

# AGREEMENT

(Design-Build)

PROJECT NUMBER: 23-01

## ASPHALT PUMP TRACK AT FLOOD PARK

THIS AGREEMENT, dated this 23<sup>rd</sup> day of May, 2023 by and between Santa Cruz Mountains Trail Stewardship, whose place of business is located in Santa Cruz, CA (“Design-Build Entity” or “DBE”), and the County of San Mateo (“Owner”), acting under and by virtue of the authority vested in Owner by the laws of the State of California for preconstruction and construction services (“Work”) for the Asphalt Pump Track at Flood Park (“Project”) in accordance with the Contract Documents. By executing this Agreement, each of the Signatories represents that he or she has the authority to bind the Party on whose behalf his or her execution is made.

Owner:

County of San Mateo  
455 County Center, 4<sup>th</sup> Floor  
Redwood City, CA 94063

Design-Build Entity:

Santa Cruz Mountains Trail Stewardship  
Post Office Box 331  
Santa Cruz, CA 95061

By: \_\_\_\_\_  
(Signature)

Name: Mr. Dave Pine,  
President Board of Supervisors

By:  \_\_\_\_\_  
(Signature)

Name: Matt De Young  
Title: Executive Director  
Telephone No.: (650) 740-3182  
Email: [matt@santacruztrails.org](mailto:matt@santacruztrails.org)  
CA License No: 1050446  
DIR Registration No.: PW-LR-1000461941

**THE PARTIES AGREE TO THE FOLLOWING TERMS AND CONDITIONS**

**TABLE OF  
EXHIBITS**

All Exhibits set forth below are incorporated into the Agreement.

<b>Exhibit 1</b>	Supplemental Conditions
<b>Exhibit 2</b>	Bridging Contract Documents
<b>Exhibit 2A</b>	Flood Park Renovation Plan Set
<b>Exhibit 2B</b>	Criteria Document
<b>Exhibit 2C</b>	Geotechnical Report
<b>Exhibit 2D</b>	Tree Protection Specification 31 13 11
<b>Exhibit 3</b>	Scope of Work
<b>Exhibit 4</b>	Price Proposal
<b>Exhibit 4A</b>	Price Proposal
<b>Exhibit 4B</b>	Contract Amount Breakdown
<b>Exhibit 5</b>	Personnel
<b>Exhibit 6</b>	Schedule
<b>Exhibit 7</b>	Conceptual Design Documents

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## DESIGN-BUILD AGREEMENT

This Design-Build Agreement (“**Agreement**”) is executed as of May 23, 2023 (“**Effective Date**”) by and between the “**Owner**” and “**Design-Build Entity**” for completion of the “**Project**.” The Owner and Design-Build Entity may collectively be referred to as “**the Parties**.”

**Owner:**

County of San Mateo  
455 County Center, 4<sup>th</sup> Floor  
Redwood City, CA 94063

**Design-Build Entity:**

Santa Cruz Mountains Trail Stewardship  
Post Office Box 331  
Santa Cruz, CA 95061

**Project:**  
Asphalt Pump Track at Flood Park

The Owner and Design-Build Entity agree as set forth below:

## 1. GENERAL

- 1.1 Definitions.** All defined terms will be capitalized throughout the Agreement. The definitions for this Agreement appear in alphabetical order in Section 1 of the “**Supplemental Conditions**” to the Agreement and may also be set forth herein for convenience as defined terms the first time the term is used.
- 1.2 Project Description.** The Project involves **Preconstruction Stage Services and Construction Stage Services** to construct a new Asphalt Pump Track (“Project”) according to the Flood Park Renovation Plans and Project Criteria Documents attached hereto as Exhibits 2A and 2B respectively.
- 1.3 Project Delivery.** The Project will be delivered using a design-build delivery method pursuant to Sections 22160, et seq., of the California Public Contract Code.

## 2. THE DESIGN-BUILD TEAM AND RELATIONSHIP OF THE PARTIES

- 2.1 Design-Build Team.** The Design-Build Entity is responsible to the Owner for completion of the Project. The Design-Build Team includes all team members providing services for or on behalf of the Design-Build Entity, and is comprised of, at a minimum, the “**General Contractor,**” the “**Design Professionals**” and “**Design-Build Subcontractors,**”. All “**Design Services**” will be performed by the Designer of Record and/or other design consultants (collectively, “**Design Professionals**”). The Design-Build Entity shall name the Owner as a third-party beneficiary to all design service agreements and/or design-build subcontracts and the parties agree that the Owner is an intended third-party beneficiary of such contracts. The Design-Build Team is currently comprised of the entities identified in **Exhibit 5B Key Personnel**.
- 2.2 Licensing.** Design-Build Entity must possess a valid California state class “A” or “B” General Building Contractor license during the entire term of this Agreement. All members of the Design-Build Team must possess the appropriate California state design licenses for their particular discipline. Subcontractors must all possess the appropriate California state specialty license for their particular trade. Nothing in this Agreement will require a Design-Build Team member, or any of their respective Consultants or Subcontractors, to perform any portion of the Work outside of their respective licenses or contrary to Applicable Law.
- 2.3 Good Faith.** The Design-Build Entity will perform all Work under this Agreement in compliance with each of the following requirements: (i) use its best skill and judgment in pursuit of the Project; (ii) furnish effective and efficient design,

construction administration and supervision; (iii) furnish at all times an adequate supply of “**Skilled Labor**” and materials; and (iv) perform the Work in the most expeditious and economical manner consistent with the Bridging Contract Documents in **Exhibit 2**, and good engineering practices.

- 2.4 Standard of Care.** The Design-Build Entity warrants that it possesses the design and construction licenses and expertise required for this Project under Section 2.2 and will use the same degree of care and skill customarily used by California state licensed professionals performing similar services for residential construction projects in the state of California.
- 2.5 Collaboration.** Owner and Design-Build Entity commit at all times to cooperate fully with each other and proceed on the basis of trust and good faith to permit each party to realize the benefits afforded under this Agreement. Design-Build Entity and its Design Professionals, Subcontractors, suppliers, and equipment vendors will perform their respective portions of the Work using collaborative tools and methods. The Design-Build Team will actively participate and collaborate with Owner to achieve best value, optimal design, increased labor efficiency, and elimination of waste and re-work. The Design-Build Entity will collaborate with Owner to develop the design within the Contract Price, and to ensure that the design satisfies the Bridging Contract Documents.
- 2.6 Communications.** All communications from the Design-Build Entity shall be directed to Owner via the Owner’s Project Manager, Mike Wassermann, and others as designated and directed by the Owner’s Project Manager.
- 2.7 Relationship of the Parties.** The Design-Build Entity’s relationship with the Owner is that of an independent contractor whose involvement in the Project is to act solely in the capacity of a California licensed design professional and general contractor and not as an agent, fiduciary, partner, member of, subsidiary of, or otherwise affiliated with the Owner.
- 2.8 Responsibility.** Design-Build Entity acknowledges and agrees that it is solely responsible to Owner for the sufficiency, quality, adequacy and completeness of the Work, and that Design-Build Entity is responsible for any acts, errors, or omissions of the Design-Build Entity’s principals, employees, agents, and/or any other parties either directly or indirectly in privity of contract with Design-Build Entity including, but not limited to, the Designer of Record and other Design Professionals, Subcontractors, suppliers, equipment vendors, and their agents and employees, and other persons performing any portion of the Work on behalf of Design-Build Entity.
- 2.9 Conflicts of Interest.** Design-Build Entity warrants that it is not aware of any existing conflicts of interest under Applicable Law that would prevent any member of the Design-Build Team from participating in the Project. Design-Build Entity has an ongoing obligation to monitor and disclose conflicts or potential conflicts of interest. If an organizational conflict of interest is discovered, the Design-Build Entity must make an immediate and full written disclosure to the Owner that includes a description of the action that the Design-Build Entity has taken or proposes to take to avoid or mitigate the conflict. If the contract is terminated due to a conflict of interest that existed at the time of the award, the

Owner has no obligation, responsibility or liability to reimburse all or part of the costs incurred or alleged to have been incurred by the Design- Builder.

### 3. CONTRACT DOCUMENTS

- 3.1 Contract Documents.** The “**Contract Documents**” consist of this Agreement, the Supplemental Conditions, and all other Exhibits attached to this Agreement, all subsequent modifications through amendments and change orders executed by Owner and Design-Build Entity, and the Construction Documents to be developed by the Design-Build Entity.
- 3.2 Interpretation and Intent.** The intent of the Contract Documents is to include all items necessary for proper completion of all Work within the “**Contract Time**” and within the “**Contract Price.**” The Contract Documents are intended to be complementary and what is required by any one of them is as binding as if called for by all of them.
- 3.3 Sufficiency of Contract Documents.** The Design-Build Entity acknowledges that all documents and materials submitted by the Owner to the Design-Build Entity in connection with the process culminating in the execution of this Design-Build Agreement, are complete and sufficient to have enabled the Design-Build Entity to determine the cost of the Work in order to enter into this Agreement. The Design-Build Entity confirms that it has examined the site and all physical, legal and other conditions affecting the Work and is fully familiar with the site and with such conditions. The Design-Build Entity specifically represents to the Owner that it has examined (a) the nature, location, and character of the Project and the site, including, without limitation, the surface conditions of the site and subsurface conditions of the site to the extent that such conditions affect the design and constructability of the Project, and all structures and obstructions on the site and thereunder, both natural and man-made, and all surface and subsurface water conditions of the site and the surrounding area; (b) the nature, location, and character of the general area in which the Project is located, including without limitation, its climatic conditions, available labor supply and labor costs, and available equipment supply and equipment costs; and (c) the quality and quantity of all materials, supplies, tools, equipment, labor, and professional services necessary to complete the Work in the manner and within the cost and time required by the Contract Documents. In connection with the foregoing, and having carefully examined all Contract Documents, and having examined the site, the Design-Build Entity acknowledges and declares that it has no knowledge of any discrepancies, omissions, ambiguities or conflicts in the Contracts Documents and agrees that if it becomes aware of any such discrepancies, omissions, ambiguities or conflicts, it shall promptly notify the Owner thereof.
- 3.4 Order of Precedence.** In the event of inconsistencies between requirements contained in different components of the Contract Documents, the content of each document listed below prevails over any inconsistent content in any document listed below it:

**3.4.1** Amendments of the Design-Build Agreement;

**3.4.2** Change Orders approved by Owner;

- 3.4.3 The Design-Build Agreement executed between Owner and Design-Builder including Exhibits;
- 3.4.4 100% Construction Documents developed by Design-Build Entity;
- 3.4.5 All other Exhibits to the Design-Build Agreement and all other Contract Documents not listed above.

#### 4. OWNER'S OBLIGATIONS

- 4.1 **Information and Documents.** The Owner may make various Background Documents related to the Project available to the Design-Build Entity, including but not limited to any surveys and other information that describe the Project Site as well as schedule requirements, budget constraints and other criteria, and procurement schedules. Any Background Documents provided are for information only and will not be included as part of the Contract Documents.
- 4.2 **Bridging Contract Documents.** The "Bridging Contract Documents," consisting of the Design Criteria, both included in **Exhibit 2B** to this Agreement, were developed by the Owner to provide an understanding of the baseline design requirements for the Project. The Bridging Contract Documents, along with other information provided during the RFP and proposal process, provides a basis for the Contract Price, initial Project Baseline Schedule, and initial design work. The Design-Build Entity must conduct all Work in accordance with the Bridging Contract Documents.
- 4.3 **Ownership of Facilities.** The Owner will own the Facilities, and control easements on which certain Facilities are to be built. Owner will provide Design-Build Entity with access to the Work site and easements for the purpose of fulfilling its obligations under this Agreement.
- 4.4 **Not Used.**
- 4.5 **Owner's Project Manager.** Owner's interests on the Project will be represented by the Owner's Project Manager, Mike Wassermann, as well as any other individuals identified from time to time by the Owner. The Project Manager is authorized to act on the Owner's behalf with respect to the daily operations of the Project, including, without limitation, review of Work, invoices, claims, change orders, and submittals, or may delegate authority to another representative. For simplicity, where this Agreement refers to the Owner, Design-Builder may assume that the Project Manager is the appropriate point of contact. Where necessary, the Project Manager will elevate issues to the County Board of Supervisors or to appropriate executives.
- 4.6 **Stop Payment Notice.** The Owner will comply with all stop payment notices submitted in compliance with applicable laws by withholding appropriate amounts from payments otherwise due to Design-Build Entity or otherwise responding consistent with legal requirements.
- 4.7 **Separate Contracts.** The Owner reserves the right to perform construction, maintenance, and operations related to the Project with the Owner's own forces, and to award contracts for work that lies outside of the Design-Build Entity's

Project Scope of Work. The Design- Builder and Owner will coordinate to allow for any other separate contracts to be performed, and to minimize interference with the Work and the work that the Owner is having performed through separate contract or contracts. Design-Build Entity shall perform all Work in such a manner as to avoid any material interruption of Owner's existing operations, including, without limitation, use of the athletic fields. When performing construction, maintenance, or operations related to the Project, the Owner agrees that its separate contractors will be subject to the same obligations as the Design-Build Entity with respect to insurance, indemnification, safety, protection, inspections and non-conforming work. The Owner will remain responsible to the Design-Build Entity for any delays to the Contract Time or cost impacts resulting from work performed by its separate contractors. Any cost and/or time impacts will be addressed through the Change Order process set forth in Section 9.

**4.8 Timeliness.** In order to avoid any impacts to the Contract Time, information or services under the Owner's control, including reviews and approvals, will be furnished within the timeframes set forth in the Contract Documents.

**4.9 Owner Direct Payments.** In case of a material breach by the Design-Build Entity, the Owner hereby retains the right to make direct payment to Subcontractors and Design Professionals, less retention, and to deduct the amounts from future payment requests from Design-Build Entity. Owner shall give Design-Build Entity notice and a reasonable opportunity to cure the material breach before exercising any rights described in this Section 4.9.

## **5. DESIGN-BUILD ENTITY'S OBLIGATIONS**

**5.1 Design-Build Services.** Design-Build Entity will provide all labor, materials and equipment necessary to complete the Work in compliance with the Contract Documents as described in further detail in the Scope of Work included in **Exhibit 3**. Unless otherwise provided in the Contract Documents, the Design-Build Entity shall provide or cause to be provided, and shall pay for services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

**5.2 Preconstruction Stage Services – Preparation of Design and Construction Documents.** Design-Build Entity will work collaboratively with Owner to validate Conceptual Design (**Exhibit 7**), propose alternatives where such alternatives create value to the Owner, evaluate design and construction phasing alternatives, and potential early work packages. Design Builder to produce Schematic, Design Development, and Construction Documents for the Project in accordance with: Criteria Documents (**Exhibit 2B**), its attachments, and supporting documents: Geotechnical Report, and Scope of Work (**Exhibit 3**). Also, complete design per meetings with the County for input, conformance with Criteria Documents, and approval at each design phase for the schematic design, design development, construction phase documents.



- 5.2.1 Conduct of Design Services.** Design-Build Entity must perform all design- services, including architectural, engineering and other design professional services, consistent with applicable state licensing laws, and through qualified, licensed design professionals employed by Design-Build Entity, or procured from qualified, independent licensed Design Professionals, and in accordance with the standard of care described in Section 2.4. The Design-Build Entity's Designer shall be the Designer-of-Record.
- 5.2.2 Schematic Design.** Prior to starting design, DBE is to conduct site investigations and familiarize themselves with the existing conditions and supporting documents provided by the County. Prepare Schematic Design Documents based on the Conceptual Drawings, site observations, Criteria Document and supporting documents. Include site layout drawings for approval by the County. Attend review meetings with the County and incorporate conformance review comments.
- 5.2.3 Design Development.** Upon the County's written acceptance of the Schematic Design Documents, prepare Design Development Documents for approval by the County from the Criteria Documents, including related civil plans. Attend review meetings with the County and incorporate conformance review comments.
- 5.2.4 Construction Documents.** Upon the County's written acceptance of Design Development Documents, prepare 100% complete construction documents for review and written approval by the County prior to proceeding with construction. Perform quality assurance/quality control and constructability reviews of the documents prior to submitting to the County. The County will perform its own constructability and conformance reviews. The 100% Construction Documents shall consist of complete detailed working drawings and Specifications addressing required materials, products, equipment, their installation and operation, quality assurances, reference standards, product data, warranty data, etc. These 100% Construction Documents shall contain all required drawings and Specifications completed in detail sufficient to construct the Project, confirm conformance with Bridging Contract Documents, and obtain County approval. The 100% Construction Documents shall be consistent with approved interim design submissions, as such submissions may have been modified in a design review meeting and recorded in the meetings minutes. Design-Build Entity shall remain responsible for correcting any deviation from the Bridging Contract Documents, whether discovered prior to or during construction work. Attend meetings with the County and incorporate review comments prior to starting construction.
- 5.2.5 Permitting.** No separate permitting is required for this Pump Track project since it is part of the larger permitted Flood Park Renovation project.

**5.2.6** Any other services that are reasonable and necessary for design and permitting of the Project, including close-out with local jurisdictional agencies.

**5.3 Construction Stage Notice to Proceed.** Prior to commencing any work on the Construction Stage of the Project, the Design-Build Entity will submit a Final Design Package to Owner that Design-Build Entity proposes would govern the Construction Stage work. The Final Design Package shall be comprised of the following documents: 1) the 100% Construction Documents; 2) a Construction Stage project schedule; 3) all documents required as part of the Project Manual for Construction Stage Work, including a number of forms and plans (Safety Plan, Traffic Control Plan, Quality Control Plan, various mitigation plans) to be identified by Owner and developed by Design- Builder during the course of the Preconstruction Stage; and 5) any other documents or materials reasonably required by Owner. Design-Build Entity must submit one (1) electronic set and (5) sets of prints. Owner shall review the Final Design Package in order to determine whether this Design-Build Agreement provides Owner with the best value for completing the Construction Stage of the Project. Owner reserves the right to take any of the following actions in response to the proposed Final Design Package submitted by Design-Build Entity.

**5.3.1** Owner may elect to proceed with the Construction Stage of this Agreement by delivering to the Design-Build Entity a written Notice to Proceed with Construction (the "NTP "), Builder elect to proceed with the Construction (in reasonably acceptable form), Building Permit and Clearance of Bird Nesting. Design-Build Entity will coordinate in good faith and in a commercially reasonable manner with respect to securing the Building Permit and the Clearance of Bird Nesting.

