



**Fresno Chaffee Zoo-Specific Conditions**

REV Date: November 24, 2021

Project Name \_\_\_\_\_  
(Permit Nos.     )

at the

Fresno Chaffee Zoo

Project No. \_\_\_\_\_

Located at

1250 West Olive Avenue

Fresno, CA 93728

## DEFINITIONS

**Addendum** - A document issued by the PM during the bidding period that modifies or supersedes portions of the Contract Documents.

**Architect** - The person or organization, including the authorized representatives thereof, commissioned by the Owner to design the project. For projects on which an engineer or landscape architect is commissioned instead of an architect, the term "Architect" shall mean the design professional so commissioned for the project.

**Bid Date** - The day on which bid proposals for a project are opened.

**Bidder** - Any individual or business entity acting directly or through an authorized representative that submits a proposal for the work.

**Change Order** - A written agreement entered into after the award of the Contract that alters or amends the executed Contract.

**Cost Request Bulletin** – Request from the Owner to price a specific change. Work described in the Cost Request Bulletin shall not be performed until authorized by the PM.

**Construction Schedule** – The Contractor's time use plan for completing the Work within the Contract Time.

**Contract** - The Contract Documents which collectively represent the entire agreement between the Owner and the Contractor, and which supersede any prior negotiations, representations, or agreements either written or oral.

**Contract Documents** - The Bid Proposal Form, Notice to Contractors, bonds, insurance certificates, plans, specifications, addenda, Agreement, Contract General Conditions, FCZ Bidding Conditions, FCZ-Specific Conditions, and change orders.

**Contract Time** – The period of time, set out in calendar days, established in the Contract Documents within which the Work must be completed. The Contract Time may be adjusted by time extensions through Change Orders.

**Contractor** - The individual or business entity that has entered into this Contract with the Owner, and has been previously approved through Fresno Chaffee Zoo Corporation's annual prequalification procedure.

**Change Directive** - A written communication to the Contractor by the PM. The Change Directive may reject work, issue coordination communications, direct additional work or work under dispute.

**Owner** – The Fresno's Chaffee Zoo Corporation

**Plans** - The drawings which include elevations, sections, details, material and equipment schedules, diagrams, information, notes, or reproductions or any of these, and which show the location, character, dimension, or details of the work.

**Prevailing Wages** - The general prevailing rate of wages identified by the Director of the Department of Industrial Relations of the State of California pursuant to Labor Code § 1770.

**Progress Schedule** – The periodically updated Construction Schedule that reflects the actual progress of the work and impacts on the work thereby maintaining a current projected date of completion. Impacts on the work include, but are not limited to, anticipated delays, re-sequencing of tasks, and Change Orders.

**Project** - The total work required by the Contract.

**Project Manager (PM)** - The person delegated by the Owner to manage the construction project, and authorized to approve and/or give direction to the Contractor by making changes to the Contract through use of a Change Directive.

**Site** - The area specified in the Contract for the project and the area made available for the Contractor's operation.

**Specifications** - The instructions and requirements which complement the plans and which describe the manner of performing the work or the quantities, qualities and types of materials to be furnished.

**Subcontractor** - Any individual or business entity that contracts with Contractor to furnish either labor and materials or equipment, or labor only.

**Superintendent** - The representative of the Contractor at the construction site, who is authorized to receive instructions from the PM, and who is authorized to direct the performance of the work on behalf of the Contractor.

**Supplier or Vendor** - Any individual or business entity that contracts with the Contractor to provide materials or equipment.

**Work** - That which is to be constructed or done under the Contract, including the furnishing of all labor, materials, and equipment.

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## **Article 1 CONDUCT OF THE WORK**

### **1.1 Work Restrictions**

The Fresno Chaffee Zoo is a family environment and some construction areas will be viewable by Zoo guests. To ensure a great, family-friendly experience for Zoo guests:

- Shirts must be worn at all times;
- Shirts and hats should not have any inappropriate or controversial language;
- The Zoo is a no-smoking facility; if necessary, an off-exhibit smoking area will be determined;
- Construction employees must follow security guidelines, keeping gates closed and not accessing areas of the Zoo not related to the construction process;
- When sharing space with Zoo guests (moving materials, vehicles, etc.), guests have the right-of-way.

The Contractor is required to enforce these requirements at all times and if any suppliers, subcontractors, employees, and/or field engineers are found to be in violation of these requirements they shall be removed from the site immediately.

The Fresno Chaffee Zoo's hours of operation are generally from 9:00 am until 4:00 pm, but adjust during the Summer hours. No loud or disruptive work will be allowed at the site while the Zoo is open to the public. Examples of loud and disruptive work include but are not limited to:

- Demolition work
- Excavation by mechanical means
- Placement of concrete
- Operating power actuated anchoring equipment
- Drilling with a rotary hammer

The Owner will be the final authority deciding whether or not a particular activity is disruptive.

Pedestrian pathways around the construction Site must remain open at all times when the Zoo is open to guests. No obstruction of these pathways will be allowed including power cords, hoses, parked vehicles or equipment. All deliveries must be performed between 5:00 pm and 7:00 am.

The Contractor shall cooperate with the Zoo to minimize interference with the daily operation of the Zoo and to facilitate unrestricted management of the Zoo events. Preparation for events may restrict the Contractor's access to the work in advance and on the date of the event. Contractor shall confirm the schedule of events on a weekly basis.

The Contractor is responsible for site security and safety throughout the duration of the contract until Final Acceptance by the Owner.

The Contractor shall clean up its work daily and at other times when directed by the PM. At all times while finish work is underway floors shall be kept broom clean. Upon completion of the work, the Contractor shall promptly remove from the premises construction equipment and any waste materials not previously disposed of, leaving the premises thoroughly clean and ready for occupancy.

In the event the Contractor does not maintain the project or the site clear of debris and rubbish in a manner acceptable to the Owner the Owner will cause the project or site to be properly cleaned and will withhold the expense incurred from payments due the Contractor.

