
- Remove and replace two (2) exhaust fans and related ductwork.
- Pull all necessary permits (at no cost to the contractor).
- Coordinate installation of duct detectors with fire alarm contractor (see allowance #1)
- Remove and replace ceiling tiles at work area as required (ceiling tiles to match existing)
- Provide project management and supervision for the retrofit.

1.4 Bid Allowances:
FIRE ALARM MODIFICATIONS **–** Provide an allowance in the amount of $12,000.00 to the Lump Sum Base Bid for providing and installing smoke detectors in return air ducts per requirements of latest edition of CBC,
CFC & CMC.
Fire Alarm Consultant: A.J. Kirkwood & Associates, Inc.
Tel: 714.505.1977
Email: ajk.a@ajk-a.com

1.5 Alternates: None

1.6 Unit Prices: None