**5.3.2** The Owner may notify the Design-Build Entity of any objections to the Final Design Package within fourteen (14) calendar days after their submittal. In the event that the Owner makes objections to the 100% Construction Documents, the Design-Build Entity may complete, correct and/or modify the 100% Construction Documents in question and resubmit the Final Design Package to the Owner. If the need for re-submittal of the Final Design Package (or any part of it) shall not be due to a change requested by the Owner in the Final Design Package, then the Design-Build Entity shall have ten (10) calendar days within which to correct, complete and re-submit the Final Design Package, but there shall be no extension of the dates in the Project Baseline Schedule. In the event the Owner shall request any change in the Final Design Package that represents a change in the Scope of Work, such request may require an adjustment of time and compensation pursuant to a Change Order.

**5.3.3** The Owner may elect not to proceed with the Construction Stage of this Agreement in its sole discretion, and may take such action without cause and for its own convenience whether or not the Owner elects to have the project constructed, terminate the Agreement with Design-Build Entity for convenience in accordance with Article 16.3, and take possession of the 100% Construction Documents and all other design

documents and related work product developed by Design-Build Entity for potential award to a separate contractor.

**5.4 Construction Stage Services.** Design-Build Entity shall proceed to execute and complete the Construction Stage services only upon issuance by the Owner to the Design- Builder of an NTP and other Documents set forth in Section 5.3.1 of this Agreement with the construction phase of the Work. Design-Build Entity will provide all Construction Stage Services required for the Project. Design-Build Entity's construction stage services will also include each of the responsibilities summarized below.

- 5.4.1** Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Build Entity shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Build Entity to complete the Construction Stage Services consistent with the Contract Documents.
- 5.4.2** Design-Build Entity shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Build Entity shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.
- 5.4.3** Design-Build Entity shall coordinate the activities of all Subcontractors. If Owner performs other work at the Site with separate contractors under Owner's control, Design- Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption to the Work or the work that the Owner is having performed by separate contractors.
- 5.4.4** Design-Build Entity shall fully comply with all environmental and permit mitigation requirements set forth in these Contract Documents, including, without limitation, remediation of all hazardous materials, including preexisting hazardous materials, at the Project Site.
- 5.4.5** Design-Build Entity must promptly remove from the Project Site, or from property adjacent to the site of the Work, all unused and rejected materials, surplus earth, concrete, plaster, and construction waste, including waste from demolition of existing structures and improvements, to permit Design-Build Entity to perform its Construction Stage Services efficiently, safely and without interfering with the use of adjacent property. In particular, the Design-Build Entity shall keep the Project Site clean to maintain safe access and to avoid fire hazard. Upon Substantial Completion of the Work, or a portion of the Work, Design-Build Entity shall remove all debris, trash, construction waste, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project for its intended use. Upon Substantial Completion of the Work, Design-Build Entity shall return the premises to its pre-existing condition or better,

based on a preconstruction survey to be performed by Design-Build Entity.

**5.5 Not Used.**

**5.6 Project Support Services.** Owner may require Design-Build Entity to provide other incidental services relating to the Project, including public outreach, and presentations at Board of Supervisor meetings. The parties acknowledge and agree that, to the extent that the services described in this Section 5.6 are, in fact, incidental, the Design-Build Entity shall perform them without additional compensation. In the event that the Owner requests services pursuant to this Section 5.6 and the Design- Builder asserts that such services are not incidental, the Design-Build Entity shall promptly, and before perform any such work, notify the Owner of its contention and shall provide any supporting documentation. Owner shall promptly respond to any such notice from the Design-Build Entity and the parties shall meet and confer in good faith regarding any disagreements with respect to services under this Section 5.6.

**5.7 Site Investigations.** By executing this Agreement, the Design-Build Entity represents that it has visited the Project premises, and is familiar with the local conditions under which the Work is to be performed.

**5.8 Test and Inspections.** The Design-Build Entity shall be responsible for and coordinate any and all inspections required by any governmental body that has jurisdiction over the Project. Failure to obtain any permits, licenses, or other approvals because of the failure of the Design-Build Entity to conform to this paragraph will not extend the Contract Time and the contractor shall not be entitled to an increase in the Contract Price therefore. Further, the Design-Build Entity shall be liable to the Owner for any financial damage such failure may cause the Owner. The Owner will pay for all testing and inspection including the special inspections, structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents, however, the Design-Build Entity shall be responsible for costs related to any tests or re-tests required for corrective work attributable to the Design-Build Entity.

**5.9 Coordination with Owner and Owner's Separate Contractors.** The Design-Builder will coordinate its Work with any of Owner's employees or contractors performing work in the vicinity of the Project Site.

**5.10 Sole Responsibility.** The Design-Build Entity acknowledges and agrees that it is solely responsible to the Owner for the sufficiency, quality, adequacy and completeness of all services performed by the Design-Build Entity, including, without limitation, design work (whether during the Preconstruction Stage or Construction Stage), and construction services. Design- Builder is responsible for any acts, errors, or omissions of the Design-Build Entity, its Design Professionals, its Subcontractors, employees, agents, and/or any other parties either directly or indirectly in privity of contract with Design-Build Entity including, but not limited to, the "Design-Build Team" identified in Section 2.1, second tier-subcontractors, and vendors who are performing any portion of the Work. The Design-Build Entity's design must meet the minimum design requirements as

defined by the Bridging Contract Documents, and all other design requirements included in the agreement. The Owner may review (at its sole discretion) and as it may deem necessary or desirable, the design at specific design development milestones for consistency and compliance with such design requirements. If the Owner shall elect to review any such documents, it shall be entitled (but not obligated) to limit its review to a cursory review or to such review as may be required to enable the Owner to determine rate of progress. Owner's review and/or approval submittals, including, without limitation, interim and final design submittals, does not reduce Design-Build Entity's obligations under this section.

**5.10.1** Nothing in this Agreement shall relieve the Design-Build Entity of its obligations to complete the Project in full accordance with all applicable laws and regulations and suitable for the Owner's intended purposes.

**5.10.2** The Design-Build Entity, on behalf of itself and its design Team, specifically acknowledges and agrees that the Owner shall have the discretion to determine whether the 100% Construction Documents comply with the requirements of the Contract Documents.

## **5.11 Applicable Laws.**

**5.11.1 Statutory Authority.** The Owner is awarding this Project pursuant to the design-build authority provided under Sections 22160, et seq., of the California Public Contract Code. The Design-Build Entity and the Owner acknowledge that they have reviewed this statutory authority, are familiar with all requirements, and will comply with applicable requirements and duties.

**5.11.2 Compliance with All Applicable Laws.** The Design-Build Entity and the Owner agree to comply with all Federal, State, Municipal and local laws, ordinances, rules, regulations, building codes and standards, orders, notices and requirements applicable to proper design and construction of this Project.

**5.12 Staffing Plan and Key Personnel.** The Design-Build Entity agrees that it will staff this Project in accordance with the staffing plan included in **Exhibit 5A**. The Staffing Plan will include a staff-level organizational chart indicating hierarchy and reporting responsibilities, as well as all Key Personnel.

**5.12.1 Key Personnel.** The Design-Build Entity will identify all "**Key Personnel**" in **Exhibit 5B** and will not remove any of its Key Personnel from this Project without the express written consent of the Owner, except for death, disability or departure of person from employment. The Owner's Project Manager will be able to request the removal of any person employed by the Design-Build Entity whom it believes is incompetent, improper or a hindrance to the design-build process. If any Design-Build Entity personnel become unavailable to work on the Project, or if the Owner requests that an employee be removed, the Design-Build Entity will propose a replacement person within 10 business days for approval by the Owner. The recommended replacement person will have similar or better qualifications and experience, and must be approved in writing by the Owner. Additional

Staffing and Key Personnel requirements are set forth in the Scope of Work in **Exhibit 3**.

**5.13 Safety.** The Design-Build Entity is the “Controlling Employer” as defined by Cal/OSHA and will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work and in accordance with the Design- Builder’s Health and Safety Program. The Design-Build Entity shall comply with all statutory safety requirements.

**5.14 Project Baseline Schedule.** The initial Project Baseline Schedule, is attached as **Exhibit 6**. This initial Project Baseline Schedule will be regularly updated in conjunction with Section 8.2 of this Agreement (at least monthly) and refined as project development and design proceeds. The updates to the initial Project Baseline Schedule will coordinate and integrate the progress of Design Services with milestone dates for design development and Construction Documents, procurement of long lead items and Subcontracts, and construction of major components of the Project. The initial Project Baseline Schedule, and all subsequent versions, shall include all major components of the Work and the Owner’s occupancy requirements projecting milestones for each of the following:

- Completion of Schematic Design
- Completion of 100% Construction Documents
- Submission of Final Design Package
- Issuance of Construction Stage Notice to Proceed
- “Substantial Completion” of the Project including Issuance of Final Certificate of Occupancy for the Project
- “Final Completion” of the Project

The Project Baseline Schedule must be prepared utilizing CPM scheduling software. The schedule must be broken down by activity and duration highlighting the critical path.

The schedule submitted by the Design-Build Entity and agreed to by the Owner shall be referred to as the Project Baseline Schedule, and shall not be adjusted except through Change Order under Section 9 for permitted delays as defined in Section 8. The Project owns all float in the Project Baseline Schedule and monthly updates. Therefore, there will not be any adjustments to the Contract Time until all Project float is exhausted and the critical path is impacted.

**5.15 Taxes and Fees.** The Design-Build Entity will pay all sales, consumer, use, gross receipts, and other similar taxes legally related to the work enacted at the time of Contract Award.

**5.16 Consultants and Laboratories.** The Design-Build Entity will make recommendations to the Owner regarding selecting, retaining and coordinating any additional professional services, special consultants and testing laboratories required for the Project.

**5.17 Construction Administration.**

- 5.17.1 Preliminary Notices.** Within 5 business day's receipt, Design-Build Entity will forward to the Owner all Preliminary Notices (Civil Code sections 9300, 9500 and 9560) served on it by any person or entity entitled to assert a payment bond or stop payment notice claim. Design-Build Entity will maintain a written record of all Preliminary Notices received by it including the manner of receipt, date of receipt, and name and address of person or entity serving the Preliminary Notice. This written record will be turned over to the Owner at Project Close-out.
- 5.17.2 Supervision.** The Design-Build Entity will manage, supervise and direct the Work using its best skill and judgment. The Design-Build Entity shall identify the ("Design- Builder's Manager") who will represent the Design-Build Entity with respect to the daily operations of the Project, or may delegate authority to another representative. For simplicity, where this Agreement refers to the Design-Build Entity, Owner may assume that the Design-Build Entity's Manager is the appropriate point of contact. The Design-Build Entity's Manager may not be changed without Owner's written consent. The Design-Build Entity will also provide a qualified superintendent and assistant superintendent at the Project Site to properly supervise all of Design-Build Entity's employees, Subcontractors and their agents and employees, and other persons performing construction work and to ensure that the construction work is carried out in strict accordance with the Contract Documents. Both the superintendent and assistant superintendent shall be approved by Owner in its sole discretion. Neither the superintendent nor the assistant superintendent may have other project or business responsibilities or calls on his or her time other than this Project.
- 5.17.3 Discipline.** The Design-Build Entity will enforce strict discipline and good order at all times among Design-Build Entity's employees, Design Professionals and Subcontractors and will not employ or contract with any unfit or unskilled person(s) or entities on this Project. The Design-Build Entity and its Design-Professionals and Subcontractors will comply with all Owner policies, standards, and procedures throughout the duration of this Project.
- 5.17.4 Construction Coordination.** Before starting each portion of the construction work, the Design-Build Entity will: (i) coordinate with Owner's Project Manager, or their designee, to coordinate any necessary shut-down of equipment, and related operations issues; (ii) review and compare the various Contract Documents relative to that portion of the construction work, as well as the information furnished by the Owner, Design Professionals and Subcontractors that may affect proper installation of the work; (iii) field measure existing conditions related to that portion of the work; and (iv) observe any conditions at the site directly affecting that portion of the work.
- 5.17.5 Field Measurements.** The Design-Build Entity will take field measurements to ensure proper matching and fitting of new construction with existing conditions at the Project Site.

- 5.17.6 Submittals.** The Design-Build Entity and its Subcontractors shall provide timely submittal of all “Shop Drawings,” “Product Data,” “Samples” and similar submittals (collectively referred to as “Submittals”) required by the Contract Documents, to the Designer of Record for review and approval. After approval by the Designer of Record, all Submittals will also be provided to the Owner for Owner’s information. All Submittals will be submitted in a sequence that avoids delays in the Project Schedule. Design-Build Entity will not submit any Submittal that is merely a tracing or copy of any of the Construction Documents. Each Submittal will be prepared by the Design-Build Entity and/or its Subcontractors or suppliers and will be submitted according to the Project specifications. No construction work will be performed without approval by the Design-Build Entity, as required. Regardless of the Submittal process, the Design-Build Entity remains responsible to the Owner for proper design and construction in compliance with all requirements set forth in this Agreement. Refer to OMR for additional provisions on Submittals.
- 5.17.6.1 Response Times to Design-Build Entity Submittals.** Unless otherwise provided in the Contract Documents, Owner shall respond to reviews, approvals, and data needs to Design-Build Entity within 14 calendar days, provided that the Design-Build Entity shall, at Owner’s request, act reasonably in allowing Owner an extension of time to respond to review, approvals, and data based on a high volume of submittals or complexity of submittals under review at a given time.
- 5.17.6.2 Design-Build Subcontractors.** All Submittals prepared by Design-Build Entity and its Subcontractors shall be reviewed and approved by the Design- Builder’s Designer of Record who will remain responsible to the Design-Build Entity and Owner for the design.
- 5.17.7 Coordination of MEP.** Mechanical, electrical, plumbing, fire protection and fire and life safety work will be coordinated, as appropriate, to avoid obstructions, conflicts, keep openings and other passageways clear, overcome interference with structural, framing, and equipment conditions, and coordinate with other trades.
- 5.17.8 Layout and Protection.** The Design-Build Entity is responsible for all layouts and will preserve and protect all line and grade benchmarks. Any additional surveying or layout caused as a result of Design-Build Entity or any of its Subcontractor’s failure to take the necessary precautions to protect the data will be performed at Design-Build Entity’s own cost and expense.
- 5.17.9 Materials and Equipment.** All materials and equipment required under the Contract Documents will be new and of good quality. Once the Construction Documents are complete, no substitutions will be accepted on this Project unless: (i) the specified materials or equipment have been discontinued; or (ii) the Owner has approved the substitution through written Change Order. Materials and equipment will be furnished in ample quantities and procured in time to ensure



uninterrupted progress of construction. All materials and equipment will be properly stored and protected as required by the Contract Documents and any loss or damage due to improper storage or protection will be borne by the Design- Builder.

**5.17.9.1 Long Lead Items.** The Design-Build Entity will collaborate with Owner to establish a program to expedite ordering and delivery of materials and equipment requiring long lead time.

**5.17.9.2 Shipment and Deliveries.** Prior to shipment, delivery and installation of materials and equipment, the Design-Build Entity will verify the stage of completion of the Project with Owner to determine the availability of facilities for access, delivery, transportation and storage, and to correlate these observations with the requirements of the Contract Documents. All shipments and deliveries will be scheduled and coordinated in accordance with the most current approved site logistics plan and the most current approved Project Schedule.

**5.17.9.3 Storage of Materials and Equipment.** Storage of equipment and materials will be coordinated through the Design-Build Entity and the Owner. Design-Build Entity will maintain, or cause its Subcontractor's to maintain, all storage areas and will keep storage areas clean, safe, and secure. Storage areas shall also provide for proper protection of all stored materials and equipment from all forms of corrosion. Design-Build Entity must request and receive Owner's approval, granted at Owner's sole discretion, for offsite storage. Any materials or equipment stored offsite will be insured or stored in a bonded warehouse. The risk of loss will remain on the Design-Build Entity for all materials and equipment stored off-site.

**5.17.9.4 Risk of Loss.** All construction work stored at the Project Site, or work related to the preparation or delivery of materials or equipment to the Project Site, will remain at the risk of the Design-Build Entity or appropriate insurance carrier until Final Completion of the Project.

**5.17.9.5 Maintenance.** The Design-Build Entity will provide all maintenance for systems and equipment at its own costs and expense until Substantial Completion.

**5.17.10 Correction of Work.** At any time prior to Final Completion, Owner may require Design-Build Entity to correct work that does not comply with the Contract Documents. Design-Build Entity must correct such defective work immediately (unless otherwise approved by Owner), at its sole cost and expense, and in a manner that does not delay the completion of the Project.

**5.17.11 Covering and Uncovering Work.** Design-Build Entity must provide notice to Owner as to the schedule for covering Work so that the Owner has adequate time to observe Work to be covered. Owner may require any Work to be uncovered, whether or not prior information was provided as to the schedule for covering. Should Work so uncovered

prove to be in non-compliance with the Contract Documents, the cost of uncovering, correction of the Work and re-covering shall be borne by the Design-Build Entity and the Owner is not be liable for any schedule recovery costs Design-Build Entity may incur. If Design-Build Entity provided adequate notice of covering and the work is compliant with the Contract Documents, Design-Build Entity is entitled to a change order for any extra cost caused Design-Build Entity, including any cost of schedule recovery. Design-Build Entity may comply with the notice requirements of this section as part of the project schedules described in Section 8.2 of the Design-Build Agreement.