### **1.2 Prevailing Wage**

The Work under this Contract is publicly funded through Fresno County Measure Z and must be performed in accordance with the requirements of Title 8 California Code of Regulations §§ 16000 to 17270, which govern the payment of prevailing wage rates on publicly funded projects. The prevailing wage rates set forth are the minimum that must be paid by the Contractor on this project. Nothing herein contained shall be construed as preventing the Contractor from paying more than the minimum rates set forth. No extra compensation whatsoever will be allowed by the Owner due to the inability of the Contractor to hire labor at minimum rates, nor for the necessity for payment by the Contractor of subsistence, travel time, overtime, or other added compensations, all of which possibilities are elements to be considered and ascertained to the Contractor's own satisfaction in preparing the bid.

If it becomes necessary to employ crafts other than those listed, the Contractor shall notify the PM immediately, and the PM will ascertain additional prevailing rates and the rates thus determined shall be applicable as minimum from time of initial employment.

The Director of the Department of Industrial Relations has ascertained the general prevailing rate of per diem wages and the general prevailing rate for legal holiday and overtime work for each craft needed in execution of the Contract.

The Contractor and subcontractors shall keep an accurate payroll record on forms provided by the Division of Labor Standards Enforcement (or shall contain the same information as the forms provided by the division). The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division, and the printouts are verified in the manner specified herein. Payroll records shall show the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and actual per diem wages paid to each journeyman, apprentice or worker employed in connection with the public work. Each payroll record shall contain verification by written declaration under penalty of perjury that the information contained in the payroll record is true and correct.

The Contractor's and subcontractors' payroll records shall be available for inspection at all reasonable hours, and a certified copy shall be made available upon request to the employee or his or her authorized representative and the Owner. Upon receipt of written notice from the PM and within ten days of that receipt, the Contractor shall file with the requesting entity a certified copy of the payroll records. Should the Contractor or subcontractor fail to comply within the ten-day period, the Contractor or subcontractor shall forfeit \$25 for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. These penalties shall be withheld from progress payments then due. Contractor is not subject to a penalty assessment due to the failure of a subcontractor to comply with this section.

### **1.3 Workers' Compensation**

The Contractor shall be required to secure payment of Workers' Compensation to its employees in accordance with Labor Code § 3700 and shall submit to the PM prior to performing the work the certification of insurance required in Labor Code § 1861 (refer also to Article 2, Contractor's Insurance).

### **1.4 Occupational Safety and Health**

The Contractor shall comply with all the provisions of the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. §§ 651 *et seq.*) and all rules, regulations, and orders adopted pursuant thereto. The Contractor shall comply with all the provisions of the California Occupational Safety and Health Act of 1973 (Labor Code §§ 6300 *et seq.*) and all rules, regulations and orders adopted pursuant thereto. These laws provide for job safety and health protection for workers.

The Contractor shall obtain copies of such safety orders as are applicable to the type of work to be performed and shall be governed by their requirements in all construction operations. The Contractor shall fully inform each subcontractor and materials supplier as to the requirements of the applicable safety orders.

### **1.5 Environmental Requirements**

#### **a. Air and Water Pollution Control**

The Contractor shall comply with all air and water pollution control rules, regulations, ordinances and statutes which apply to the work performed under the Contract, including any air pollution control rules, regulations, ordinances and statutes adopted under the authority of Section 11017 of the Government Code. Contractor must be eligible to perform work in California, and is deemed eligible if not found to be in violation of any order, resolution, or regulation relating to air or water pollution adopted in accordance with Government Code § 4477.

In the absence of any applicable air pollution control rules, regulations, ordinances or statutes governing solvents, all solvents, including but not limited to the solvent portions of paints, thinners, curing compounds, and liquid asphalt used on the project, shall comply with the applicable material requirements of the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD). All containers of solvent, paint, thinner, curing compound or liquid asphalt shall be labeled to indicate that the contents fully comply with these requirements.

Unless otherwise provided in the special provisions, material to be disposed of shall not be burned either inside or outside the premises.

A regular watering program shall be initiated to adequately control the amount of fugitive dust in accordance with applicable SJVUAPCD rules. Exposed soil surfaces shall be sprayed with water at least daily and as needed to mitigate dust.

Trucks hauling dirt from the site shall be covered in accordance with applicable state and local requirements. To reduce exhaust emissions, unnecessary idling of construction vehicles and equipment shall be avoided.

b. Sound Control Requirements

The Contractor shall comply with all sound control and noise level rules, regulations and ordinances which apply to the work. In the absence of any such rules, regulations and ordinances, the Contractor shall conduct its work to minimize disruption to others due to sound and noise from the workers, and shall be responsive to the PM's requests to reduce noise levels.

Each internal combustion engine, used for any purpose on the project or related to the project, shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the project without a muffler. Construction equipment shall be fitted with modern emission control devices and shall be kept in proper tune.

Loading and unloading of construction materials will be scheduled so as to minimize disruptions to the Owner's activities. Construction activities will be scheduled to minimize disruption to the Owner and to Fresno Chaffee Zoo guests.

Excessive noise shall be defined as any work activity that has a sound or series of sounds that are considered to be invasive, irritating for guests, and/or disruptive to either guests or animals onsite. These noises are variable and can range from deliveries to the site, to a jackhammer or other construction equipment being operated onsite. In environments where exterior ambient noise levels exceed 65dBA CNEL it shall not be allowed, and considered intolerable during hours of operation for guests and events. Contractor shall provide noise mitigation plan within 7 calendar days of Notice to Proceed from Owner including onsite measures to be followed by anyone involved with the project. Contractor must also address in the mitigation plan hours outside of normal operations, as excessive

Noises can adversely affect animals. Owner, Owner's representative, and Contractor shall formally agree to a noise mitigation plan prior to work commencing onsite.

c. Environmental Clearances

The Contractor shall provide to state and federal agencies all information necessary for environmental clearances and other authorizations necessary for this project. The Contractor shall comply with the provisions, including giving notices during construction when so required. The Contractor shall not be compensated for the delays in obtaining environmental clearances and authorizations.

**1.6 Archaeological Finds**

All Contractors and Subcontractors for the project(s) shall be informed, in writing, of the possibility that cultural and/or paleontological resources or human remains may be discovered during project activities. If any cultural resources, paleontological resources, and/or human remains, are uncovered during project-related activities, all project-related activities in the area or in any area reasonably suspected to overlie the resources shall halt until an evaluation and/or data recovery excavation can be planned and implemented by a professional Archaeologist, a professional Paleontologist, and/or County coroner. Appropriate measures, as recommended by the Archaeologist, Paleontologist, or Coroner, to protect uncovered remains from accidents, looting, and vandalism shall be implemented immediately.

If the remains are determined to be Native American, the PM shall contact the appropriate tribal representatives to oversee removal of the remains.



## 1.7 Tree Protection

- a. Tree protection fencing:
  - Minimum protection will be a rigid 6-foot chain link or rigid 6ft plywood fence ONLY.
  - No snow fencing for tree protection.
  - Fencing sections are to be anchored into the ground.
  - Fencing to be set at predetermined locations to be shown on plans.
  - Fencing is to remain through the duration of the construction to final completion.
  - Fencing may not be moved or removed without prior Arborist, Landscape Architect, and PM approvals.
- b. In instances where there is approved tree removal or construction activity in the vicinity of a tree, the professional services of a certified Arborist shall be sought. Accepted recommendations of the arborist are to be included into the construction documents and management plan for the project.
- c. Trees identified as ‘significant’ according to the Tree Plan should be afforded extra care. In addition, trees within Designated Open Spaces (as defined in the Tree Plan) are to be afforded extra care.
- d. All related construction drawings, including project site, landscape and demolition plans, shall be approved by the Landscape Architect in consultation with the project Arborist, and contain the information listed below. Owner and PM have final approval in all matters.
- e. The following requirements prevent damage to plant materials including trees, ground cover, root systems, soil, bark, foliage, branches, and limbs due to construction activities that include, but are not limited to:
  - Soil contamination, erosion and compaction.
  - Excessive wetting, ponding and construction run-off.
  - Alteration of grade, stockpiling of soil, debris and materials.
  - Damage to soil, roots, bark, trunk, limbs, branches and foliage.
  - Unauthorized cutting, breaking, skinning and abrasion of roots, branches and bark.
- f. The Landscape Architect in consultation with the Project’s certified Arborist will:
  - Include a tree protection plan in construction documents.
  - Represent the FCZC’s interest in protecting valuable trees/plants including dedicated trees and plaques.
  - Be consulted by the design team on all building, utility and landscape design issues related to the project affecting campus trees/plants. This involvement may start at conceptual design and will not terminate until project closeout.
  - Determine the boundaries for the Zones of Protection and Critical Root Zones and approve methods for protecting these areas during construction for all trees/plants to be saved.
  - Determine the boundaries of the Critical Root Zones within the Zones of Protection where the only soil disturbances allowed are trench-less boring at specified depths, ‘air spade’ trenching, or hand digging.
  - Approve methods for tree and root zone maintenance during construction, Zones of Protection posting and allowable construction activities within the Zones of Protection.
  - Monitor compliance and provide field reports, evaluate Zones of Protection violations and determine mitigation or monetary losses from violations and damages.
  - Identify all trees/plants to be relocated prior to demolition or construction.
  - Identify all trees/plants to be saved and protected.
  - Prior to any demolition, outline materials and procedures to be used in protecting Zones of Protection. These are to include scheduling of mulching and maintenance, procedures for obtaining variances, relative timing for removal of protective fencing and procedures for protecting Zones of

Protection after fencing is removed. PM must be notified and consulted before removal of protection fencing occurs.

- No trimming of tree canopies will be allowed without prior PM approval.

g. Zones of Protection:

- Notices will be posted on Zones of Protection fencing listing prohibited activities without prior approval. These notices will remain in place until authorization is granted by the Landscape Architect, Arborist, and PM.
- Contractor shall submit requests to work within the Zones of Protection following procedures established by the Landscape Architect and PM must be notified and consulted before work occurs.
- The following activities are prohibited in the Zones of Protection without prior written approval from the Landscape Architect and PM.
  - i. Removal or moving of protective fencing
  - ii. Parking and driving of vehicles
  - iii. Storing of equipment
  - iv. Excavations
  - v. Flooding and cleanup of equipment, tools, etc.
  - vi. Operation of equipment
  - vii. Staging of materials
  - viii. Trenching
  - ix. Stockpiling
  - x. Altering Drainage
  - xi. Items may be added or removed for each individual project as needed.
- Tree trunks are to be protected as specified by the Landscape Architect and project's Arborist.
- When fencing is removed all protection requirements still apply.
- During any excavation, NO roots larger than 1-inch in diameter will be cut without prior approvals from the Landscape Architect, Arborist and PM.
- All cuts will be made with clean, sharp cutting tools only.
- No root tearing, ripping or abrasions are allowed.
- Exposed roots will be kept moist and protected from sun and frost at all times.
- Additional requirements shall be incorporated into the project specifications/drawings as necessary to ensure adequate tree/plant protection.
- Damages to any trees that are to remain and protected:
  - i. Tree values will be assessed by the Landscape Architect and PM per ISA standards and posted to the tree at start of construction. Compensation of any and all harm, damage, destruction, etc. to the tree will be assessed based on the tree value.  
OR  
Liquidated damages of five hundred dollars (\$500.00) per tree, per incident will be assessed for violation of these requirements.
  - ii. Damages can be waived only by Landscape Architect and PM if the tree is replaced with the like species and size and has a full one year unconditional guarantee.