## 6. SUBCONTRACTORS

- 6.1 Procurement.** Those portions of the Work that the Design-Build Entity will not self- perform, or that will not be performed by Design Professionals or Subcontractors named in Design-Build Entity's proposal, will be performed by Subcontractors added during the course of the Work in accordance with the bidding process in Public Contract Code Sections 4100, et seq. All subcontracted work shall be performed under written subcontracts or purchase orders. The Design-Build Entity must furnish to the Owner in writing the names of the persons or entities the Design-Build Entity proposes to engage as subcontractors at least ten (10) days before said entity shall start any Work as a subcontractor. The Design- Builder may not contract with any subcontractor to whom the Owner has made reasonable and timely objection.
- 6.2 Written Agreements.** All subcontracts will be in writing and will bind the Subcontractor to the Design-Build Entity by the terms of the Contract Documents, and Subcontractor will assume toward the Design-Build Entity all the obligations and responsibilities that the Design- Builder assumes toward the Owner. Each subcontract agreement will preserve and protect the rights of the Owner and Design-Build Entity under the Contract Documents with respect to the portion of the Work to be performed by the Subcontractor so that subcontracting the Work does not prejudice the Owner's rights. Where appropriate, the Design-Build Entity will require Subcontractors to enter into similar agreements with its tier-subcontractors. The Supplemental Conditions to this Agreement and all necessary Exhibits to this Agreement will be a part of each Subcontract Agreement.
- 6.3 Licensing Requirements.** All Subcontractors will be properly licensed for their respective portion of the Work.
- 6.4 Standard of Care.** All Subcontractors will warrant that they possess the design and/or construction licenses and expertise required for this Project and will use the same degree of care and skill customarily used by California state licensed professionals and contractors performing similar services for residential facilities construction in the state of California during the same time frame.
- 6.5 Responsibility.** Design-Build Entity assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to

any third-party beneficiary rights. Design-Build Entity shall coordinate the activities of all Subcontractors.

- 6.6 Conflicting Terms.** All conflicts arising out of any subcontract agreement will be resolved in accordance with the order of precedence set forth in Section 3.4, and this Agreement will take precedence over any terms and provisions in a subcontract.
- 6.7 Assignment.** Each subcontract agreement will include an assignment provision. The assignment provision will allow for assignment of subcontracts to the Owner upon termination of the Design-Build Entity for cause provided: (i) Owner accepts assignment by written notification to the Subcontractor and Design-Build Entity; and (ii) assignment is subject to the rights of the surety, if any, obligated under a bond or bonds relating to this Agreement. The Design-Build Entity will not be responsible for acts and omissions of the Subcontractors that occur after the effective date of assignment.
- 6.8 Claims and Dispute Resolution.** The Subcontractor will be bound to the same claims and dispute resolution procedures as set forth in Section 14.12 of the Supplemental Conditions.
- 6.9 Insurance.** The Design-Build Entity may, at its discretion, require its Subcontractors, through written subcontract, to carry appropriate insurance and bonding. Design-Build Entity's insurance must satisfy all requirements set forth in **Paragraph 12** regardless of any subcontractor coverage.
- 6.10 Indemnity.** The Design-Build Entity will cause its Subcontractors, through written subcontract, to include the indemnification provisions set forth in Section 11 and to indemnify and defend the Owner and its board of trustees, the Owner, and Design-Build Entity from all claims, damages and liability pursuant to the provisions in Section 11, except to the extent that such subcontractors cannot legally be required to indemnify (e.g., with respect to design-related claims).
- 6.10.1 Third Party Beneficiary.** The Owner will be an express third-party beneficiary to all design-build subcontracts.
- 6.10.2 Subcontracts.** Subcontracts may be awarded on a lump sum or best value basis.
- 6.10.3 Contract Time.** Subcontractors will be tied to similar provisions governing Contract Time under Section 8.

## 7. COMPENSATION

- 7.1 Preconstruction Stage Compensation.** During the Preconstruction Stage of the Project, the Design-Build Entity will complete all Preconstruction Stage Services summarized in Section 5.2 of this Agreement and elaborated in more detail in the Scope of Work in **Exhibit 3**. Compensation for all Preconstruction Stage Services, including labor, materials, overhead, and profit of Design-Build Entity and all of its Design Professionals, and design-assist Subcontractors, will be on the basis of a lump-sum amount of **Ninty-Four Thousand dollars (\$94,000)** as full compensation to the Design- Builder for the Work called for in

Step One (“Preconstruction Stage Price”). Payments will be made based on monthly invoices, with monthly invoices/payments based on the percentage complete of the scope of work for the Preconstruction Stage services.

- 7.2 Construction Stage Compensation.** During the Construction Stage of the Project, the Design-Build Entity will perform all Construction Stage Services, as summarized in Section 5.4 of this Agreement. Compensation for the Construction Stage Services will be on the basis of a lump sum of **Four Hundred Six Thousand dollars (\$406,000)**, which will cover all labor, equipment, materials, profit, overhead, taxes and any other expenses to be incurred by the Design-Build Entity (“Construction Stage Price”). Design-Build Entity will be paid pursuant to monthly invoices based on a Schedule of Values and percentage of completion of the Work. The Preconstruction Stage Compensation and the Construction Stage Compensation shall, in the aggregate, constitute the Contract Price.
- 7.3 Owner Contingency.** The Contract Price includes a Construction Contingency in the amount of **Fifty Thousand dollars (\$50,000)**. The Construction Contingency is Owner-controlled. Use of the Construction Contingency requires Owner’s prior written approval. All unspent funds in the Contingency at Final Completion shall accrue to Owner. Subject to Owner’s prior written approval for use thereof, the Construction Contingency is available for Design-Build Entity to cover cost of the Work unanticipated by Design-Build Entity on the effective date of the Design-Build Agreement, such as unanticipated field conditions or differing site condition, re-sequencing the Work for the good of the Project, acceleration in the Schedule for improvement in the overall Contract Time, and Owner requested changes.
- 7.4 Contract Price.** The Contract Price is the sum of the Preconstruction Stage Price, Construction Stage Price, Sales Tax, Freight, Allowance, and Construction Contingency, and shall represent the sum total of all compensation due to the Design-Build Entity for all design and construction services under the Agreement. The total Contract Price for this Agreement is **Five-Hundred Fifty Thousand dollars (\$550,000)**.
- 7.5 Design-Build Entity's Fee.** The Design-Build Entity's Fee is included in the Contract Price. However, the Design-Build Entity's Fee of fifteen percent (**15%**) can be applied to the direct cost of the construction in the event of contingency work and approved change orders. Design-Build Entity will not be entitled to Design-Build Entity's Fee for work necessitated by its own substandard workmanship, errors or omissions.

## **8. CONTRACT TIME**

- 8.1 Contract Time.** The Design-Build Entity must achieve Final Completion of the Work using best practical safe speed to achieve Final Completion as soon as reasonably possible. The Contract Time is the time allotted for the Design-Build Entity to achieve Substantial Completion and Final Completion of the Work. Completion of the Preconstruction Stage must be achieved by **July 31, 2023** for the Preconstruction Services. Completion of the primary Construction Stage must be achieved by **October 6, 2023**. Final Completion of Seal Coat and stripping must be achieved by **April 30, 2024**. The Design-Build Entity must also

achieve all specific milestone completion dates as set forth in the Project Baseline Schedule in **Exhibit 6**.

**8.2 Monthly Project Schedules.** The Design-Build Entity will create monthly updates of the initial Project Baseline Schedule, referred to as “Monthly Project Schedules,” incorporating activities and schedule updates of the Design Professionals and Subcontractors on the Project as necessary to reflect the status of design and construction and projected milestone dates for Substantial Completion and Final Completion. The Design-Build Entity will provide for Owner’s approval information in an agreed upon format, and as requested by the Owner, for the scheduling of times and sequences of operations required for its Work in coordination with the work of Owner’s employees and separate contractors, if any.

**8.2.1 3 Week Look-Ahead Schedules.** The Owner will require the Design-Builder, with the assistance of its Design Professionals and Subcontractors, to create weekly a 3 Week Look-Ahead Schedules for the performance of upcoming Work and document all Work performed during the prior 3-week period. The Design-Build Entity will require its Subcontractors and Design Professionals to continuously monitor the Monthly Project Schedule and 3 Week Look- Ahead schedules to understand the timing, phasing and sequencing of operations of their respective work with other Work being performed at the Project. The 3 Week Look-Ahead Schedules are to be used as a working tool to evaluate any schedule slippages and collaborate on methods for labor efficiency. Work flow will be scheduled based on providing information, material and resources as required by the user of the information, material or resources, optimizing the flow of Work and reducing bottlenecks and activity that will not advance the Project Schedule. The Design-Build Entity will provide Owner with copies of the 3 Week Look-Ahead Schedules and will meet with Owner to review and coordinate with any work being performed by Owner’s separate contractors. Design-Build Entity shall request input from Owner on 3 Week Look-Ahead Schedules, as necessary, no less than one week before the 3 Week Look-Ahead Schedule submission date.

**8.3 Prosecution of the Work.** The Design-Build Entity will commence the Work within 10 days of receipt of a Notice to Proceed by the Owner and will diligently prosecute and complete its Work pursuant to the most approved current Monthly Project Schedule.

**8.3.1 Schedule Slippage.** The Design-Build Entity will notify Owner within 72 hours of any slippage in the Monthly Project Schedule as a result of its Work and must submit a detailed recovery plan for evaluation and approval by Owner. All costs associated with the recovery, which shall provide for completion of the Project within the Contract Time, will be the responsibility of the Design-Build Entity unless the Design-Build Entity is entitled to an extension of time under Section 8.4

**8.3.2 Acceleration.** The Owner may direct the Design-Build Entity and its Subcontractors and Design Professionals to work overtime in order to accelerate the Project schedule. If the Design-Build Entity and its

Subcontractors and Design Professionals are not in default under any of the terms or provisions of this Agreement, their respective subcontracts and/or agreements, or any of the other Contract Documents, the Owner will pay the Design- Builder, its Subcontractors and Design Professionals for actual additional wages and/or billable rates paid, if any. All additional wages and billable rates paid will be subject to audit.

- 8.4 Permitted Delays.** If the Design-Build Entity is delayed, obstructed, hindered or interfered with in the commencement, prosecution or completion of the Work by: (i) any negligent act or omission of the Owner, or Owner's separate contractors; (ii) **"Owner Elected Changes;"** (iii) delay caused by a **"Force Majeure Event;"** (iv) **"Unforeseen and Differing Site Conditions;"** and/or (v) **"Owner's Suspension of the Work,"** such that the critical path of the most current, approved Project Baseline Schedule is impacted extending the Final Completion Date, the Substantial Completion Date, or any specific milestone completion dates, then the Design-Build Entity will be entitled to an extension for the same period of time that the Design-Build Entity was delayed provided that the delay, obstruction, interference or hindrance was not caused, in whole or in part by any fault, neglect, act or omission of the Design-Build Entity, its employees, Design Professionals, Subcontractors or suppliers.

Notwithstanding the above, the Design-Build Entity will not be entitled to an extension of time unless the Design-Build Entity provides the Owner with notice in writing of potential delay, obstruction, hindrance or interference within 72 hours of the discovery of the potential delay. Design-Build Entity shall follow up with all practical speed, but not later than 7 days after the initial notice, to summarize the cause or causes of the delay, and demonstrates that it could not have anticipated or avoided the delay, obstruction, hindrance or interference and has used all available means to minimize the consequences of the delay. The Design-Build Entity may also be entitled to an adjustment in the Contract Price based on demonstration that the delay and resulting adverse material effect in the cost of completing the Work, after implementation of all reasonable mitigation, materially adversely affected Design-Build Entity's cost of completing the Work.

- 8.5 Liquidated Damages.** The Owner and Design-Build Entity acknowledge and agree that if Design-Build Entity fails to complete Work within the time set forth in section 8.1, the Owner will suffer damages that are both extremely difficult and impracticable to ascertain. Therefore, Owner and Design-Build Entity agree that, liquidated damages shall be enforced on failure to achieve Substantial Completion in the amount of \$750 per day for each day that Substantial Completion is delayed, and failure to achieve Final Completion in the amount of \$1,000 per day for each day that Final Completion is delayed.

Payment of liquidated damages represents a reasonable estimate of fair compensation for the losses that reasonably may be anticipated as a result of Design-Build Entity's delays in completing the Work. Owner and Design-Build Entity acknowledge and agree that these liquidated damages

provision will be Owner's sole remedy for delay damages caused by Design-Build Entity's failure to achieve Substantial Completion or Final Completion, within the time set forth in Section 8.1, and/or any of the specific milestone completion dates. Nothing contained in this Section 8.5 shall preclude Owner from recovery for actual damages unrelated to Design-Build Entity's delays, including, but not limited to, claims for actual losses incurred due to breach of contract, negligence, defective work, injury to persons or property or third-party claims.

## 9. CHANGES

**9.1 Change Orders.** A Change Order is a mutually agreed upon written order adjusting the Design-Build Entity's Scope of Work, Contract Price, Contract Time or any combination. A Change Order may come through an Owner Elected Change, or Design-Builder's request. All changes in the Work will only be authorized by an Owner Elected Change, or Owner executed Change Order and performed under the applicable conditions of the Contract Documents. A Change Order signed by the Design-Build Entity and Owner indicates an agreement to any adjustment in the Contract Time, and/or Contract Price, which includes all Costs of Work plus Fee, and that the adjustments in the Change Order fully and completely resolves any claim by Design-Build Entity for additional compensation or time arising from or related to the subject of the Change Order. Change Orders for additional Work that was not considered as part of the Contract Price are limited to the following circumstances and, therefore may impact the Contract Price, and may or may not impact Contract Time:

- 9.1.1 Owner Elected Changes
- 9.1.2 Force Majeure Events
- 9.1.3 Unforeseen and Differing Site Conditions
- 9.1.4 Owner's Suspension of the Work as defined in Section 16.2
- 9.1.5 Changes in applicable law

**9.2 Owner Elected Change.** The Owner will initiate a Change Order by providing the Design-Build Entity with a written summary of the Owner Elected Change. Within 10 business days of receipt of an Owner Elected Change, or such other mutually-agreed upon period for more complex or extensive Owner Elected Changes, the Design-Build Entity must submit a complete cost proposal for the revised scope to the Owner, as well as any proposed change in Contract Time under Section 8. The Owner will review and evaluate the Design-Build Entity's cost proposal and any proposed change in Contract Time, before presenting the Design-Build Entity with a proposed Change Order at either its regular weekly meeting or a special meeting.

**9.3 Design-Build Entity Initiated Changes.** The Design-Build Entity must provide the Owner written notice of a proposed change within 5 business days of discovery of the facts or circumstances giving rise to the proposed change order.

The Owner will meet and discuss the proposed change either at its regular weekly meeting or at a special meeting.

- 9.4 Submission.** All claims for additional compensation or extensions in Contract Time will be presented in writing to the Owner for review. The Owner will either discuss the proposed change at its regular weekly meeting or will call a special meeting to meet and review the proposed change. At the conclusion of the meeting an Owner Elected Change may be issued. Consistent with Owner's internal procedures, a change order request may require approval from Owner's Board of Trustees. All Change Orders must be approved by the Owner before the expense is incurred. Additive Change Orders will affect Contract Price and may affect Contract Time, subject to Section 8. Deductive Change Orders will affect Contract Price and may affect Contract Time.
- 9.5 Continued Performance.** No Work will be allowed to lag pending the adjustment through Change Order, but will be promptly executed as directed through Owner Elected Change, even if a dispute arises. Disputes will be resolved in accordance with Section 14.12. Failure of the Design-Build Entity to provide the Owner with notice of its disputed claim and to submit the written claim within 10 business days of completion of the Work in dispute constitutes an agreement on the part of the Design-Build Entity that it will not be paid for its Work. No claim will be considered after the Work in question has been performed unless a written Change Order has been executed or timely written notice of claim has been made by the Design-Build Entity. The Design-Build Entity will not be entitled to claim or to bring suit for damages, whether for loss of profits or otherwise, on account of an omission of any item or portion of Work covered by the executed Change Order.
- 9.6 Omitted Work.** If the Design-Build Entity omits any portion of the Work that is included in the Contract Documents, the Owner will have the right to withhold from payments due or to become due to the Design-Build Entity in an amount which, in the Owner's opinion, is equal to the value of portion of the Work that was omitted until the omitted Work is performed.
- 9.7 Contract Price Reduction.** The Owner may also reduce the Contract Price to reflect back-charges or payments withheld pursuant to the Contract Documents upon written notice, and 48 hours opportunity to cure.
- 9.8 Contract Time Impacts and Extended Costs.** The Design-Build Entity will not reserve a right to assert impact costs, extended job site costs, extended overhead, constructive acceleration and/or actual acceleration beyond what is allowable under Section 8 and claimed in a proposed change order under Section 9.3. No claims will be allowed for impact, extended overhead costs, constructive acceleration and/or actual acceleration due to a multiplicity of changes and/or clarifications. Nothing contained in this Section will be construed as restricting the rights and remedies of Design-Build Entity in violation of Civil Code section 2782 or Public Contract Code section 7102. If this provision is determined to conflict with Public Contract Code section 7102 or Civil Code section 2782, this provision will be reformed to provide the greatest protection to the Owner under the law.



**9.9 Surety.** All changes, additions or omissions in the Work ordered through an Owner Elected Change, or Change Order are part of the Work and will be performed and furnished in strict accordance with all of the terms and provisions of the executed Change Order and the other Contract Documents. The Design-Build Entity will keep its surety informed of all modifications to this Agreement. The obligations of Design-Build Entity's surety are not to be reduced, waived or adversely affected by the issuance of Change Orders even if the Design- Builder fails to inform the surety of the Change Order(s) and the Owner will not be required to obtain consent of the surety to the Design-Build Entity or any of its Subcontractors.

## **10. PAYMENT**

**10.1 Progress Payments.** In accordance with California Public Contract Code section 20104.50, the Owner will make monthly progress payments on all undisputed Work performed within 30 calendar days of receipt of a monthly invoice and a monthly progress report that were properly submitted pursuant to the procedures set forth in this Section and as further established by the Owner. Each invoice will be submitted on the forms provided by the Owner, will include an itemized list of the work performed, be based on the percentage of the Work completed, and provide a level of detail to allow Owner to make a fair and reasonable estimate of the value of Work completed. The invoice must be certified by the Design-Build Entity and made out to the Owner. Before making payment, the Owner will review the invoice for accuracy of the Work completed to date. No such payment shall be required to be made when, in the judgment of the Owner, the request for payment is in excess of the percentage of Work completed. Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation into the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment stored off of the site at a location agreed upon in writing, provided that such off-site location shall be a bonded warehouse or secured by other means acceptable to the Owner.

**10.1.1 Schedule of Values.** Design-Build Entity must submit a draft schedule of values to Owner for approval prior to the first payment and within ten days after Notice to Proceed. As approved by Owner, the schedule of values shall be used for preparing future estimates for partial payments to the Design-Build Entity, and shall list the major items of Work (any scope of work with a value exceeding .5% of the total contract value), including materials and services, with a cost fairly apportioned to each item so that the total of the prices for all items equal the lump sum price. The schedule of values shall be by area, structure, or other logical division of work. Separate material and labor costs for each major item of work that is listed. The schedule of values will be considered in determining payment or credit for additional or deleted work. The final Schedule of Values will be added to the Design-Build Agreement as Exhibit 4B.