## **Article 2 CONTRACTOR'S INSURANCE**

### **2.1 Commencement of Work**

The Contractor shall not commence work until it has obtained all the insurance required in this Article, and such insurance has been approved by the PM.

## **2.2 Policies and Coverage**

The Contractor shall obtain and maintain the following policies and coverage:

Comprehensive or Commercial Form General Liability Insurance, on an occurrence basis, covering work done or to be done by or on behalf of the Contractor and providing insurance for bodily injury, personal injury, property damage, and contractual liability. The aggregate limit shall apply separately to the work.

Business Automobile Liability Insurance on an occurrence basis, covering owned, hired, and non-owned automobiles used by or on behalf of the Contractor and providing insurance for bodily injury, property damage, and contractual liability. Such insurance shall include coverage for uninsured and underinsured motorists

Worker's Compensation including Employers Liability Insurance as required by law.

## **2.3 Verification of Coverage**

The Contractor shall submit original certificates of insurance and endorsements to the policies of insurance required by the Contract to the PM as evidence of the insurance coverage. The certificates of insurance and endorsements shall provide for no cancellation or modification of coverage without thirty (30) days written notice to the PM. Renewal certifications and endorsements shall be timely filed by the Contractor for all coverage until the work is accepted as complete. The Owner reserves the right to require the Contractor to furnish complete, certified copies of all required insurance policies.

## **2.4 Insurance Provisions**

Nothing in these insurance provisions shall be deemed to alter the indemnification provisions in Article 3. The insurance policies shall contain, or be endorsed to contain, the following provisions:

For general and automobile liability policies, the Owner, their officers, employees, representatives, volunteers, and agents are to be covered as additional insureds.

For any claims related to the Work, the Contractor's insurance coverage shall be primary insurance as respects the Owner, their officers, employees, representatives, volunteers, and agents. Any insurance or self-insurance maintained by the Owner, their officers, employees, representatives, volunteers, and agents shall be in excess of the Contractor's insurance and shall not contribute with it.

Each insurance policy required by this Article shall state that coverage shall not be canceled by either the Contractor or the insurance carrier, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Owner.

The Owner, their officers, employees, representatives, volunteers, and agents shall not by reason of their inclusion as additional insured incur liability to the insurance carriers for payment of premiums for such insurance.

## **2.5 Amount of Insurance**

For all projects, the insurance furnished by Contractor under this Article shall provide coverage in amounts not less than the following:

Comprehensive or Commercial Form General Liability Insurance--Limits of Liability shall be \$2,000,000 General Aggregate and \$1,000,000 Each Occurrence--combined single limit for bodily injury and property damage.

Business Automobile Liability Insurance-Limits of Liability; \$1,000,000 Each Accident-- combined single limit for bodily injury and property damage to include uninsured and underinsured motorist coverage.

Workers' Compensation limits as required by law with Employers Liability limits of \$1,000,000.

## **2.6 Acceptability of Insurers**

Insurers shall be licensed by the State of California to transact insurance and shall hold a current A.M. Best's rating of "a" or shall be a carrier otherwise acceptable to the Owner.

## **2.7 Subcontractor's Insurance**

Contractor shall ensure that its subcontractors are covered by insurance of the types required by this Article, and that the amount of insurance for each subcontractor is appropriate for that subcontractor's work. Contractor shall not allow any subcontractor to commence work on its subcontract until the insurance has been obtained.

## **2.8 Miscellaneous**

- a. Any deductible or self-insured retention under any policy of insurance required in this Article shall be Contractor's liability.
- b. Acceptance of certificates of insurance or additional insured endorsements by the Owner shall not limit the Contractor's liability under the Contract.
- c. In the event the Contractor does not comply with these insurance requirements, the Owner may, at its option, provide insurance coverage to protect the Owner. The cost of the insurance shall be paid by the Contractor and, if prompt payment is not received, may be deducted from Contract sums otherwise due the Contractor.
- d. If the Owner is damaged by the failure of Contractor to provide or maintain the required insurance, the Contractor shall pay the Owner for all such damages.
- e. The Contractor's obligations to obtain and maintain all required insurance are non-delegable duties under this Contract.

# **ARTICLE 3 DEFENSE AND INDEMNIFICATION**

## **3.1 No Modification**

Nothing in these indemnification provisions shall be deemed to alter the insurance provisions in Article 2.

## **3.2 Survival**

These provisions shall survive and are enforceable following termination of the Contract for any reason.

## **3.3 Construction Defect Claims.**

For purposes of the Contract, a "Construction Defect Claim" is a claim which alleges a deficiency in the development, planning, design, supervision, observation of construction, or construction of an improvement to real property related to the Project which is alleged to have caused injury (bodily injury and/or personal injury) to or death of persons (including, but not limited to, any employee of Contractor, any subcontractors, sub-subcontractors, or material suppliers, or the Indemnitees), loss of, loss of use of, or damage to real or personal property arising out of, or relating in any way, directly or indirectly, to (a) the Contractor's Work on the Project and/or (b) Contractor's breach or default of its obligations under the Contract, except any claim arising out of the sole negligence or willful misconduct of Owner related to the Contract, the Work, or the Project.

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold Owner, PM, and their members, officers, directors, employees, shareholders, representatives, agents, personnel, attorneys, experts, consultants, and all persons acting for or on their behalf related to the Contract, the Work, or the Project (the "Indemnitees") harmless from and against any and all loss, damage, liability, expense, cost (including, without limitation, attorney's fees, litigation or arbitration fees or costs, and expert witness fees and costs), claim, demand, or lien arising out of or related to any Construction Defect Claims to the extent the claims arise out of, pertain to, or related to the Contractor's Work, regardless of any fault on the part of Contractor. Contractor's obligations hereunder shall extend to Construction Defect Claims occurring after this Contract is performed or terminated as well as while it is in force, and shall continue until it is finally adjudicated that any and all actions against the Indemnitees for such matters which are indemnified herein are fully and finally barred by applicable laws. Under the Contract, the Contractor's duty to defend the Indemnitees is immediate.