**10.1.2 Monthly Progress Reports.** Each monthly invoice must include a report providing an overall status of the Project's progress, and any concerns or impacts.

- 10.1.3 Evaluation of Invoice.** The Owner will review the invoice based on the approved schedule of values, monthly progress report, on-site observations and evaluation of the Work, and on the data and documentation substantiating the invoice. Upon request, Design-Build Entity must substantiate the cost for any or all items and provide additional level of detail, including quantities of work. Based on that review, Owner will pay all undisputed items. An approval of an invoice is subject to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion of the Work and to specific qualifications expressed by the Owner. Owner is entitled to rely on the accuracy and completeness of the information furnished by the Design-Build Entity and approval will not be deemed to represent that a detailed examination, audit, or arithmetic verification of the documentation submitted with the Design-Build Entity's invoice has been made or that exhaustive or continuous on-site inspections have been made to verify that the Work is in accordance with the Contract Documents. A payment by Owner does not represent that Owner has ascertained how or for what purpose the Design-Build Entity has used money previously paid.
- 10.1.4 Retention.** The Owner will withhold 5% of each progress payment during the Project. Retention will be withheld until the Project achieves Final Completion unless the Owner, in its sole discretion, agrees to release the Design-Build Entity's retention earlier and provided that the Work has been accepted by the Owner and other necessary agencies with jurisdiction over the Project.
- 10.1.4.1 Substitution of Securities.** To the extent required by law, Owner will consider and approve reasonable and appropriate requests under Public Contract Code section 22300 for substitution of securities or establishment of an escrow account for retention. Nothing contained in this Section will prevent Owner from withholding payment when grounds exist for doing so under the Contract Documents.
- 10.1.5 Change Orders.** Applications for payment may include requests for payment on account of changes in the Work that have been properly authorized.
- 10.1.6 Stored Materials and Equipment.** Stored materials and equipment may be included in the invoice provided the materials and equipment are properly stored in accordance with Section 5.17.9.3 and a complete invoice accompanies the invoice. Owner will not pay for materials or equipment storage.
- 10.1.7 Stop Payment Notices and Claims.** Upon submission of an invoice, the Design-Build Entity warrants that all Work included in the invoice has been performed in accordance with the Contract Documents and to the best of the Design-Build Entity's knowledge, information and belief, title to all Work covered by the invoice will pass to the Owner free and clear of all stop payment notices, claims, security interests or encumbrances. Design-Build Entity will provide executed conditional

waivers and release of claims for all amounts included in the invoice. Waivers must comply with the requirements of California Civil Code section 8132.

**10.1.8 Owner Payment to Design Professionals, Subcontractors and Suppliers.** The Owner will not have an obligation to pay a Design Professional or Subcontractor for work performed unless required by law. However, if the Owner is not in default of payment provisions and receives a stop payment notice or has reason to believe that the Design-Build Entity is not paying its Design Professionals or Subcontractors and suppliers, the Owner may make payment of sums due to Design-Build Entity through joint check or pay Design Professionals and Subcontractors and suppliers directly and withhold those payments from Design-Build Entity. The Owner shall not exercise any rights granted under this Section prior to issuing a notice to the Design-Build Entity and granting the Design-Build Entity a reasonable opportunity to cure.

**10.2 Final Payment.** Upon Final Completion of the Work, the Design-Build Entity will submit a final payment application. All prior progress estimates will be subject to correction in the final invoice. If items remain to be completed at that time, then the Design-Build Entity in conjunction with Owner will revise the Final Punch List and will include 150% of the estimated cost to complete each remaining item. The Owner may withhold from the final payment 150% of the estimated cost to complete the Work. The amount retained by the Owner for Final Punch List items will be released to the Design-Build Entity as each item is completed. Upon Final Completion of the Project, and submission of Owner's Release of Claims form, by Design- Builder, final payment of all remaining retention, if unencumbered, will be paid on all undisputed amounts no later than 30 calendar days after Final Completion of the entire Project and in no event later than the time prescribed under Section 7107 of the Public Contract Code.

**10.2.1 Contract Price Reduction.** Upon Final Completion of the Project, the Owner after written notice to Design-Build Entity may reduce the Contract Price to reflect costs charged to the Design-Build Entity, back-charges or payments withheld pursuant to the Contract Documents.

**10.2.2 Evidence.** Before issuance of final payment, Owner may request satisfactory evidence that: (i) all payrolls, materials bills and other indebtedness connected with the Work have been paid or otherwise satisfied; (ii) insurance required by the Contract Documents will remain in force after final payment and will not be canceled or allowed to expire until at least 30 calendar days prior written notice has been given to the Owner; (iii) the Design- Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (iv) surety, if any, has consented to final payment, (v) Owner has received all close-out documents required by the Contract Documents; and (vi), other data establishing payment or satisfaction of obligations, such as releases and waivers of stop payment notices, claims, security interests or encumbrances arising out of this Agreement have been received.

**10.2.3 Payment Not Acceptance of Work.** Approval of an invoice (final or otherwise) or partial or entire use or occupancy of the Project by the Owner will not be used as conclusive evidence that the Work was properly performed or constitute acceptance of Work that is not in accordance with the Contract Documents.

**10.3 Payments Withheld.** In addition to the 5% retention, the Owner may withhold payments due to the Design-Build Entity that may be necessary to cover: (i) stop payment notice claims; (ii) defective Work not remedied; (iii) failure of Design-Build Entity to make proper payments to its Design Professionals, Subcontractors or suppliers; (iv) damage to Design Professionals, Subcontractors or third party caused by Design-Build Entity; (v) amounts due to the Owner for claims against Design-Build Entity; (vi) failure to provide Owner with timely schedule updates under Section 8.2; (vii) disputed amounts in the invoice; and (viii) legally permitted penalties.

**10.4 Waiver of Claims.** Acceptance of final payment by the Design-Build Entity constitutes a waiver of claims by Design-Build Entity and its Design Professionals, Subcontractors and suppliers except for those previously made in writing and identified by the Design-Build Entity as unsettled at the time of final invoice. The Design-Build Entity must acknowledge this waiver on a form provided by the Owner prior to Design-Build Entity's receipt of the final payment.

## **11. INDEMNIFICATION**

**11.1 Indemnification.** Design-Build Entity shall defend, indemnify, and hold harmless San Mateo County, and its trustees, officers, employees and agents, and their successors and assigns (collectively referred to as "Indemnitees") from and against all third party claims, demands, liability, suits, actions, costs or expenses (including reasonable attorneys' fees) for any and all loss or damage, including, but not limited to, personal injury or property damage, arising out of or resulting from allegations of:

a. The failure or alleged failure by any Design-Build Team member to comply with any applicable law, order, citation, rule, regulation, standard, ordinance or statute, including rules and regulations imposed by Cal-OSHA and caused by the act or omission of the Design-Build Entity;

b. The negligent act, omission, misconduct, or fault, or the alleged negligent act, omission, misconduct or fault of any Design-Build Team member;

c. Any and all claims by any governmental or taxing authority claiming unpaid taxes based on gross receipts, purchases or sales, the use of any property or income of any Design-Build Team member with respect to any payment for the Work made to or earned by the Design-Build Team member under the Contract Documents;

d. Any and all stop payment notices and/or liens filed in connection with the Work, including all expenses and attorneys' fees incurred by the Owner in discharging any stop payment notice or lien, provided that the Owner is not in default on payments owing to the Design-Build Entity with respect to such Work;

e. Failure of the Design-Build Entity to comply with the Insurance provisions set forth in Paragraph 12;

f Any release of hazardous materials:

1. Brought onto the Site by any Design-Build Team member; or
2. Where the removal or handling involved negligence, willful misconduct, or breach of Contract by any Design-Build Team member; and

Nothing in this section shall require the Design-Build Entity to defend, indemnify or hold harmless the Indemnitees for the Indemnitees' sole negligence, willful misconduct, or active negligence.

### **11.2 Indemnification for Infringement of Intellectual Property Rights.**

The Design-Build Entity agrees to fully defend, indemnify, and hold harmless the Indemnitees against any demand, claim, cause of action, suit, proceeding, or judgment that design, service, method, or product called for and provided by the Design-Build Entity or any Design-Build Team member (herein called "deliverables") that infringes or allegedly infringes any patent, copyright, trademark, service mark, trade dress, utility model, industrial design, mask work, trade secret, or other proprietary right of a third party (collectively "Intellectual Property Right").

The Design-Build Entity shall pay any and all costs of such defense and settlement (including interest, fines, penalties, costs of investigation, costs of appeals, and attorney 's fees), and will pay any and all costs and damages finally awarded against any of the Indemnitees. The Design-Builder shall have the exclusive right to conduct its legal defense.

In the event that any deliverable furnished hereunder, or called for in any design or services provided under this Agreement, is in any suit, proceeding, or judgment held to constitute an infringement on any third party's Intellectual Property Right, and its use is enjoined, the Design-Builder shall, at its own expense accomplish the following:

- a. Procure the fully paid-up, irrevocable, and perpetual right for the Owner to continue using the deliverable;
- b. Modify the deliverable; or
- c. Provide for the replacement of the deliverable with an alternative product that is functionally equivalent to the deliverable.

If the Design-Build Entity is unable to provide the Owner with one of the forms of relief described above, the Design-Build Entity shall also reimburse to the Owner the total paid by the Owner for the deliverable that is held to constitute an infringement.

### **11.3 Indemnification for Design Defects.** To the fullest extent permitted by law, the Design-Build Entity shall fully defend (with counsel acceptable to the Owner), indemnify, and hold harmless Indemnitees from any and all claims, demands, causes of action, damages, costs, expenses (including legal, expert witness, and consulting fees and costs), losses, or liabilities of whatsoever nature that arise

out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the Design-Build Entity, its employees, any of the Design-Build Entity's Design Professionals or Subcontractors of any tier, or anyone for whom Design-Build Entity or any of its Design Professionals or Subcontracts may be liable, in relation to any of their design services, including but not limited to errors, omissions, inconsistencies, inaccuracies, deficiencies, or other defects whether or not contained in the Construction Documents furnished by the Design-Builder, and whether or not such errors, omissions, inconsistencies, inaccuracies, deficiencies, or other defects were also included in the Contract Documents provided by the Owner. The Design-Build Entity agrees that, because the Bridging Contract Documents are preliminary and conceptual in nature and are subject to review and modification by the Design-Build Entity, such documents shall not be deemed a "design furnished" by the Owner or any of the other Indemnitees, as the term "design furnished" is used in Civil Code Section 2782, and that this clause is governed by Civil Code Section 2782.8. In addition, Design-Build Entity shall defend the Owner, or pay for the costs of such defense, to the extent of Design-Build Entity's proportionate percentage of fault for the underlying claim. In addition, Design-Build Entity shall defend the Owner, or pay for the costs of such defense, to the extent of Design-Build Entity's proportionate percentage of fault for the underlying claim.

**11.4 Exception.** The indemnification provisions in this Section 11 will extend to claims occurring after this Agreement is terminated as well as while it is in force. However, Design- Builder will not be obligated to indemnify or provide a defense to the Indemnitees from claims arising from the active negligence or willful misconduct of Indemnitees. If any of the Indemnitees are actively negligent, the Design-Build Entity will continue to indemnify and provide a defense to Indemnitees but only to the extent and in proportion to the degree that the Indemnitees were not actively negligent. Nothing contained in Section 11 will be construed to impose any obligation in conflict with the provisions of Civil Code section 2782 and/or Insurance Code section 11580.04. In the event of a conflict, the provision conflicting with Civil Code section 2782 and/or Insurance Code section 11580.04 will be modified to limit Design-Build Entity's obligations to the greatest extent permitted by law. The section does not apply to the duty to defend claims arising from design defects, which obligation is addressed separately in Section 11.3. The section does not apply to the duty to defend claims arising from design defects, which obligation is addressed separately in Section 11.3.

**11.5 Duty to Defend.** Except as otherwise provided herein, the Design-Build Entity will defend all claims defined in Section 11.1 at its own cost, expense and risk and pay and satisfy any judgment or decree that may be rendered against any Indemnitee arising out of a claim, or reimburse Indemnitee(s) for any and all legal expenses incurred by any of them in connection with the claim or in enforcing the indemnity granted in this section. The duty to defend will apply, and Design-Build Entity will be required to furnish a defense, regardless of whether the matter has been adjudicated. The Owner shall have the right to approve counsel defending it, which approval will not be unreasonably withheld. Following the resolution of any such dispute, the Owner shall reimburse Design-Build Entity for the costs incurred by Design-Build Entity for any Indemnitees' defense, to the extent of the Owner's proportionate responsibility or fault, as determined by court or arbitrator or as agreed by settlement or otherwise.

## 12. INSURANCE AND BONDS

**12.1 Design-Build Entity's Insurance Requirements.** The Owner and its trustees, officers, employees, agents, and volunteers will be a named additional insured under all of Design-Builder's insurance policies except errors and omissions policies and workers' compensation policies. Likewise, the Design-Build Entity will require all Subcontractors to name the Owner, and its trustees, officers, employees, agents, and volunteers as additional insured on all Subcontractor policies except errors and omissions policies and workers' compensation policies. Before commencement of the Work, the Design-Build Entity will provide certificates of insurance and endorsements per the following as evidence of insurance and Owner's, and Owner's additional insured status under those policies.

### 12.2 DBE Provided Insurance

**12.2.1 General DBE** shall procure and maintain for the duration of this Contract at its sole cost and expense, insurance against claims which may arise from, or in connection with, the performance of the Work by, or on behalf of (whether directly or indirectly), the DBE.

Each insurance policy required by this Contract shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the Owner, except that ten (10) days' prior written notice shall apply in the event that cancellation for non-payment of premium.

**12.2.2 Commercial General Liability:** \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and

**12.2.3 Workers' Compensation and Employers' Liability:** Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident; and

**12.2.4 Automobile Liability:** \$1,000,000 combined single limit per accident for bodily injury and property damage.

**12.2.5 Builder's Risk/Course of Construction:** Not required since this is only for the asphalt pump track.

**12.2.6 Not Used.**

**12.2.7 Professional Liability Errors and Omissions Insurance:** \$1,000,000 per claim/\$2,000,000 aggregate limit

**12.2.8 Waivers**

**12.2.8.1** Owner and Design-Build Entity waive all rights against each other and any of their consultants, including Project/Construction Manager and their consultants to the extent of their onsite exposure, separate contractors, if any, Subcontractors, Designers, agents and employees, each of the other, and any of their contractors, subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by Builder's Risk insurance obtained pursuant to paragraph 1.2 above, or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner in good faith. Owner or Design-Build Entity, as appropriate, shall require of the separate contractors, if any, and the Subcontractors, Designers, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether or not such individual or entity had an insurable interest in the property damaged. The only exceptions to this waiver of subrogation are for claims that may be covered by any Professional Liability insurance to the extent that insurance responds to any loss.

**12.2.8.2** Owner waives subrogation rights under the Contractor's Pollution Liability Policy, to the greatest extent permitted by law, against all other project participants, including Design-Build Entity and Subcontractors of any tier.

**12.3 Performance and Payment Bonds.** Prior to commencement of the Construction Stage, the Design-Build Entity will furnish a payment bond and a performance bond to the Owner, each in the amount equal to 100% of the amount of the Construction Stage Price, covering all construction work and warranties, on the forms acceptable to the Owner. The payment and performance bonds will be provided prior to commencement of Work. The surety supplying the bonds must be an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, authorized to do business as a surety in the State of California and satisfactory to the Owner. Failure to furnish the required payment and performance bonds to the Owner constitutes a default under this Agreement and the Owner will have all of the rights and remedies provided under the Contract Documents and afforded by law including, but not limited to, forfeiture of the bidder's bid deposit or bond to the Owner and the Owner may award this contract to another responsive and responsible bidder, or may call for new bids. Full compensation for furnishing the payment and performance bonds are included in the Contract Price.



**12.4 Payment of Subcontractors.** Without limiting the responsibilities of Design-Build Entity and its surety under the terms of this Agreement, the Design-Build Entity and its surety agree to promptly pay all lawful claims of Subcontractors, materialmen, laborers, persons, firms or corporations for labor or services performed or materials, supplies, machinery equipment, rentals, fuels, oils, tools, appliances, insurance and other items furnished, used, or consumed in connection with the prosecution of the construction work including Change Orders, and will indemnify and save harmless the Owner, and Owner from and against all liability loss, damage and expense, including interest, costs and attorneys' fees, which the Owner, and Owner and/or its surety may sustain by reason of Design-Build Entity's or its surety's failure to do so.

### **13. WARRANTY OF THE WORK**

**13.1 Design-Build Entity Warranty.** The Design-Build Entity shall provide a **two-year** warranty on all furnished labor and materials, commencing on the date of Final Completion of all Work under the Agreement. Design-Build Entity shall perform all required corrective work, and shall be responsible for the cost of all labor, materials, equipment, transport, installation and re-testing required for the corrective work. Moreover, in the event that corrective work is required under the Design-Build Entity Warranty, a one-year warranty shall apply to the corrected work covering any discrepancies and defects in the corrected work that are discovered after the corrected work is accepted.

The Design-Build Entity Warranty shall warrant that:

- a. The Work conforms to the requirements of the Contract Documents;
- b. All Design Services furnished under the Agreement conforms to all professional engineering principles generally accepted as standards of the industry in the State of California and complies with the standard of care of a reasonable professional that is performing the same or similar work, at the same time and locality and under the same or similar conditions;  

The construction Work furnished under the Agreement is free from defects in workmanship, and was performed in a workmanlike manner and conforms to the standards of care and diligence normally practiced by recognized construction firms performing construction of a similar nature in the State of California, and conforms to the requirements of the Bridging Contract Documents and the 100% Construction Documents, as these documents may have amended during the course of Work under the Agreement;
- c. Materials and equipment furnished under the Contract Documents are of good quality and new;
- d. The Facilities are fit for the purposes intended in the Contract Documents;
- e. The Facilities shall be free of defects in design, material, and workmanship; and
- f. The Facilities shall function up to the standards set forth in the Bridging Contract Documents and all other reliability standards established in the Contract Documents.

**13.2 Subcontractor Warranties.** The Design-Build Entity shall obtain **two-year** warranties commencing on the date of Final Completion of all Work under the

Agreement from all Subcontractors and Design-Build Team members providing design services, labor, equipment, materials, supplies and maintenance equipment; require all such warranties to be executed in writing for the benefit of the Owner and enforce all warranties for the benefit of the Owner, if so directed by the Owner. Warranties by subcontractors are in addition to, and do not replace or reduce, any other warranty obligations stated in the Contract Documents, including but not limited to the Design-Build Entity Warranty. All such Subcontractor warranties from Design-Build Team members shall run directly to and be enforceable by the Design-Build Entity and the Owner, and their respective successors and assigns.

The Design-Build Entity hereby assigns to the Owner all of the Design-Build Entity's rights and interest in all warranties that are received by the Design-Build Entity from any Subcontractor or Design-Build Team members unless necessary for enforcement. All such warranties shall survive Final Completion, acceptance, final payment, and termination of the Agreement if the stated warranty period extends beyond the Final Completion, acceptance, final payment, and termination of the Agreement.

**13.3 Manufacturers' Warranties.** The Design-Build Entity shall obtain manufacturers' warranties for all equipment procured and installed on the Project and shall assign all such warranties to the Owner prior to Final Completion. Owner and Design-Build Entity shall agree upon acceptable warranty periods for each item of equipment prior to the procurement of the equipment of not less than one year from Final Completion. Manufacturers' warranties shall all commence on Final Completion.

**13.4 Remedy.** The Design-Build Entity shall remedy, at its own expense, any failure to conform to the warranty requirements set forth in this Section 13 Warranty of the Work. If the Design-Build Entity fails to remedy any such failure within a reasonable time after receipt of notice (or immediately in the case of an emergency), the Owner shall have the right in its sole discretion to replace, remove, or otherwise remedy the failure at the Design-Build Entity's expense.

**13.4.1 Notification to Design-Build Entity.** The Owner shall notify the Design- Builder, in writing, within a reasonable time after the discovery of any failure to conform to the warranty requirements set forth in this Section 13, Warranty of the Work.

**13.4.2 Warranties Do Not Limit the Design-Build Entity's Liability.** The foregoing warranties are in addition to all rights and remedies available under the Agreement or applicable law, and shall not limit the Design-Build Entity's liability or responsibility imposed by the Agreement or applicable law with respect to the Work, including:

- a. Liability for design defects;
- b. Latent construction defects;
- c. Strict liability;
- d. Negligence; and
- e. Fraud.

**13.5 Assignment of Warranty.** Upon providing written notice to the Design-Build Entity, the Design-Build Entity's warranties, including all warranties from Subcontractors and Design-Build Team members that have been assigned to the Design-Build Entity, shall be immediately assignable by the Owner to any entity, in the Owner's sole discretion.

#### **14. OWNERSHIP AND USE OF DOCUMENTS**

**14.1 Ownership of Construction Documents.** The drawings, specifications and other documents prepared by or on behalf of the Design-Build Entity pursuant to this Agreement (including, without limitation, the Construction Documents), including all drafts, and the copyright thereto, shall at all times be and remain the property of the Owner, whether or not the Project for which they are made is commenced, so long as the Owner shall not be in default of its obligations under this Design-Build Agreement. Neither the Design-Build Entity nor any subcontractor or material or equipment supplier shall own or claim a copyright in such drawings, specifications and other similar or related documents, and Owner shall retain all common law, statutory, and other reserved rights with respect thereto. All copies of such documents shall be delivered by the Design-Build Entity to the Owner upon completion of the Work or upon the prior termination of this Agreement. Such drawings, specifications and other documents shall be used by the Design-Build Entity solely with respect to this Project and shall not be used by the Design-Build Entity or any subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner in each instance.

**14.2 Ownership under Termination.** Should the Owner elect to terminate this agreement, the Design-Build Entity agrees that (1) for itself and its Designer, that the Owner will be the sole and absolute owner of the 100% Construction Documents, and shall have the right to use or to modify the 100% Construction Documents in any manner it wishes, including, without limitation, using the 100% Construction Documents in construction contracts with third parties; and (2) there shall be no limitation on the Owner by the Design-Build Entity should the Owner subsequently engage the Design-Build Entity's Designer of Record for services on this project or for other services.

**14.3 Confidentiality.** The documents, materials and information prepared by or on behalf of, or furnished to the Design-Build Entity in connection with the Work, including, without limitation, the RFP, the Contract Documents, the 100% Construction Documents and any other plans, specifications, drawings, shop drawings or details relating to the Project and the terms and provisions of this Agreement, shall be kept strictly confidential by the Design-Build Entity to the maximum extent permitted by law. Except as required by law, the Design-Build Entity shall not disclose, furnish or make known or accessible to or use for the benefit of anyone, any such documents, materials or information or make available any reports, recommendations and/or conclusions which the Design-Build Entity may make for the Owner to any person, firm or corporation or use such documents or information in any manner whatsoever without obtaining the Owner's prior written approval in each instance unless such disclosure is required by law. The Design-Build Entity acknowledges that the Owner will incur significant damages in the event of a breach by the Design-Build Entity of its

obligations under this Section 14.3. The provisions of Article 14 shall survive the expiration or prior termination of this Agreement.

- 14.4 Licensing.** The Design-Build Entity, its Design Professionals and Design-Build Subcontractors are granted a limited, non-exclusive, license to use and reproduce applicable portions of the Design and Construction Documents and other documents prepared by the Design-Build Entity for use in the performance of the Design-Build Entity's Work under this Agreement. Additionally, the Owner grants the Design-Build Team members a non-exclusive, perpetual license for use, or display of the Project information solely for either educational or promotional purposes.
- 14.5 Exception.** Nothing contained in Section 14.1 will be construed to limit the Design-Build Entity, its Design Professionals and Design-Build Subcontractors rights, title and interest to continue to use their respective general design details that each of them uses or has used on multiple projects, or new standard design details that were developed during design of this facility.
- 14.6 Copies.** All copies made under this license will bear the statutory copyright notice, if any, shown on the Design and Construction Documents and any other documents prepared by the Design-Build Entity, its Design Professionals and Design-Build Subcontractors. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project will not be construed as publication in derogation of the Owner's copyright or other reserved rights and interests.

## **15. ACCOUNTING RECORDS**

- 15.1 Audit.** In accordance with Government Code Section 8546.7, records of both the Owner and the Design-Build Entity will be subject to examination and audit by the State Auditor General for a period of 10 years after final payment. Design-Build Entity will make available to the Owner any of the Design-Build Entity's other documents related to the Work immediately upon request of the Owner as set forth in Section 15.2.
- 15.2 Records.** The Design-Build Entity will keep full and detailed accounts and exercise controls as may be necessary for proper financial management under this Agreement. In addition to the State Auditor rights above, the Owner will have the right during normal business hours to audit and copy the Design-Build Entity's documents related to this Project including, but not limited to, records, books, estimates, correspondence, instructions, drawings, receipts and invoices for materials, supplies and equipment, temporary facilities, etc., contracts, purchase orders, vouchers, memorandums, Change Orders and all substantiating documentation, certified payroll, and other data relating to the Cost of Work, the Contract Price in order to evaluate accuracy and completeness of Design-Build Entity's billing. The Design-Build Entity will preserve all Project records for a period of at least 3 years after final payment, or for such longer period as may be required by law. The Design-Build Entity will incorporate Section 15 accounting and auditing provisions into all Design Professional agreements and Subcontracts and require Design Professionals and Subcontractors to keep detailed and accurate accounting records for their portion of the Work for a period of at least 3 years.

## 16. TERMINATION, SUSPENSION AND ABANDONMENT

**16.1 Termination for Fault.** The Owner may terminate this Agreement upon not less than 7 calendar days' written notice and an additional 7 calendar days to commence curing upon the Design-Build Entity's failure to perform any material obligation under the Agreement. The Design-Build Entity will have 7 days after receiving reasonably detailed written notice thereof from the Owner, provided that, if the nature of the breach is such that it will reasonably require more than 7 days to commence curing, the Owner may not terminate so long as Design-Build Entity (1) promptly, upon receipt of notice to cure, submits a plan to initiate all actions reasonably necessary to correct the default and prevent its reoccurrence, and (2) Owner accepts Design- Builder's plan, and (3) Design-Build Entity commences and continuously implements the plan to Owner's satisfaction.

The Owner may also terminate this Agreement without notice or opportunity to cure upon the occurrence of the following Design-Build Entity events of default: 1) the failure to obtain and maintain any contract security instrument, 2) the failure to achieve acceptance of the Facilities through the acceptance process, and 3) the insolvency or bankruptcy of the Design-Build Entity. The notice will set forth the reason for termination and the effective date of termination. If the Owner terminates this Agreement for cause, the Design-Build Entity will not be entitled to any further payments except for work already completed. Unless otherwise limited herein, nothing stated in this paragraph will prevent the Owner from pursuing and recovering any damages allowed by law from Design-Build Entity arising out of a breach of this Agreement. If a court of competent jurisdiction deems that termination of the Design-Build Entity was wrongful or otherwise improper, the termination will be deemed a termination for convenience under Section 16.3.

**16.2 Suspension by Owner.** If the Project is suspended by the Owner and not due to any fault of the Design-Build Entity or any of its Design Professionals or Subcontractors, the Design- Builder will be entitled to receive payment for all Work performed as of the effective date of the suspension, plus any documented reasonable direct costs incurred by Design-Build Entity to implement the suspension. The written notice of suspension will set forth the reason for suspension and the effective date of suspension. If the Project is resumed, and provided that the suspension was not caused or due to any fault or neglect of the Design-Build Entity or any of its Design Professionals or Subcontractors, then the Design-Build Entity's compensation will be equitably adjusted through Change Order under Section 9.1.4 and the Contract Time will be equitably adjusted for the additional time required to achieve Final Completion.

## 17. MISCELLANEOUS PROVISIONS

**17.1 Governing Law.** This Agreement will be governed and construed in accordance with the laws of the State of California without regard to the principles of the conflict of laws. The Parties agree that any claim or enforcement of a judgment or alternative dispute award will be filed with the appropriate court of law in San Mateo County.

- 17.2 No Solicitation of Employees.** Owner will not solicit or employ any of Design-Builder's Project personnel for the duration of the Project.
  
- 17.3 Assignment.** The Owner and Design-Build Entity, respectively bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of the other party with respect to all covenants of this Agreement. Neither Owner nor Design-Build Entity will assign this Agreement without the written consent of the other, and such consent will not be unreasonably withheld or delayed.
  
- 17.4 Severability.** The terms and conditions of this Agreement will be interpreted in accordance with their plain meaning, and not strictly for or against either party. Any rule of construction or interpretation to the contrary will be of no force or effect with respect to this Agreement. If a court of competent jurisdiction finds any term or provision of this Agreement to be void or unenforceable for any reason that term or provision will be deemed severed, and the remainder of the Agreement will remain in full force and effect according to its terms and provisions, to the maximum extent permitted by law.
  
- 17.5 No Third-Party Beneficiaries.** Nothing contained in this Agreement creates a contractual relationship with, or a cause of action in favor of any third party against, either the Owner or Design-Build Entity. Owner and Design-Build Entity acknowledge and agree that the obligations of the Design-Build Entity are solely for the benefit of the Owner and are not intended in any respect to benefit any other third parties.
  
- 17.6 Waiver.** No action or failure to act by the Owner or Design-Build Entity will constitute a waiver of a right or duty afforded them under this Agreement, nor will such action or failure to act constitute approval of or acquiescence in a breach of this Agreement, unless specifically agreed to in writing.
  
- 17.7 Time is of the Essence.** Time is of the essence with respect to each and every provision of the Agreement and any subsequent Change Orders.
  
- 17.8 Notice.** Any notice required to be given by this Agreement will be in writing and deemed effective upon personal delivery, or 1 business day after being sent via registered or certified mail return receipt requested or by overnight commercial courier providing next business day delivery and addressed to the following respective parties:

To Owner: County of San Mateo Parks Dept.  
 Attention: Mario Nastari  
 455 County Center, 4<sup>th</sup> Floor  
 Redwood City, CA 94063

Copy to: Mike Wassermann  
 Project Manager  
 Capital Program Management, Inc.  
 495 Seaport Court, Suite 103  
 Redwood City, CA 94063

and

Office of the San Mateo County  
Counsel  
Attn: John D. Nibbelin, Chief  
Counsel  
400 County Center  
6<sup>th</sup> Floor  
Redwood City, CA 94063

To Design-Build Entity: Santa Cruz Mountains Trail Stewardship  
Post Office Box 331  
Santa Cruz, CA 95061

- 17.9 Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original, and all of which when taken together will constitute one instrument. The counterparts of this Agreement, and all amendments, must be manually executed, but the exchange of copies of this Agreement and of manually executed signature pages by facsimile or by electronic mail as an attachment in portable document format (.pdf) to the addresses provided in this Agreement shall constitute effective delivery of this Agreement as to the Parties and may be used as a fully binding original in lieu of the original Agreement for all purposes.
- 17.10 Modifications.** All modifications to the terms and conditions set forth in this Agreement must be in writing and signed by an authorized representative of both parties.
- 17.11 Section Headings.** The Section headings contained in this Agreement are for reference purposes only and will not in any way affect the meaning or interpretation of this Agreement.
- 17.12 Legal Citations.** Legal citations to statutory requirements are included in the Agreement for convenience and an omission of any statutory requirement will not relieve the Design-Build Entity or its Design Professionals and Subcontractors from compliance with the law.
- 17.13 Exhibits.** The Supplemental Conditions and following Exhibits are incorporated by reference into the Agreement as though set forth in full.
- 17.14 Entire Agreement.** This Agreement represents the entire integrated agreement between the Owner and Design-Build Entity and supersedes all prior oral and written negotiations, representations or agreements by the parties with respect to this subject matter. This Agreement is entered into as of the Effective Date first written above.

**Exhibit 1**  
**SUPPLEMENTAL CONDITIONS**  
**DESIGN-BUILD AGREEMENT**

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## SUPPLEMENTAL CONDITIONS TO DESIGN-BUILD AGREEMENT

### 1. DEFINITIONS

**1.1 “Agreement”** means the Design-Build Agreement between County of San Mateo and Design-Build Entity, dated **May 23, 2023**, including the Supplemental Conditions to the Agreement and all Exhibits.

**1.2 “Allowance”** is a non-binding, good-faith estimate of the potential work cost attributable to the Allowance item carried in the Contract Price. An allowance is necessary for certain circumstances because the item, components, and/or systems are anticipated but undefined when the Contract Price is set. Allowances are owner-controlled funds that are only usable with the approval of a Proposed Change Order (PCO) as discussed in Section 9 of this agreement.

**1.3 “Designer of Record”** is the entity retained by the Design-Build Entity as the lead Design Professional that is responsible for the design of the Project. The Designer or Engineer of Record for this Project is **Santa Cruz Mountains Trail Stewardship**.

**1.4 “Background Documents”** means any existing drawings Owner provides to Design-Build Entity for reference. Background Documents are not part of the Contract Documents.

**1.5 “Bridging Contract Documents”** is defined in Section 4.2

**1.6 “Change Order”** is defined in Section 9.1.

**1.7 “Construction Documents”** means the documents developed by Design-Build Entity that establish all requirements for work during the Construction Stage of the Project. The Construction Documents will be informed by, and be consistent with the Bridging Contract Documents.

**1.8 “Construction Stage Services”** means all labor, materials, equipment and appurtenances provided by the Design-Build Entity and its Subcontractors to complete construction of the Project in strict accordance with the 100% Construction Documents and other components of the Contract Documents, ensure that all mechanical and support systems, as applicable, are properly and fully operational, and obtain all required certificates, approvals, and temporary or permanent permits for occupancy, use and completion of the Project have been issued by appropriate governmental authorities.

**1.9 “Contract Documents”** are set forth in Section 3.1 of the Agreement and include the Agreement inclusive of Exhibits, the Supplemental Conditions to the Agreement, and the Construction Documents, to be developed by the Design-Build Entity, and all subsequent contract modifications issued after execution of the Agreement, such as Change Orders.

**1.10 “Contract Price”** is set forth in Section 7 of the Agreement and reflects the sum total of all compensation due to the Design-Build Entity for all design and construction services under the Agreement. The Contract Price is the sum of the Preconstruction Price and the Construction Price.

**1.11 “Contract Time”** is the time within which the Design-Build Entity must achieve Final Completion of all Work on the Project. The Contract Time is set forth in Section 8.1. **“Daily Construction Reports”** means the daily log kept by the Design-Build Entity that describes the weather, each Subcontractor’s work on the site, the number of workers per trade, identification of equipment, construction work accomplished, problems encountered, and other similar relevant data such as accidents, service connections or disconnections, construction work stoppage, delays, material and labor shortages, and any applicable orders or requests from governing authorities.

**1.12 “Design-Build Entity, Design-Build Entity”** the entity that will enter into the Agreement with Owner and that will be the single point of accountability to Owner for delivering the services and the Project.

**1.13 “Design-Build Subcontractors”** means all Subcontractors that contract directly with the Design-Build Entity to perform design and construction services related to a specific trade or discipline.

**1.14 “Design-Build Team”** includes the General Contractor, Design Professionals and Design-Build Subcontractors members of the Design-Build Entity performing Preconstruction Stage Services and Construction Stage Services for the Project.

**1.15 “Design Guide Illustrations”** mean the drawings prepared by Owner and made a part of the Bridging Contract Documents.

**1.16 “Design Professionals”** means the Designer of Record, the structural engineer, and any other design consultants who are performing design services for the Project on behalf of Design-Build Entity but do not perform any Construction Stage Services.

**1.17 “Design Services”** includes all required design work required to complete the Project, consistent with the Bridging Contract Documents.

**1.18 “Effective Date”** means the date that the Design-Build Entity and Owner entered into the Agreement, which is set forth on page 1 of the Agreement.

**1.19 “Facilities”** means all equipment, products, materials, controls, software, both individually and collectively as a completed system.

**1.20 “Final Completion”** occurs on the date when Design-Build Entity has achieved Substantial Completion; all Final Punch List items have been completed and accepted by the Owner; all close-out documentation required under the Project specifications has been transmitted to the Owner’s Project Manager.

**1.21 “Final Completion Date”** is set forth in Section 8.1 of the Agreement.

**1.22 “Final Design Package”** is defined in Section 5.3 of the Design-Build Agreement.

**1.23 “Final Punch List”** is the punch list prepared by the Design-Build Entity in conjunction with the Owner after completing a Project walk-through upon Substantial Completion.