If any of the Indemnitees tender a Construction Defect Claim to Contractor, Contractor shall elect to perform either of the following, the performance of which shall be deemed to satisfy the Contractor's defense obligation:

a. Within fourteen (14) days following receipt of tender of a Construction Defect Claim, Contractor may elect to defend the claim with counsel of its choice, and Contractor shall maintain control of the defense for any claim or portion of claim to which the defense obligation applies. Consistent with Civil Code § 2782, the defense by the Contractor under this paragraph shall be a complete defense of the Indemnitees of all claims or portions thereof to the extent alleged to be caused by Contractor, including any vicarious liability claims against the Indemnitees resulting from Contractor's scope of work, but not including claims resulting solely from the scope of work, actions, or omissions of the Indemnitees. If Contractor elects to defend under this paragraph, Contractor must provide written notice of the election to the Indemnitees within fourteen (14) days following receipt of the written tender. Should Contractor fail to do so, or should Contractor elect not to defend the claim with counsel of its choice pursuant to this paragraph, the parties shall proceed as set forth in section b, below.

b. Pay, within fourteen (14) days of receipt of an invoice from the Indemnitees, the Contractor's pre-allocated 90% share of the Indemnitees' actual defense fees and costs, on an ongoing basis during the pendency of the Construction Defect Claim.

The foregoing allocation in section (b) is subject to reallocation at the conclusion of the Construction Defect Claim, as provided below, consistent with Civil Code § 2782, and including any amounts reallocated upon final resolution of the claim, either by settlement or judgment. The Indemnitees shall allocate a share to themselves to the extent a claim or claims are alleged to be caused by their work, actions, or omissions, and a share to Contractor to the extent a claim or claims are alleged to be caused by the Contractor's work, actions, or omissions, as well as the work, actions, or omissions of subcontractors, sub-subcontractors, or material suppliers.

If, upon request by Contractor, the Indemnitees do not reallocate defense fees to between Contractor and Indemnitees within 30 days following final resolution of the Construction Defect Claim as described above, and provided Contractor has paid 100% of its initial allocation, Contractor shall have the right to pursue a claim against the Indemnitees for any alleged over-allocation of defense fees. Therein, Contractor shall bear the burden of proving that the parties' initial allocation of fees was erroneous or unjust.

The Indemnitees and Contractor waive any conflict of interest that may arise from counsel representing the Indemnitees, and pursuing claims against Contractor for, *inter alia*, breach of contract, negligence, indemnity, contribution, and declaratory relief, while also receiving compensation from Contractor.

### **3.4 Non-Construction Defect Claims**

Except for Construction Defect Claims, the treatment of which is as specified above, to the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold the Indemnitees harmless from and against any and all loss, damage, liability, expense, cost (including, without limitation, attorney's fees, litigation or arbitration fees or costs, and expert witness fees and costs), claim, demand, or lien arising out of injury (bodily injury and/or personal injury) to or death of persons (including, but not limited to, any employee of Contractor, any subcontractors, any sub-subcontractors, or material suppliers, or the Indemnitees), loss of, loss of use of, or damage to real or personal property arising out of, or relating in any way, directly or indirectly, to (i) the Contractor's Work on the Project and/or (ii) Contractor's breach or default of its obligations under the Contract, regardless of the passive or active negligence of the Indemnitees and regardless of whether such liability without fault is imposed or sought to be imposed on Indemnitees, except to the extent that such indemnity is void or otherwise unenforceable under the applicable law in effect on or validly retroactive to the date of the Contract, and except where such loss, damage, injury, liability or claim is the result of the sole negligence or willful misconduct of the Indemnitees. Said indemnity and defense obligations shall further apply whether or not said Non-Construction Defect Claims arise out of the concurrent act, omission, or negligence of the Indemnitees, whether active or passive.

Contractor shall not be obligated to indemnify or defend the Indemnitees for Non-Construction Defect Claims finally determined by a court of law or arbitrator to arise from the sole negligence or willful misconduct of the Indemnitees.

Under this Section 3.4, the Contractor's duty to defend is immediate and arises upon tender of a Non-Construction Defect Claim. Contractor's obligation and duty to defend is as broad as allowed by law and applies whether or not the issue of the Contractor's liability, breach of this Agreement, or other obligation or fault have been determined. Contractor will be immediately obligated to pay the Indemnitee's costs of defending the Non-Construction Defect Claim and Contractor shall pay such defense costs within fourteen (14) days of delivery of invoicing for same. The Indemnitees shall in their sole and complete discretion select attorneys to defend the Indemnitees from a Non-Construction Defect Claim and may change counsel at any time. The Indemnitees and Contractor waive any conflict of interest that may arise from counsel representing the Indemnitees, and pursuing claims against Contractor for, *inter alia*, breach of contract, negligence, indemnity, contribution, and declaratory relief, while also receiving compensation from Contractor.

### **3.5 Liquidated Damages re Defense and Indemnification**

Upon any default on the part of Contractor to perform its defense obligations herein, Contractor waives any and all rights to challenge, contest or dispute the amount or reasonableness of any settlement of any Construction Defect Claim or Non-Construction Defect Claim reached by the Indemnitees. In addition, upon any default on the part of Contractor in the performance of its defense obligations herein contained, the Indemnitees may, at their sole option, elect to: (1) treat the Contract as continuing and enforce the same by specific performance; (2) seek monetary damages; or (3) increase Contractor's unpaid share of all sums due hereunder for defense and/or indemnity by fifty percent (50%), not as a penalty, but as an agreed, reasonable liquidated damage. The Indemnitees and Contractor agree that at the time the Contract is entered into actual damages are difficult to calculate and that an increase in Contractor's unpaid share of all sums due hereunder for defense and/or indemnity by fifty percent (50%) shall be a reasonable approximation of actual damage incurred, but without the expense or litigation. The liquidated damages identified above shall be paid to the Indemnitees on demand and will not be subject to any reallocation.