**1.24** “**Force Majeure Event**” means an Act of God as defined under Public Contract Code section 7105, civil disobedience, an act of terror, or unavoidable casualties beyond the Design-Build Entity’s control, and not due to any act or omission of the Design-Build Entity or its Design Professionals and/or Subcontractors, that necessarily extends the Final Completion Date.

**1.25** “**Hazardous Materials and Substances**” means any substance, product, waste, or other material of any nature that is or becomes listed, regulated or addressed under one or more of the following Environmental Laws: (1) CERCLA, (2) Hazardous Materials Transportation Act, (3) RCRA, (4) the Clean Water Act, (5) the Toxic Substance Control Act, (6) HSAA, (7) the California Porter-Cologne Water Quality Control Act, (8) the California Hazardous Waste Management Act, (9) the California Safe Drinking Water Act, (10) the California Waste Management Act, and (11) any other Federal or State law or local ordinance concerning hazardous, toxic or dangerous substances, wastes, or materials.

**1.26** “**Key Personnel**” means the Design-Build Entity’s personnel identified as key to the project’s overall success, and, at a minimum, including those positions defined as Key Personnel in the RFQ and RFP. The Design-Build Entity’s Key Personnel are specifically identified in **Exhibit 5**.

**1.27** “**Owner**” means San Mateo County - Parks.

**1.28** “**Owner-Elected Changes**” are changes in the Work directed by the Owner that may impact the Contract Price, and Final Completion Date and are not: (i) reasonably inferable from the Bridging Contract Documents or Contract Documents; or (ii) required as a result of design errors and omissions.

**1.29** “**Owner’s Minimum Requirements**” mean the performance specifications and prescriptive specifications prepared by Owner and made a part of the Bridging Contract Documents.

**1.30** “**Owner’s Suspension of Work**” is when the Owner elects to suspend progress of Work on the Project under Section 16.2 of the Agreement.

**1.31** “**Party**” or “**Parties**” means the Design-Build Entity or the Owner in the singular or the Design-Build Entity and Owner collectively who have executed the Agreement.

**1.32** “**Preconstruction Stage Services**” means all services, labor, materials, equipment and appurtenances provided by the Design-Build Entity and its Subcontractors to prepare a Preliminary Design for the Project, as further defined in **Exhibit 3**.

**1.33** “**Preconstruction Survey**” Design-Build Entity’s deliverable comprised of a comprehensive preconstruction survey of the Work site as described in more detail in the Scope of Work.

**1.34** “**Product Data**” includes illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design-Build Entity’s Subcontractors illustrating materials or equipment for some portion of the construction work.

**1.35** “**Project**” means the completion of the Preconstruction Stage Services and Construction Stage Services.

**1.36 "Project Site"** means that certain real property located at 215 Bay Road, Menlo Park, CA 94025 commonly known Flood Park.

**1.37 "Project Baseline Schedule"** means the approved critical path schedule prepared by the Design-Build Entity for performance of all Work within the Contract Time, as approved by the Owner.

**1.38 "Punch List"** is a list prepared by the Owner's Project Manager, when Design-Builder considers a portion of the construction work substantially complete, that includes all items that are incomplete or unsatisfactorily finished and a schedule for their completion.

**1.39 "Request for Information" ("RFI")** means written requests prepared by the Design-Build Entity and/or its Subcontractors requesting clarification about design or raising coordination issues that impact design, cost or schedule. RFIs will be handled internally by the Design-Build Entity, with copies to the Owner.

**1.40 "Samples"** means physical examples of materials, equipment or workmanship required by the Construction Documents that are used to establish standards by which the construction work will be judged.

**1.41 "Shop Drawings"** means drawings, diagrams, and other data specially prepared by the Design-Build Entity and/or its Subcontractors, manufacturers, suppliers or distributors to demonstrate the way in which materials and equipment will perform in accordance with the design illustrated in the Construction Documents. Shop Drawings will be approved by Design-Builder, but Owner will also review.

**1.42 "Site Logistics Plan"** will provide phasing, establish the areas of the site that will be used for trailers, deliveries, staging, ingress and egress, location of major pieces of equipment, storage containers, stockpiles of materials, clearways used for emergency access, environmental controls, trailers for Design-Build Entity and Owner, parking facilities for Design-Builders, employees, and Owner, access road, fence line, etc.

**1.43 "Specifications"** means the component of the Construction Documents separate from the drawings, addressing all required materials, products and equipment, their installation and operation, quality assurances, reference standards, submittal requirements etc., not already addressed in the OMRs. The Specifications shall be developed in conjunction with the Construction Specifications Institute ("CSI") 16 Division/Three Part Format, as established in the CSI Manual of Practice.

**1.44 "Staffing Plan"** means the plan submitted by the Design-Build Entity with its proposal.

**1.45 "Subcontractor"** means all contractors under direct contract with Design-Build Entity for performance of a portion of the construction work as well as any lower tier-subcontractors. The term subcontractor includes Design-Build Subcontractors.

**1.46 "Submittals"** includes Shop Drawings, Product Data, Samples and similar documentation required by the Project specifications or other Construction Documents.

**1.47 “Substantial Completion”** means completion of all Preconstruction Stage Services and Construction Stage Services in accordance with the Contract Documents, and sufficient for the Owner to occupy and use the Facilities for their intended purpose; notwithstanding the foregoing, incomplete minor Punch List work that does not affect Owner’s ability to occupy and use the Facilities for their intended purpose shall not prevent the achievement of Substantial Completion.

**1.48 “Substantial Completion Date”** The Substantial Completion Date is set forth in Section 8.1 of the Agreement.

**1.49 “Supplemental Conditions”** means the Supplemental Conditions to the Agreement.

**1.50 “Unforeseen Site Conditions” or “Differing Site Conditions”** means discovery of unknown, unforeseen or differing site conditions, as defined in Public Contract Code section 7104, any unknown existing conditions in concealed spaces of the renovated portions of the Project.

**1.51 “Work”** means all work, including all services, labor, materials, equipment, tools, and appurtenances, necessary to complete the Preconstruction Stage Services and Construction Stage Services, as described in, or reasonably inferable from, the Contract Documents.

## **2. WORK RESTRICTIONS**

**2.1 Work Hours.** All construction work will be performed between 7:00 a.m. and 7:00 p.m. unless further restricted by permit requirements or compliance with the US Department of Interior Department of Fish and Wildlife protective measures for nesting or breeding species. Design-Build Entity will provide the Owner with written notice for any construction work that must be performed after hours. All after-hour construction work requires the Owner’s written approval prior to commencement.

**2.2 Signs.** Design-Build Entity shall not erect any sign on the Project Site without the prior written consent of the Owner, which shall be at the Owner’s sole discretion.

**2.3 Parking.** Design-Build Entity works parking must be in Owner approved area.

**2.4 Staging and Storage.** Material will be stored only in the areas indicated on the Site Logistics Plan. Limited short-term staging areas will be designated in the Site Logistics Plan.

## **3. SOILS INVESTIGATIONS AND HAZARDOUS MATERIALS**

**3.1 Site Inspection.** The Design-Build Entity is required to examine the Project Site before submitting its proposal. Design-Build Entity may not rely exclusively on Background Documents to determine the status of soil conditions, except for issues involving Unforeseen and Differing Site Conditions.

**3.2 Hazardous Materials and Substances.** The Design-Build Entity is not expected to encounter but is responsible for the proper reporting of discovered potentially

**“Hazardous Materials or Substances”** that were pre-existing at the Project Site before commencement of construction and are part of the Work. The Design-Build Entity will not be considered the generator of any pre-existing hazardous materials on the Project Site. The Design-Build Entity is also responsible for all Hazardous Materials and Substances that it requires through the Project design specifications or that are brought onto the Project Site by its employees and/or Subcontractors. The Design-Build Entity will notify the Owner of discovered materials, and the owner will schedule the removal of discovered materials in a way that minimizes potential delays to the project.

**3.2.1 Unsafe or Hazardous Conditions.** If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from any Hazardous Materials or Substances encountered at the Project Site, the Design-Build Entity will stop any part of the Work that it deems unsafe until corrective measures have been taken. If the Design-Build Entity fails to take corrective measures, the Owner may do so. Failure on the part of the Owner to stop unsafe practices, or the Owner’s efforts to take corrective measures after the Design-Build Entity fails to do so, does not relieve or diminish the Design-Build Entity’s safety responsibilities.

**3.2.2 Verification.** Upon discovery of any Hazardous Material or Substance that has not previously been identified in the Design-Build Entity’s Hazardous Material Survey, the Design-Build Entity will immediately notify the Owner’s Project Manager and stop all construction work in the area if necessary. The Design-Build Entity will retain the services of a licensed laboratory to verify the presence or absence of the preexisting Hazardous Material or Substance. If preexisting Hazardous Material or Substance is discovered, the Design-Build Entity will contact its licensed laboratory to verify that the condition has been rendered harmless before construction work recommences in the affected area. The Design-Build Entity may be entitled to an adjustment in the Contract Time if the Hazardous Material or Substance is deemed an Unforeseen or Differing Site Condition and impacts the Final Completion Date of the Project. If the Hazardous Material or Substance was pre-existing the Owner will pay for the services of the licensed laboratory. The Design-Build Entity will reimburse the Owner for the services of the licensed laboratory if the Hazardous Material or Substance was brought on-site by the Design-Build Entity or any of its Subcontractors or vendors.

## **4. SAFETY**

**4.1 Signs.** The Design-Build Entity will erect and maintain reasonable safeguards for safety and protection, as required by existing conditions and performance of the construction work, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities.

**4.2 Weekly Safety Meetings.** The Design-Build Entity will hold weekly meetings with its Subcontractors to review Subcontractor compliance with the Design-Build Entity’s Health and Safety Program.

**4.3 Daily Jobsite Walks.** The Design-Build Entity will also conduct daily jobsite inspections to verify that the construction work is being performed in a safe and workmanlike manner and in accordance with the Design-Build Entity’s Health and Safety Program. The Design- Builder will provide written notice to its Subcontractors demanding immediate correction of any known safety violation.

## 5. QUALITY ASSURANCE AND QUALITY CONTROL

**5.1 Quality Control Plan.** The Design-Build Entity will prepare and submit to the Owner's Project Manager for approval a plan that describes the procedures and methods the Design-Build Entity will utilize to control the quality of the construction work. The Quality Control Plan must be approved before the start of construction. The Owner reserves the right to require revisions of the Quality Control Plan that are necessary to ensure the specified quality of the construction work. The Design-Build Entity will assign appropriate site personnel to oversee quality control. No change in the Quality Control Plan will be implemented without prior Owner approval. At a minimum the Quality Control Plan will provide information regarding the following:

**5.1.1** Quality control supervision and document control.

**5.1.2** Identification of personnel for required training and qualification activities.

**5.1.3** Procedures for testing and inspections that identify individual inspection or testing points and acceptance criteria, and include provisions for recording results and the responsible inspection/test personnel.

**5.1.4** Procedures for identifying what applicable technical and quality requirements will be required of vendors supplying materials, parts and services to ensure compliance with the Contract Documents.

**5.1.5** Procedures for receiving, inspecting and accepting materials and equipment. The procedures will include, at a minimum, examination of the physical condition for compliance with the Contract Documents, purchase order and/or subcontract agreement, and identifying and processing any non-conforming goods.

**5.1.6** Provisions for identifying and timely remedying non-conforming or defective construction work.

**5.1.7** Documentation control to maintain records of the activities included in the Quality Control Plan. All documentation will be submitted to the Owner as part of the close-out documentation for this Project and therefore must be logically organized and indexed for reference.

**5.2 Design Quality Control Plan.** The Design-Build Entity will prepare and submit to the Owner for approval a Design-Quality Control Plan that describes the procedures and methods the Design-Build Entity will utilize to control the quality of the construction work. The Design Quality Control Plan must be approved before the start of construction. The Owner reserves the right to require revisions of the Design Quality Control Plan that are necessary to ensure the specified quality of the construction work. The Design-Build Entity will assign appropriate site personnel to oversee quality control. No change in the Design Quality Control Plan will be implemented without prior Owner approval.

**5.3 Manufacturer's Field Services.** To the extent required, the Design-Build Entity will engage in a factory-authorized service representative to inspect field-assembled components and equipment installation, including service connections. All manufacturers' field service reports must be in writing and included as part of the records turned over to Owner during close-out.

**5.3.1 Quality Control Reports.** The Design-Build Entity will keep daily Quality Control Reports throughout the duration of the construction process certifying that the relevant area of the construction work has been inspected. The Quality Control Reports will be prepared, signed and dated by the personnel identified as the supervisor in the Quality Control Plan and will include, at a minimum, the following information: Identification of the material, equipment or component that was inspected and indicate, if applicable, if the Submittals have been reviewed and approved by the Design- Builder.

**5.3.2** Indicate that materials and/or equipment comply with the requirements of Section 5.19.9 of the Agreement and are properly stored, if not yet installed.

**5.3.3** Indicate that the construction work has been coordinated under Sections 5.19.4 and 5.19.5 of the Agreement, that all required preliminary work has been inspected by Quality Control personnel, was properly performed, and that the area is ready to receive subsequent construction work. If the construction work is not acceptable, provide a written description of any rework required in the area inspected with an explanation of the cause of the re-rwork (including which Subcontractors are involved), any cost involved in the required re-work, and the expected completion date of the required re-work.

**5.4.4** Results of any off-site testing or quality control work and any required further actions.

**5.4.5** Other necessary information including, directions received, quality control problem areas, deviations from the Quality Control Plan, construction deficiencies encountered, Quality Control meetings held, an acknowledgement that as-built drawings have been updated (if applicable), corrective direction given by Quality Control personnel, and corrective action taken by the Design-Build Entity.

**5.5 Quality Control Design Reports.** The Design-Build Entity will keep daily Quality Control Design Reports throughout the duration of the construction process certifying that the relevant area of the construction work has been inspected. The Quality Control Design Reports will be prepared, signed and dated by the personnel identified as the supervisor in the Design Quality Control Plan. Quality Control Design Reports should be submitted as part of each design submittal.

**5.6 Test and Inspection Logs.** The Design-Build Entity will maintain an on-site inspection log that is accessible by the Owner. The log will document all tests and inspections performed at the Project during construction. In addition, the Design-Build Entity will prepare a sequentially numbered record of tests and inspections. The record of tests will include the following information:

**5.6.1** Request for Inspection.

**5.6.2** Date test or inspection was conducted.

**5.6.3** Identity of testing agency or special inspector.

**5.6.4** Description of the construction work tested or inspected.



**5.6.5** Identification of any drawings or applicable details on the Construction Documents or Submittals that were used during testing and inspection.

**5.6.6** Date that the test or inspection was concluded and the date that the results were transmitted to Owner.

## **6. TEMPORARY FACILITIES**

**6.1 Temporary Electricity.** Design-Build Entity will provide, maintain, and pay for temporary electrical power at the Project Site for construction purposes and trailers.

**6.2 Temporary Communications.** The Design-Build Entity will provide, maintain, and pay for all applicable communications and data service connections for field offices, including all installation and connection charges.

**6.3 Temporary Water.** The Design-Build Entity will provide, maintain, and pay for all required potable water required for construction field personnel as well as water required for and in connection with the construction operations such as dust control. Unnecessary waste of water will not be permitted. The Design-Build Entity must use special hydrant wrenches for opening and closing fire hydrants in lieu of pipe wrenches.

**6.4 Not Used.**

**6.5 Temporary Sanitary Facilities.** Provide and maintain all required temporary toilets for use of all design and construction personnel and field labor at the Project Site through Final Completion of the Project. Location of temporary sanitary facilities will be approved by Owner's Project Manager prior to delivery. The Design-Build Entity will provide at least 1 temporary toilet facility for every 20 persons. The Design-Build Entity will cause all design and construction personnel (including field labor) to use temporary sanitary facilities rather than Owner's facilities. All temporary sanitary facilities will comply with the Department of Health standards.

**6.6 Not Used**

**6.7 Water Control.** Design-Build Entity will grade the Project Site as required by the civil design included in the Construction Document. During construction, the Design-Build Entity will maintain all trenches and excavated areas free from water accumulation and will provide the necessary barriers to protect the Project Site from ponding, running water and soil erosion. The Design-Build Entity will provide for increased drainage of storm water and any water that may be applied or discharged on the Project Site during performance of the construction work. All drainage facilities will be adequate to prevent damage to the construction work, Project Site, and adjacent property. Design-Build Entity will construct dikes, if necessary, to divert any increased runoff from entering adjacent property (except in natural channels), to protect Owner's facilities and the construction work, and to direct water to drainage channels or conduits. Design-Build Entity will provide ponding as necessary to prevent downstream flooding. Design-Build Entity shall be solely liable for any loss or damages resulting from Design-Build Entity's failure to comply with the provisions of the Dept. of Water Resources Best Management Practices and County requirements.

**6.8 Pollution Control.** The Design-Build Entity will provide a plan that meets the requirements of California Storm Best Management Practices (Stormwater Quality Task Force, 1993) to prevent the pollution of drains and watercourses by sanitary wastes, sediment, debris, and other substances and/or soil erosion during construction operations:

**6.8.1** No sanitary wastes will be permitted to enter any drain or watercourse other than sanitary sewers. No sediment, debris, or other substance will be permitted to enter sanitary sewers without authorization of the receiving sanitary sewer service, and all possible best management practices will be taken to prevent materials from entering into any drain to watercourse.

**6.8.2** In the event that dewatering of excavations is required, Design-Build Entity will obtain the necessary permits from local governmental authorities for discharge of the dewatering effluent. The Design-Build Entity will be responsible for assuring that water quality of the discharge meets the appropriate permit requirements prior to any discharge.

**6.8.3** Erosion and sedimentation control practices will include installation of silt fences, straw wattle, soil stabilization, re-vegetation, and runoff control to limit increases in sediment in storm water runoff, including but not limited to, detention basins, straw bales, silt fences, check-dams, geo-fabrics, drainage swales, and sand bag dikes.

**6.8.4** The construction work will be scheduled to expose areas subject to erosion for the shortest possible time, and natural vegetation will be preserved to the greatest extent practicable. Temporary storage and construction buildings will be located, and construction traffic routed, to minimize erosion. Temporary fast-growing vegetation or other suitable ground cover will be provided as necessary to control runoff.