### **3.6 Miscellaneous**

a. Contractor shall include in all agreements with any subcontractors, sub-subcontractors, and material suppliers clauses substantially similar to this Article 3 wherein the subcontractors, sub-subcontractors, and material suppliers agree to defend, indemnify, and hold Contractor and the Indemnitees harmless under the same terms and conditions as set forth herein.

b. Indemnitees shall not be liable to Contractor, and Contractor hereby waives all claims against Indemnitees, for injury or death to any person, damage to any property, or loss of income or use of any property by and from all causes during performance of Contractor's Work on the Project, including (without limitation) fire, earth movement (including, but not limited to, settlement, subsidence, or heaving), flood, earthquake, theft, embezzlement, riot, act of God, war, or civil commotion, unless such injury, death, damage or loss is ultimately determined to be the direct result of the sole negligence or willful misconduct of Indemnitees.

c. Contractor's duty to defend Indemnitees is entirely separate from, dependent of, and free standing of Contractor's duty to indemnify Indemnitees, including (without limitation) the defense of Indemnitees against claims for which Indemnitees (or any of them) may be strictly liable, and applies whether the issue of Contractor's negligence, breach of contract, breach of warranty, or other fault or obligation has been determined and regardless of whether Indemnitees (or any of them) have paid any sums, or incurred any detriment, arising out of or resulting directly or indirectly from Contractor's performance of Work on the Project. It is the parties' intention that the duty to defend is triggered immediately upon tender by Indemnitees to Contractor and that Indemnitees (or any of them) shall be entitled to obtain summary adjudication of Contractor's duty to defend Indemnitees at any stage of any suit or claim within the scope of this Article 3.

d. Contractor agrees that all of Contractor's Work to be performed on the Project and all actions by or on behalf of Contractor in performing Contractor's Work on the Project (including the actions of any subcontractors, sub-subcontractors, or material suppliers) shall comply with, observe, and abide by and with any and all federal, state, and local laws, ordinance, rules, regulations, orders, codes, standards, notices, requirements, statutes, building codes, manufacturers' and/or suppliers' specifications, and any other requirements of any governmental or private agencies having jurisdiction over any portion of the Project, if any (collectively, the "Codes"), including (without limitation) Codes applicable to equal employment opportunity, minority or disadvantaged business enterprise, womens' business enterprise, safety, hours of operation, noise, and with any and all other laws, regulations or requirements with which Subcontractor must comply. Contractor shall be solely responsible for determining the applicability and local effect

and interpretation of all Codes effecting Contractor's work on the Project and for the cost of complying with any and all Codes. Contractor agrees to defend, indemnify, and hold harmless Indemnitees from and against any and all loss, expense, injury, claims, proceedings, liability, damages, fines, penalties or corrective measures, including (without limitation) attorney's fees, litigation or arbitration fees or costs, and expert witness fees and costs, caused or occasioned by Contractor's failure to comply, directly or indirectly, with any Codes or its responsibilities hereunder as well as failure by any subcontractors, sub-subcontractors, or material suppliers of Contractor to fail to comply with their obligations to obey all Codes.

#### **Article 4 ADDITIONAL REQUIREMENTS**

##### **4.1 Contractor's Responsibility for the Work**

The Contractor shall be responsible for all work performed under the Contract, and no subcontractor will be recognized as such. For purposes of assessing responsibility to the Contractor, all persons engaged in the work shall be considered employees of the Contractor. The Contractor shall give its personal attention to the fulfillment of the Contract and keep all phases of the work under its control.

The Contractor shall create report of construction activities occurring each day, and include a listing of all subcontractors of all tiers and the numbers of workers for each that are on site each day, briefly describing the Work the subcontractors are performing. Each subcontractor shall create report of construction activities occurring each day, and include a listing of all subcontractors of all tiers and the numbers of workers for each that are on site each day, briefly describing the Work the subcontractors are performing. Contractor and every subcontractor shall submit these reports to the PM weekly. At the end of the Project the Contractor shall submit to the PM a complete listing of all subcontractors, suppliers and other businesses that performed Work on the Project.

The PM nor the Owner will arbitrate disputes among subcontractors or between the Contractor and one or more subcontractors concerning responsibility for performing any part of the project.

##### **4.2 Quality Control**

The Contractor shall be fully responsible for the quality of materials and workers' skill in the project. The Contractor shall not rely upon the inspection and testing provided by the Owner other than those special inspections and tests performed by the Owner's selected laboratories for which there are written reports.

##### **4.3 Burden for Damage**

From the issuance of the official notice to proceed until the formal acceptance of the project by the Owner, the Contractor shall have the charge and care of and shall bear the risk of damage to the project and materials and equipment for the project.

The Contractor, at its own expense, shall promptly rebuild, repair, restore, and make good all such damage to any portion or to all of the project and materials therefore before the acceptance of the project by the Owner except for such damage as is proximately caused by acts of the federal government or public enemy. In case of suspension of work from any cause whatever, the Contractor shall be responsible for all materials, and shall properly store them, if necessary, and shall provide suitable drainage and erect temporary structures where necessary.

If the Contractor damages any property belonging to the Owner, the Owner may, in addition to other remedies available to the Owner, retain from the money due to the Contractor an amount sufficient to ensure repair of the damage or an amount to contribute toward repair of the damage.

The Owner, nor the officers, employees, representatives, nor agents of each of them shall be responsible for any damage to the project and materials and equipment for the project.

##### **4.4 Protection of Facilities**

From the issuance of the official Notice to Proceed until the formal acceptance of the project by the Owner, the Contractor shall protect the Site and Work from theft, acts of malicious mischief, vandalism and unauthorized entry. During all hours that Work is not prosecuted, Contractor shall furnish such watchman's services as necessary to safeguard materials and equipment in storage on the Project site, including Work in place or in process of fabrication, against theft, acts of malicious mischief, vandalism and other losses or damages. The Contractor shall be liable for

any loss or damage that result from its failure to protect the Site and the Work.