**6.9 Construction Equipment and Aids.** Design-Build Entity will furnish, install, maintain, and operate all construction equipment required by the performance of the construction work. Construction aids include elevators and hoists, cranes, temporary enclosures, swing staging, scaffolding and temporary stairs. When sandblasting, spray painting, spraying of insulation, or other activities inconveniencing or dangerous to property or the health of design or construction personnel, Owner's staff, or the public are in progress, Design-Build Entity will enclose the area of activity to contain the dust, over-spray, or other hazard.

**6.10 Traffic Control.** The Design-Build Entity will provide a traffic control plan in accordance with the California Department of Transportation Traffic Manual. The Design-Build Entity will submit its traffic control plan to the appropriate agency for approval, as necessary, before commencement of the construction work requiring traffic controls.

**6.11 Removal of Temporary Facilities and Equipment.** The Design-Build Entity will remove all temporary utilities, equipment, facilities, and materials before final inspection of the Project and clean and repair any damage caused by installation or use of temporary work restoring existing facilities to their original conditions.

## **7. SURVEYING**

**7.1 Field Engineering.** The Design-Build Entity will employ a California State licensed civil engineer or land surveyor to provide field engineering services to establish benchmarks and line and grade for horizontal and vertical control.

## **8. DEMOLITION – Not Used**

## **9. PROTECTION OF WORK AND PROPERTY**

**9.1** Design-Build Entity will be responsible for providing a safe place for the performance of the construction work and for the physical conditions and safety of areas affected by the construction work. Design-Build Entity will take all necessary precautions to provide for the safety and protection of all persons who may come in contact with the construction work and for all property and equipment within or adjacent to the Project Site including adequate precautions to protect existing trees, equipment, materials, utilities, and other adjoining property and structures. Design-Build Entity will repair any damage caused by its operations at its own expense and will provide protection to prevent damage, injury or loss to:

**9.1.1** Owner's employees and other persons at the Project Site.

**9.1.2** Equipment, materials, and vehicles stored at the site or off-site if under the care, custody, or control of the Design-Build Entity or its Design Professionals or Subcontractors.

**9.1.3** Existing trees, structures, roads, equipment, property and the work of others when carrying out Design-Build Entity's Work. Refer to Tree Protection specifications as included as part of the Criteria document includes as **Exhibit 2B**.

**9.2** These precautionary measures will apply continuously and not be limited to normal working hours.

**9.3** If damage to persons or property occur as a result of the construction work, Design-Build Entity will be responsible for proper investigation, documentation, including video or photography, to adequately memorialize and make a record of what transpired. The Owner will be entitled to inspect and copy any documentation, video, or photographs.

## **10. WORKERS AND WORKERS' COMPENSATION**

**10.1** Design-Build Entity will at all times enforce strict discipline and good order among its employees. Design-Build Entity will not employ on the Project any unfit person or unskilled labor.

**10.2** Design-Build Entity and its Subcontractors are required to secure the payment of compensation of its employees in accordance with Labor Code section 3700. Before commencing the Work, the Design-Build Entity, its Design-Build Team members, and its Subcontractors will sign and file a certification with the Owner under Labor Code section 1861 stating the following:

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 undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the any work or services under the Design-Build Agreement or any subcontract or design service agreements.

## **11. CHANGE IN NAME OR LEGAL ENTITY**

**11.1** If a change in name or nature of the Design-Build Entity's legal entity is anticipated, the Design-Build Entity will notify the Owner to ensure that the change will be properly reflected on the Agreement.

## **12. PROHIBITED INTERESTS**

**12.1** No public official or representative of the Owner who is authorized in such capacity and on behalf of the Owner to negotiate, supervise, make, accept, approve, or to take part in negotiating, supervising, making, accepting or approving any engineering, inspection, construction or material supply contract or any subcontract in connection with design and construction of the Project, will be or become directly or indirectly interested financially in this Agreement.

## **13. LAWS AND REGULATIONS**

**13.1** Design-Build Entity will give all notices and comply with all laws, ordinances, rules and regulations bearing on conduct of Work. If Design-Build Entity observes that the Contract Documents are at variance with any laws, ordinances, etc., Design-Build Entity will promptly notify the Owner's Project Manager, in writing, and any necessary changes will be adjusted. If Design-Build Entity performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without notice to the Owner's Project Manager, it will bear all costs associated with any required corrections or repairs.

## **14. STATUTORY PUBLIC WORKS CONTRACT REQUIREMENTS**

The following requirements apply to all public works construction work performed under this Agreement.

**14.1 Public Works Registration.** Design-Build Entity or its contractor, and all subcontractors, must be registered with the California Department of Industrial Relations pursuant to Labor Code Section 1725.5. This Agreement is subject to monitoring and enforcement by the DIR pursuant to Labor Code Section 1771.4. Design-Build Entity shall furnish the records specified in Labor Code Section 1776 directly to the Labor Commissioner on a monthly basis, and in a format prescribed by the Labor Commissioner. Design-Build Entity must also post notices at the work site pursuant to Title 8 California Code of Regulations Section 16451.

**14.2 Use of Subcontractors.** Design-Build Entity shall not subcontract any work to be performed by it under this Agreement without the prior written approval of Owner, which approval will not be unreasonably withheld. Design-Build Entity shall be solely responsible for reimbursing any subcontractors and Owner shall have no obligation to them. Attention is directed to the requirements of Section 4100 to 4113, inclusive of the California Public Contract Code which are applicable to the work covered by this Agreement.

**14.3 Prohibition Against Contracting with Debarred Subcontractors.** Design-Builder is prohibited from performing work on a public works project with a subcontractor who is ineligible to perform work on the public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.

**14.4 Prompt Payment to Subcontractors.** Design-Build Entity shall pay any subcontractors approved by Owner for work that has been satisfactorily performed no later than

seven (7) days from the date of Design-Build Entity's receipt of progress payments by Owner. Within thirty (30) days of receipt of retention by Design-Build Entity and satisfactory completion of all work required of the subcontractor, Design-Build Entity shall release any retention payments withheld to the subcontractor. In the event Design-Build Entity does not make progress payments or release retention to the subcontractors in accordance with the time periods in this section, Design- Builder will be subject to a charge of two percent (2%) per month on the untimely or improperly withheld payment. Owner may require Design-Build Entity to provide documentation satisfactory to Owner of Design-Build Entity's compliance with this requirement as a condition of final payment and release of contract retentions, if any.

**14.5 Payment Bond for Construction Work.** Pursuant to Civil Code Section 9550, Design-Build Entity shall furnish to Owner a Payment Bond in the amount of all equipment and construction costs, to provide Owner with security for Design-Build Entity's full payment to workers and subcontractors for costs of materials, equipment, supplies, and labor furnished in the course of the performance of the work applicable to this section.

**14.6 Labor Code Provisions.** In the performance of this Contract, Design-Build Entity's attention is directed to the following requirements of the Labor Code:

Hours of Labor. Eight hours labor constitutes a legal day's work. Design-Build Entity shall forfeit, as penalty to Owner, \$25 for each worker employed in the performance of the Agreement by Design-Build Entity or by any subcontractor under it for each calendar day during which such worker is required or permitted to work more than eight hours in any one day and 40 hours in any one calendar week in violation of the provisions of the California Labor Code and in particular, Sections 1810 to 1815, inclusive. Work performed by employees of the Design-Builder in excess of eight hours per day and 40 hours during any one week shall be permitted upon compensation for all hours worked in excess of eight hours per day at not less than one-and-one-half times the basic rate of pay, as provided in Section 1815.

Prevailing Wages. Design-Build Entity shall comply with California Labor Code Sections 1770 to 1780, inclusive. In accordance with Section 1775, the Design-Build Entity shall forfeit as a penalty to Owner an amount as determined by the Labor Commissioner not to exceed \$200 for each calendar day or portion thereof for each worker paid less than stipulated prevailing wage rates for such work or craft in which such worker is employed for any work done under the Agreement by him or by any subcontractor under it in violation of the revisions of the Labor Code and in particular, Labor Code Sections 1770 to 1780, inclusive. In addition to said penalty and pursuant to Section 1775, the difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by Design-Builder. Pursuant to the provisions of Section 1773 of the Labor Code, Owner has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work applicable to the work to be done from the Director of the Department of Industrial Relations. Copies of the prevailing wage rates are on file at Owner and are available for review upon request.

Payroll Records. The Design-Build Entity's attention is directed to the following provisions of Labor Code Section 1776. The Design-Build Entity shall be responsible for the compliance with these provisions by his subcontractors.

- a. Each contractor and subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work.
- b. The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Design-Build Entity on the following basis:
  1. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
  2. A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to Owner, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations.
  3. A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either Owner, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the Design-Build Entity, subcontractor and the entity through which the request was made. The public shall not be given access to such records at the principal office of the Design-Build Entity.
- c. The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the Division.
- d. The Design-Build Entity shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested such records within ten (10) days after receipt of a written request.
- e. Any copy of records made available for inspection as copies and furnished upon request to the public or Owner, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Design-Build Entity shall not be marked or obliterated.
- f. The Design-Build Entity shall inform Owner of the location of records enumerated under subdivision (a), including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.
- g. In the event of noncompliance with the requirements of this Section, the Design-Builder shall have ten (10) days in which to comply subsequent to receipt of written

notice specifying in what respects such contractor must comply with this Section. Should noncompliance still be evident after such 10-day period, the Design-Build Entity shall, as a penalty the State or Owner, forfeit Twenty-five Dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due. The penalties specified in subdivision (g) of Labor Code Section 1776 for noncompliance with the provisions of said Section 1776 may be deducted from any monies due or which may become due to the Design-Build Entity.

- h. The Design-Build Entity and each subcontractor shall preserve their payroll records for a period of three (3) years from the date of completion of the Contract.

Labor Non-discrimination. Attention is directed to Section 1735 of the Labor Code which provides that Design-Build Entity shall not discriminate against any employee or applicant for employment because of race or color, religion, physical or mental disability, national origin or ancestry, medical condition, marital status or sex of such persons, except as provided in Section 12940 of the Government Code. Design-Build Entity further agrees to include a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

Apprentices. The Design-Build Entity and all subcontractors shall comply with the requirements of California Labor Code sections 1777.5, 1777.6 and 1777.7 regarding the employment and of apprentices.

**14.7 Skilled and Trained Labor Force Requirements.** Project cost is below minimum threshold of \$1,000,000 and therefore is not required to comply with all requirements related to providing a skilled and trained workforce, pursuant to Public Contract Code section 22164(c), and Public Contract Code sections 2600-2603.

**14.8 Retention on Progress Payments.** Owner will deduct and hold in retention five percent (5%) from each progress payment to Design-Build Entity for construction work, or portion thereof. The remainder, less any other deductions taken in accordance with the Agreement, will be paid to Design-Build Entity as progress payments.

**14.9 Securities in Lieu of Retention.** Pursuant to Public Contract Code Section 22300, Design-Build Entity may elect, in lieu of having progress payments retained by Owner, to deposit in escrow with Owner, or with a bank acceptable to Owner, securities eligible for investment under 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 to by Design-Build Entity and Owner. If Design-Build Entity elects to submit securities in lieu of having progress payments retained by Owner, Design-Build Entity shall, at the request of any subcontractor performing more than 5% of Design-Build Entity's total bid, make the same option available to the subcontractor.

**14.10 Assignment of Claims.** In entering into a public works contract or a subcontract to supply goods, services, or materials, Design-Build Entity or subcontractor offers and agrees to assign to Owner 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 Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works



contract or the subcontract. This assignment shall be made and become effective at the time Owner tender's final payment to Design-Build Entity, without further acknowledgement by the parties.

**14.11 Third-Party Claims.** Pursuant to Public Contracts Code Section 9201, Owner shall have full authority to compromise or otherwise settle any claim relating to the Agreement at any time. Owner shall provide for timely notification to Design-Build Entity of the receipt of any third-party claim, relating to the contract. Notice shall be in writing and will be provided within thirty (30) days.

#### **14.12 Public Contract Code Claims Procedures**

**14.12.1** Mandatory Prerequisites to Filing a Construction Claim. Prior to filing a construction claim pursuant to Public Contract Code Sections 9203 and 20104-20104.6 and this section, Design-Build Entity must first complete all Change Order procedures in Section 9 of the Design-Build Agreement. Any claim submitted prior to satisfaction of the Change Order procedures will be rejected as premature and untimely. A construction claim must be submitted no later than (a) 30 days after the completion of all Dispute Resolution Board procedures are completed, or (b) 30 days after the occurrence of the event giving rise to the claim.

**14.12.2** Claims Procedures. In accordance with the procedures set forth in Public Contract Code sections 9204 and 20104-20104.6, Design-Build Entity may submit a claim by registered or certified mail with return receipt requested, for one or more of the following: (a) a time extension, including, without limitation, for relief from damages or penalties for delay assessed by the Owner; (b) payment by the Owner of money or damages arising from work done by, or on behalf of, the Design-Build Entity pursuant to this contract and payment for which is not otherwise expressly provided or to which the Design-Build Entity is not otherwise entitled; or (c) payment of an amount that is disputed by the Owner.

**14.12.3** Support for Claim. The Design-Build Entity shall furnish reasonable documentation to support the claim, including but not limited to: 1) a clear, concise recital of the basis upon which the claim is asserted, including a designation of the provisions of the Contract Documents upon which the claim is based, 2) a statement as to the amount of time and/or compensation sought pursuant to the claim; 3) whether the Design-Build Entity's claim arises from an ongoing occurrence, and if so a description of the specific Work activities affected by the claim, 4) a time impact analysis in the event that Design-Build Entity requests a time extension, 5) full and complete cost records supporting the amount of any claim for additional compensation, and 6) a notarized certification by the Design-Build Entity as follows: "Under the penalty of law for perjury or falsification and with specific reference to the California False Claims Act, Government Code Section 12650 et seq., the undersigned hereby certifies that the information contained herein is a true, accurate and complete statement of all features relating to the claim asserted." Failure by the Design-Build Entity to provide sufficient documentation will result in denial of the claim. The Owner reserves the right to request additional documentation, or clarification of the documentation provided.

**14.12.4** Response to Claim. Upon receipt of a claim, the Owner will conduct a reasonable review and provide a written statement to the Design-Build Entity identifying what portion of the claim is disputed and what portion is undisputed within 45 days of receipt of the claim. The Owner and Design-Build Entity may, by mutual agreement, extend

the 45-day time period. For any undisputed portion of a claim, the Owner must make payment within 60 days of its issuance of the written statement.

If the Design-Build Entity disputes the Owner's written statement, or if the Owner fails to respond, the Design-Build Entity may demand an informal conference to meet and confer for settlement of the issues in dispute. The Owner will then schedule the meet and confer conference within 30 days of the demand. Within 10 business days following the meet and confer conference, the Owner will provide a written statement identifying the portion of the claim that remain in dispute. Any payment due on an undisputed portion of the claim will be made within 60 days of the meet and confer conference.

After the meet and confer conference, any disputed portion of the claim shall be submitted to non-binding mediation. Alternatively, upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable. If mediation is unsuccessful, the parts of the claim that remain in dispute shall be subject to applicable procedures set forth below.

Failure of Owner to respond to a claim within the time periods described above shall result in the claim being deemed rejected in its entirety. Additionally, amounts not paid in a timely manner shall bear interest at 7 percent per year.

In the event that the mediation is unsuccessful, Design-Build Entity must file a government claim pursuant to Government Code section 910 et seq. in order to initiate a civil action.

**14.13 Utility Relocation.** Pursuant to California Government Code Section 4215, if during the course of the work Design-Build Entity encounters utility installations which are not shown or indicated in the contract plans or in the specifications or which are found in a location substantially different from that shown, and such utilities are not reasonably apparent from visual examination of the work site, then it shall promptly notify Owner in writing. Where necessary for the work of the Contract, Owner will amend the Agreement to adjust the scope of work to allow Design-Build Entity to make such adjustment, rearrangement, repair, removal, alteration, or special handling of such utility, including repair of the damaged utility. If Design-Builder fails to give the notice specified above and thereafter acts without instructions from Owner, then it shall be liable for any or all damage to such utilities or other work of the Agreement which arises from its operations subsequent to the discovery, and it shall repair and make good such damage at its own cost.

#### **14.14 Trenching, Shoring, and Differing Site Conditions.**

**14.14.1 Compliance.** Design-Build Entity will comply with Labor Code sections 6500, 6705, and 6707, and Public Contract Code section 7104 regarding trenching and shoring.

**14.14.2 Permit Requirements for Trenches 5'-0" or More in Depth.** Design-Build Entity agrees to comply in full with Section 6500 of the Labor Code and to provide the required permits prior to the initiation of any work, method, operation or process that involves: (i) construction of trenches or excavations that are 5'-0" or deeper and into which a person is required to descend; (ii) the construction of any building, structure, falsework, or scaffolding more than 3 stories high or the equivalent height; (iii) the demolition of any building,

structure, falsework, or scaffold more than 3 stories high or the equivalent height; or (iv) the underground use of diesel engines in work in mines and tunnels.

**14.14.2.1 Detailed Plans for Trenches 5'-0" or More in Depth.** In compliance with Labor Code section 6705, the Design-Build Entity will submit to the Owner's Project Manager, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any trench or trenches 5'-0" or more in depth. If the plan varies from shoring system standards, the plan will be prepared by a registered civil or structural engineer. The plan will not be less effective than the shoring, bracing, sloping, or other provisions of the Construction Safety Orders, as defined in the California Code of Regulations.

**14.14.2.2 Separate Bid Items for Sheet piling, Shoring, etc.** To the extent that Design-Build Entity's Work involves construction of a pipeline, sewer, sewage disposal system, boring and jacking pits, or similar trenches or open excavations, which are 5'-0" or deeper, Design-Build Entity will comply with all applicable laws, regulations, and codes and its bid and the Contract Price will contain, as a line item, adequate sheet piling, shoring, and bracing, or equivalent method, for the protection of life or limb pursuant to Labor Code section 6707, which will conform to applicable safety orders. Nothing in this section will be construed to impose tort liability on the Owner or any of its employees.

**14.14.3 Excavations Deeper than 4'-0"**. If Work under this Agreement involves digging trenches or other excavation that extends deeper than 4'-0" below the surface, Design-Build Entity will promptly, and before the following conditions are disturbed, notify Owner's Project Manager, in writing, in accordance with Public Contract Code section 7104, of any:

**14.14.3.1** Material that the Design-Build Entity believes may be hazardous waste, as defined in Section 25117 of the Health and Safety Code, which is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

**14.14.3.2** Subsurface or latent physical conditions at the site differing from those indicated.

**14.14.3.3** Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in the construction work of the character provided for in the Bid Documents and under this Agreement.