The Contractor shall protect adjoining property and nearby buildings, roads, and other facilities and improvements from dust, dirt, debris and other nuisances arising out of Contractor's operations or storing practices. Dust shall be controlled by sprinkling or other effective methods acceptable to Owner. An erosion and sedimentation control program shall be initiated, which includes measures addressing erosion caused by wind and water and sediment in runoff from site. A regular watering program shall be initiated to adequately control the amount of fugitive dust in accordance with applicable SJVUAPCD rules.

Contractor shall also comply with all Fresno Metropolitan Flood Control District (FMFCD) requirements for Storm Water Pollution Prevention Plans (SWPPP).

#### **4.5 Safety**

The Contractor shall exercise precaution at all times for the protection of persons and their property. The Contractor shall install adequate safety guards and protective devices for all equipment and machinery, whether used in the work or permanently installed as part of the project. The Contractor shall also provide and adequately maintain all proper temporary walks, roads, guards, railings, lights, and warning signs. The Contractor shall comply with all applicable laws relating to safety precautions, including the safety regulations of the California Division of Industrial Safety. Unless the Contractor designates other employees, its superintendent shall have the duty of prevention of accidents. The Contractor shall institute a safety program that includes all trades on the site.

Renovation, expansion, or remodel work of any existing building may expose workers to lead-containing materials such as paint, flashings, and pipe joints. The Contractor shall comply with all applicable laws addressing such exposure, including the Cal/OSHA Lead in Construction Standards (Title 8, California Code of Regulations, § 1532.1).

The PM may bring to the attention of the Contractor a possible hazardous situation in the field regarding the safety of personnel on the site. The Contractor shall be responsible for verifying the observance of all local, state, and federal workplace safety guidelines. In no case shall this right to notify the Contractor absolve the Contractor of its responsibility for monitoring safety conditions. Such notification shall not imply that anyone other than the Contractor has assumed any responsibility for field safety operations.

Explosives shall not be used without first obtaining written permission from the PM and then shall be used only with the utmost care and within the limitations set in the written permission and in accordance with prudence and safety standards required by law. Storage of explosives on the project site is prohibited. Powder activated tools are not explosive for purposes of this Article; however, such tools shall only be used in conformance with State safety regulations.

In the event of an accident, the Contractor shall make available to the PM copies of its accident report to its insurance carrier. The Contractor shall determine the cause of the accident and immediately correct any equipment, procedure, or condition contributing to the accident.

#### **4.6 Utilities**

Contractor is responsible to notify all Utility companies (811/USA DIG hotline, etc.) within industry standard timelines prior to commencing any underground work activities onsite, and shall furnish all such evidence including ticket numbers in writing to PM. If the Contractor discovers utility facilities not identified in the Contract Documents, the Contractor shall immediately notify the PM and the utility involved, in writing, of such discovery. When the Contractor is required by the plans and specifications to locate, remove and/or relocate utility facilities not identified in the Contract Documents with reasonable accuracy, it shall be compensated for any reasonable actual added cost incurred.

With the exception of the identification of main or trunk line utility facilities in the Contract Documents, the foregoing provisions shall not apply to, and Owner shall have no obligation to indicate, the presence of existing service laterals or appurtenances whenever the presence of such utilities on the site of the project can be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the site of the construction.

The Contractor shall be responsible at its own cost for all work, expense, or special precautions caused by the existence or proximity of utilities encountered at the site or in the performance of the project work including, without limitation, repair of any damage that may result including any damage resulting from hand or exploratory excavation. The



Contractor is cautioned that the utilities encountered at the site may include communication cables or electrical cables conducting high voltage. When excavating in the vicinity of the ducts enclosing such cables, special precautions are to be observed by the Contractor at its own cost and shall include the following; all cables and their enclosure ducts shall be exposed by careful hand excavation so as not to damage the ducts or cables nor cause injury to persons, and appropriate warning signs, barricades, and safety devices shall be erected.

The Contractor shall provide as-built drawings of all utilities encountered and constructed to the PM, indicating the size, horizontal location, and vertical location based on the project benchmark or a stable datum.

#### **4.7 Schedule**

The Contractor will provide a Construction Progress Schedule within 7 calendar days after the issuance of the Notice to Proceed by Owner. This schedule shall use the critical path method of scheduling and be updated prior to approval of any progress payments. The Contractor will provide the construction schedule in native electronic form with all data accessible and all formulas visible in Microsoft Project, P6 or another similar scheduling software program upon approval by PM. If different scheduling software is used the contractor must provide a license for the Owners use.

The Contractor's Construction Schedule shall show the sequence, duration in calendar days, and interdependence of activities required for the complete performance of all work. The Contractor's Construction Schedule shall begin with the date of issuance of the Notice to Proceed, and conclude with the date of final completion including punch list work activities and training time period. Schedule to reflect Owners critical dates and milestones as discussed in preconstruction meetings.

The Construction Progress Schedule will be reviewed by the Project Manager and returned to the Contractor marked reviewed or with comments within 5 calendar days. All comments must be addressed by the Contractor and resubmitted for final review within 3 calendar days.

Monthly schedule updates will be submitted as a prerequisite for the acceptance of each payment application.

#### **4.8 Drawings Reflecting Actual Construction**

During the course of construction, the Contractor shall maintain drawings kept up each day to show the project as it is actually constructed. Every sheet of the plans and specifications that differs from the actual construction shall be marked and sheets so changed shall be noted on the title sheets of the plans and specifications. All change orders shall be shown by reference to sketch drawings, and any supplementary drawings or change order drawings shall be included. The altered Contract drawings shall be sufficiently detailed so that future work on the project or in adjacent areas may be conducted with a minimum of difficulty.

As-Builts shall be reviewed by Contractor and PM prior to any monthly progress payment. Before the completion of the project, and before release of the final retention payments, the red lined "as-built" drawings and specifications shall be transmitted to the PM for review and approval. Both a full size hard copy set and electronic version shall be provided to Owner prior to the release of final payment.

#### **4.9 Interpretation of Contract Requirements**

Correlation. Contract Documents shall be interpreted as being complementary, requiring a complete project. Any requirement occurring in any one of the Contract Documents is as binding as though occurring in all Contract Documents. Generally, the specifications address quality, types of materials and Contract conditions while the Plans show placement, sizes, and fabrication details of materials.

In the event of conflict in the Contract Documents, the priorities stated below shall govern:

- Addenda shall govern over all other Contract Documents, and subsequent addenda shall govern over prior addenda only to the extent modified.
- Contract General Conditions shall govern over all sections of the Specifications and any notation on the Plans. No other section of the Specifications shall modify the Contract General Conditions.
- In case of conflict between Plans and Specifications, the Specifications shall govern.

Conflicts within the Plans:

- Material and equipment schedules, when identified as such, shall govern over all other portions of the Plans.
- Specific notes shall govern over all other notes and all other portions of the Plans except the material and equipment schedules described above.
- Larger scale drawings shall govern over smaller scale drawings.
- Figured or numerical dimensions shall govern over dimensions obtained by scaling.
- In the event provisions of codes, safety orders Contract Documents, referenced manufacturers' specifications or industry standards are in conflict, the more restrictive or higher quality shall govern.

In the event of omissions in the Contract Documents, the following shall apply:

- If the Contract Documents are not complete as to any minor detail of a required construction system or with regard to the manner of combining or installing of parts, materials, or equipment, but there exists an accepted trade standard for good and skillful construction, such detail shall be deemed to be an implied requirement of the Contract Documents in accordance with such standard. "Minor Detail" shall include the concept of substantially identical components, where the price of each such component is small even though the aggregate cost or importance is substantial, and shall include a single component that is incidental, even though its cost or importance may be substantial.
- The quality and quantity of the parts or material so supplied shall conform to trade standards and be compatible with the type, composition, strength, size, and profile of the parts of materials otherwise set forth in the Contract Documents.

#### **4.10 Audit Rights**

The contracting parties shall be subject to examination and audit by the Owner (or designee) at any time during construction and for a period of three (3) years after final payment of the Contract. Such examination and audit shall include access to the Contractor and the subcontractor records as delineated in the following:

The Contractor's records which shall include but not be limited to accounting records (hard copy, as well as computer); emails; written policies and procedures; subcontract files (including proposals of successful and unsuccessful Bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); back charge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other supporting evidence deemed necessary by the PM to substantiate charges related to this Contract (all foregoing hereinafter referred to as "records") and shall be open to inspection and subject to audit and/or reproduction to adequately permit evaluation and verification of (a) the Contractor's compliance with Contract requirements and (b) compliance with provisions for pricing change orders, payments or claims submitted by the Contractor or any of his payees. The Contractor is required to have as part of the records the following reports: a detailed cost ledger reflecting total charges against the project which present an itemization by invoice and labor costs by cost codes; a summary report identifying total project costs by cost codes; and a subcontractor history report including each subcontract amount and change orders issued thereto.

#### **4.11 Issuance of Interpretations, Clarifications, Additional Instructions**

Should the Contractor discover any conflicts, omissions, or errors in the Contract Documents which were not discovered during the bidding process or which, in the exercise of reasonable diligence could not have been discovered during the bidding process, or should Contractor have any question concerning interpretation or clarification of the Contract Documents, the Contractor shall within 3 calendar days of such discovery request in writing interpretation, clarification, or additional detailed instructions, before proceeding with the work affected. The written request shall be given to the PM with copies to the Architect and/or Engineer.

The PM, in consultation with the Architect and/or Engineer, shall issue in writing the interpretation, clarification, or additional detailed instructions requested.

Should the Contractor proceed with the work affected before receipt of the interpretation, clarification, or instructions from the PM, the Contractor shall replace or adjust any work not in conformance with the interpretation, clarification, or instructions and shall be responsible for any resultant damage or added cost.

Should any interpretation, clarification, or additional detailed instructions, in the opinion of the Contractor, constitute work beyond the scope of the Contract, the Contractor must submit written notice thereof to the PM within seven

calendar days following receipt of such interpretation, clarification, or additional detailed instructions and in any event prior to commencement of work thereon. The Contractor shall submit an explanation of how the interpretation, clarification, or additional detailed instruction constitutes work beyond the scope of the Contract, along with a detailed cost breakdown and an explanation of any delay impacts through submission of a Time Impact analysis.

If, in the judgment of the PM, the notice is justified, the interpretation, clarification or additional detailed instructions shall either be revised or the extra work authorized by the PM by Change Directive, with a change order to follow. If the PM, in consultation with the Architect and/or Engineer, decides that the claim is not justified, the PM shall give the Contractor a written order that the claim is not justified and direct the Contractor to perform such work.

The Contractor must proceed with the work upon receipt from the PM of a written order to do so, in accordance with the Architect's and/or Engineer's interpretation of the Contract requirements. If the Contractor objects to the order, the Contractor must notify the PM in writing of its objection and the reasons therefore, within seven days of receipt of the order. The Contractor shall have the right to have this claim later determined by the PM pursuant to this Article 7.1, Claims. When performing disputed work, the Contractor shall prepare time and materials records for each day, and the PM will verify these records at the conclusion of each day. The Contractor shall have no claim for additional compensation because of such interpretation, clarification, or additional detailed instruction, unless it gives the written notices required to the PM within seven calendar days as specified above.

#### **4.12 Close Out Documents**

Contractor shall provide to the PM, at or before the time of Final Payment, all as-built drawings, warranties, O&M manuals, and other close out documents called for in the plans, specifications, and other Contract Documents. The PM in its sole and absolute discretion shall review all such documents for completeness and accuracy and the decisions of the PM in that regard shall be binding on all parties.

End of FCZ-Specific Conditions