**14.14.4 Differing Site Conditions.** Design-Build Entity's notice to Owner shall be issued by telephone or in person and followed within 24 hours thereafter by written notice, providing a brief description of why the condition encountered is considered a Differing Site Condition. Promptly upon receipt of Design-Build Entity's notice, Owner will investigate the site conditions. If, during construction, the Design-Build Entity encounters an alleged Differing Site Condition, the Design-Build Entity shall immediately give written notice and may continue work; provided however that the following documents and information shall be submitted on a daily basis:

1. Digital photographs (paper and electronic copy) that detail the Differing Site Conditions;

2. An electronic copy of the pertinent data (e.g. settlement monitoring data, boring logs, dewatering production rates, etc.) for the previous 24 hours;
3. As applicable, sample of soil and groundwater in the alleged Differing Site Condition area.
4. Design-Build Entity's applicable daily reports for each day that the alleged Differing Site Condition exists; and
5. Detailed daily records (which shall include, but not be limited to, labor and equipment), describing the alleged Differing Site Conditions and the impact the Differing Site Conditions are having on the progress of the construction.

Immediate written notice shall describe the specific ground conditions encountered and the measures taken to deal with the ground conditions. The Design-Build Entity will provide the OR with written notice within 5 business days discovery of an Unforeseen and Differing Site Condition. The OR, in conjunction with the Owner and IOR, will promptly investigate the conditions, and if they find that the conditions do so materially differ, or do involve hazardous waste, and cause a decrease or increase in Design-Build Entity's Contract Price or Contract Time for any part of the Work, the OR will recommend that the Owner issue a Change Order under Section 9 of the Agreement. If it is determined that physical conditions at the site are not materially different from those indicated in Bid Documents or that no change in terms of the Contract Documents is justified, the OR will notify Design-Build Entity in writing, stating reasons the Design-Build Entity will not be entitled to an adjustment in the Contract Price or Contract Time. Such reasons may include any of the following:

**14.14.4.2** Design-Build Entity knew of the existence of the conditions at the time Design-Build Entity submitted its proposal; or

**14.14.4.3** Design-Build Entity should have known of the existence of the conditions as a result of having complied with the requirements of Contract Documents; or

**14.14.4.4** The information or conditions claimed by Design-Build Entity to be latent or materially different consist of information, conclusions, opinions or deductions of the kind that precludes reliance upon; or

**14.14.4.5** Design-Build Entity was required to give written notice of differing site conditions under the Contract Documents and failed to do so within the time required.

The Design-Build Entity will not be excused from the Contract Time to complete its Work and will proceed with all Work to be performed under the Agreement unless or until it is determined that Design-Build Entity is entitled to an adjustment under Section 9 of the Agreement. If the Design- Builder disagrees with the decision regarding an alleged Differing Site Condition, Design-Build Entity may pursue a claim under Section 14.12 of these Supplemental Conditions.

**14.15 Design-Build Entity's License Requirements.** Design-Build Entity and any approved subconsultants (for architectural design, engineering, construction project

management services) or subcontractors shall hold such current and valid licenses as required by California Law, including the Department of Industrial Relations (DIR) contractor and subcontractor registration requirements articulated in part by Cal. Labor Code section 1725.5.

**14.16 Examination and Audit of Records.** Pursuant to Government Code Section 8546.7, Design-Build Entity shall retain all project-related records for a period of 3 years after final payment on this DBO Contract, which shall be subject to audit or inspection by the Owner or the State Auditor during this period.

**14.17 Safety Requirements.** The Design-Build Entity shall promptly and fully comply with and carry out, and shall without separate charge therefore to the Owner, enforce compliance with the safety and first aid requirements prescribed by applicable State and Federal laws and regulations, rules and orders and as may be necessary to ensure that all Construction Work shall be done in a safe manner and that the safety and health of the employees, agents and the people of local communities is safeguarded. Compliance with the provisions of this Section by subcontractors shall be the responsibility of the Design-Build Entity. All installed, dismantled, and removed material, equipment and facilities, without separate charge therefore to Owner, shall fully conform with all applicable State and Federal safety laws, rules, regulations and orders and it shall be the Design-Build Entity's responsibility to furnish only such material, equipment and facilities.

**14.18 Notice of Third-Party Claims.** Pursuant to Public Contract Code section 9201, the Owner will provide Design-Build Entity with timely notification of the receipt of any third-party claim relating to the Agreement.

**14.19 Assignment of Anti-Trust Actions.** Pursuant to Public Contract Code section 7103.5 and Government Code sections 4554 and 4553, in entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, Design-Build Entity, its Design Professionals and Subcontractors offer and agree to assign to the Owner 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. section 15) or under the Cartwright Act (chapter 2 (commencing with section 16700) of part 2 of division 7 of the Business and Professions Code), arising from the purchase of goods, services, or materials pursuant to this Agreement or any Subcontract. This assignment will be made and become effective at the time the Owner makes final payment to the Design-Build Entity, without further acknowledgment by the parties.

**14.20 Compliance with All Applicable Laws.** Design-Build Entity shall comply with all the applicable requirements of federal, state and local laws, statutes and ordinances relative to the execution of the Work. In the event Design-Build Entity fails to comply with these requirements, Owner may stop any Work until such noncompliance is remedied. No part of the time lost due to any such cessation of the Work shall be made the subject of a claim for an extension of time or increase in the compensation.

# Exhibit 2

## BRIDGING DOCUMENTS DESIGN-BUILD AGREEMENT

### Exhibit 2A – Flood Park Renovation Plans

Plans available for Download via Dropbox at this location;

<https://www.dropbox.com/sh/e1r3hodn84ggpbf/AAy1HpQFgrSC6YAvEmaRg8ua?dl=0>

### Exhibit 2B – Pump Track Design Criteria

Included in this document

### Exhibit 2C – Geotechnical Report

Report available for download via Dropbox at this location;

<https://www.dropbox.com/sh/e1r3hodn84ggpbf/AAy1HpQFgrSC6YAvEmaRg8ua?dl=0>

### Exhibit 2D – Tree Protection Specification Section 31 13 11

Report available for download via Dropbox at this location;

<https://www.dropbox.com/sh/e1r3hodn84ggpbf/AAy1HpQFgrSC6YAvEmaRg8ua?dl=0>

### Exhibit 2E - San Francisco Public Utility Corridor (SFPUC)

Right-of-Way (ROW) documents SD-8-1, SD-8-2, SD-8-3

Report available for download via Dropbox at this location;

<https://www.dropbox.com/sh/e1r3hodn84ggpbf/AAy1HpQFgrSC6YAvEmaRg8ua?dl=0>

# Exhibit 2B

## DESIGN CRITERIA DESIGN-BUILD AGREEMENT

### 1. Asphalt Pump Track Design and Material Requirements

- 1.1. Place the Pump Track as shown on the Flood Park Renovation project drawings. The track cannot encroach on the PDU right-of-way as indicated on the Flood Park Renovation drawings in the proposal package. The asphalt ride surface may not extend into the San Francisco Public Utility Corridor (SFPUC) Right-of-Way (ROW) 80' corridor or the 100' setback from the Flood Park Property Line. However, these areas may be used for backslope, fencing, or other non-ridable elements of the pump track.
  - 1.1.1. Comply with the Tree Protection specifications in Section 31 13 11 to minimize tree impact.
- 1.2. The selected Pump Track design will engage all users, encouraging skill progression, social interaction, and fitness—a safe and appealing environment for the community and an asset for future recreation. In addition, the selected design will be multifunctional, sustainable, feasible, and suitable for a spectrum of wheeled vehicles, including; Mountain Bikes (hardtail, full suspension, etc...), BMX, Balance Bike, Skateboard/longboards, Scooter, In-line Skates/Roller Skates, or wheelchair.
- 1.3. The selected design will provide a continuous flow with no flat valleys to promote constant momentum and a pumping motion to maintain speed.
- 1.4. Construct the entire Pump Track above existing grades with positive drainage away from the Pump Track surface.
- 1.5. The starting area will be the highest point of the Pump Track and will accommodate at least four riders, a minimum size of 8' x8' and tall enough to generate speed to eliminate the need for pedaling.
  - 1.5.1. Coordinate starting platform location with CMG's access path location per the site Plan of the overall Flood Park Renovation Project.
- 1.6. Rollers and other features should have progressive spacing, U-shaped valleys, and slopes to increase rider speed as riders progress along the track.
  - 1.6.1. Bank turns in a manner suitable for riders of various skill levels and speeds.
  - 1.6.2. The side slopes of the Pump Track must be no greater than a 1:3 slope, except when; the track is constrained by the right-of-way, tree protection requirements, or other obstacles; the banks can be asphalt and slope up to 1:1 or 45 degrees
- 1.7. Ride Surface Width – 6'0" minimum
  - 1.7.1. Additional 12" on either side before the embankment for an 8-foot paved width.
  - 1.7.2. Provide a rolled asphalt edge profile with a smooth transition to adjacent surfaces

- 1.8. Include a minimum of Two (2) pull-out areas to allow riders to pull aside from the Pump Track safely.
- 1.9. Install a permeable mat below the track subgrade to allow water and nutrients to bypass the Pump Track naturally. Install Mirafi HP570 geotextile fabric (or approved equal) after the sub-excavation has been completed and before placement of import materials under the entire pump track.
- 1.10. Minimum asphalt paving profile of 3" AC over 6" AB.
  - 1.10.1. ¾" Class 4, Asphalt Base to meet Caltrans Standard.
  - 1.10.2. 3/8" Hot Mix Asphalt (HMA) to meet Cal Trans standard Type A. The overall objective for the design of asphalt paving mixtures is a blend of aggregates and asphalt that yields a mix having;
    - 1.10.2.1. Adequate stability to resist distortion and displacement and;
    - 1.10.2.2. Proper aggregate texture and hardness to provide sufficient skid resistance and;
  - 1.10.3. Ensure there are no tool marks on the completed surface;
  - 1.10.4. Seal all new Hot Mix Asphalt;
  - 1.10.5. Asphalt paints to be specifically designated for asphalt.
- 1.11. Include striping to designate limits of the Pump Track edges and directional arrows.
- 1.12. Bike Maintenance Station: Fixit with air kit bike pump accessory, Avail: Dero (888) 337-6729

## **2. Inclusions of the Pump Track Contractor:**

- 2.1. Finalize design and proposed materials based on Parks and Community meeting input.
- 2.2. Place construction staking based on the final approved design. Comply with requirements of the San Francisco Public Utility Corridor (SFPUC) Right-of-Way (ROW) per documents SD-8-1, SD-8-2, SD-8-3.
- 2.3. .
  - 2.3.1. Sub-grade excavations and finish grade areas to receive paving sections.
  - 2.3.2. Design must not include sub-grade excavation more than 6".
  - 2.3.3. Install Mirafi HP570 geotextile fabric (or approved equal) after the sub-excavation has been completed and before placement of import materials under the entire pump track.
- 2.4. Import approved clean fill material and compact it to 90%.
  - 2.4.1. Material must be tested and certified free of any hazardous materials.
  - 2.4.2. Material must be free of roots and rocks over 2".
  - 2.4.3. DBE will propose a mix design for the fill material.
  - 2.4.4. During placement of fill material and before placement of asphalt base material, Parks representative to review and accept the layout. Design Builder may be required to make minor modifications.
- 2.5. Install drainage weep pipes in the direction of existing sheet flow grades to minimize ponding water. Number of weep pipes required will vary based on design.



- 2.5.1. Weep Pipes to be a minimum of 6” in diameter, schedule 40 pipes, in the ends of weep pipes to have beveled ends with grate mechanically fastened per the attached detail.
  - 2.6. Install six (6) irrigation sleeves under the Pump Track for future irrigation to infield trees— location to be determined in the field by CMG.
    - 2.6.1. Irrigation sleeves to be a minimum of 4” in diameter schedule 40, installed at 18” below existing grade and extended 18” beyond the edge of embankments. Cap ends (NO GLUE) and install a 4x4 redwood marker flush to grade.
  - 2.7. Install approved asphalt base material and compact to 95%. During Asphalt Base placement and before asphalt placement, the Parks representative will review and accept the layout. Design Builder may be required to make minor modifications
  - 2.8. Install approved asphalt with a smooth, consistent finish to prevent ponding water on the Pump Track surface. The asphalt needs to be installed in a manner that does not have flat spots, no ponding water, is void of rock pockets, and is free of tool marks. During the placement of Asphalt, the Parks representative will review and accept the final finishing for a high-quality, smooth finish. Design Builder may be required to make minor modifications.
  - 2.9. Seal asphalt with approved sealer after asphalt cure time per milestone schedule.
  - 2.10. Stripe to designate limits of the Pump Track edges and include large directional arrows at approximately 40-feet or as necessary to provide clear direction to riders.
  - 2.11. Install bike repair station per attached specifications (same as installed at Quarry Park).
- 3. Draft list of exclusions of the Pump Track Contractor:**
- 3.1. Planning Department approval.
  - 3.2. Buildings Permits.
  - 3.3. Temporary construction fencing.
  - 3.4. Tree protection fencing.
  - 3.5. Bark mulch around the Pump Track.
  - 3.6. Landscaping & Irrigation.
  - 3.7. Signage.
  - 3.8. Drinking Fountains/water bottle filler station.
  - 3.9. Site Furnishings (benches and waste receptacles).
  - 3.10. Lighting.

3.11. Asphalt access paths to the Pump Track.

3.12. Fencing and gates.

## **Exhibit 3**

### **DESIGN NARRATIVE, SCOPE OF WORK, TECHNICAL PROPOSAL**

#### **DESIGN-BUILD AGREEMENT**

##### **Design Narrative**

The site is highly constrained by the SFPUC ROW, the property line buffer, existing trees, and other planned infrastructure and pathways. We worked hard to identify ways to maximize utilization of the space and create an interesting and engaging pump track with opportunities for progression and variety.

Concept general design guidelines:

- No asphalt surfaces in the SFPUC ROW or 100' residential buffer area.
- Assume ~3:1 slope for embankments. Steeper embankments paved or other treatment.
- Berm and start area heights 2.5-3.5' above grade
- Minimum of 8' wide riding lanes.
- Track layout that maximizes use of space and provides a variety of turn shapes and riding and transfer options.
- Adequate clearance from trees and minimizing fill in tree root areas.
- Access from both sides of track and multiple starting/staging/break areas.

In the concept drawings dark gray areas are the primary ride lanes, light gray areas are other paved areas and anticipated paved embankments, and the tan area is the approximate extent of fill.

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Cost proposal was developed based on the following scope of work. The final track size and design will impact cost depending on final square footage of asphalt and imported fill volumes. Assumed material quantities are included below. An allowance is provided for analysis of trucking material over the SFPUC pipelines.

## Scope of Work

- Included
  - Review Flood Park renovation plans, geotechnical report
  - Site visit
  - Attend (1) Community meeting
  - 50% planset (schematic design)
  - 75% planset
  - 95% planset
  - 100% planset
  - Plan Sheets
    - Construction Plan
    - Layout Plan
    - Track Grading Plan
    - Materials Plan
    - Details
  - Specifications
    - Track grading
    - Fill materials
    - Asphalt paving
    - Subgrade stabilization as needed
    - Sealcoat
    - Track Striping
  - Coordination with County
  - Construction cost estimate updates at each planset submittal
- Exclusions
  - SWPPP
  - Planting Plans
  - Irrigation Plans
  - Civil Plans
  - Structural Plans
  - Signage Plans or design

- Stormwater drainage plans or analysis
- Permitting
- Organizing or advertising community meeting
- Contingency
  - Retaining walls/alternative embankment options.

## Preconstruction

- Included
  - Coordination with County representatives and Renovation General Contractor
  - Develop detailed construction schedule
  - Site logistics and staging plan
  - Construction materials and other submittals
  - Performance and Payment Bonds
- Contingency/allowance
  - SFPUC Pipeline protection analysis if not provided by Renovation project contractor.

## Construction

- Included
  - Mobilize storage container and equipment to site
  - Staking of track layout
    - Fill slope extents
    - Berm radius centers
  - Install drainage pipes
    - (10) 6" diameter schedule 40
  - Install irrigation sleeves
    - (6) 4" diameter schedule 40 below existing grade
  - Place Mirafi 570N (8000 sf) in areas receiving fill
  - Place and compact track fill and embankments (1200 tons)
    - Recycled Class II base
    - (3) compaction tests
  - Trim fill and fine tune track shape
  - Pave track and embankments over 3:1 (5500 sf paved area)
    - 3/8" fine HMA

- Install bike fix station and footing
  - Dero Fixit with air kit bike pump accessory
- Demobilization and site cleanup
- As-built planset
- Allowance (included in base bid)
  - Place GEOWEB (GW30V30829PT) where additional stability is needed in root protection areas where subgrade cannot be cleared/compacted (1000 sf)
- Exclusions
  - Additional protection measures for SFPUC pipelines
  - Licensed surveyor or identification of SFPUC ROW, residential buffer, other limits of work
  - Site clearing/demolition
  - Erosion control
  - Tree protection fencing
  - Water use fees or import of offsite water for dust control and moisture conditioning

## Landscaping

- Exclusions
  - All landscaping treatments (mulch, bark, plantings, etc.)
  - Soil amendments
  - Site furnishings
  - Fencing
  - Irrigation
  - Pruning of trees
  - Tree removal
  - Lighting
  - Access paths to pumptrack

## Finishing

- Included
  - Install asphalt sealcoat (after appropriate pavement cure period determined by geotechnical engineer, typically 3-6 mo after paving)
  - Striping after paving and after sealcoating

## Options for different levels of finish/aesthetics (not included in base bid)

- Treatments of steep embankments with rock or other materials
- Colored asphalt

# Exhibit 4A

## PRICE PROPOSAL CONTRACT AMOUNT BREAKDOWN

### DESIGN-BUILD AGREEMENT

#### Fixed Fee Price Proposal

##### Preconstruction Phase

Kickoff, Site Visit	\$ 17,500.00
50% design	\$ 17,500.00
75% design	\$ 17,500.00
100% design	\$ 17,500.00
Issuance of Notice to Proceed	\$ 20,000.00
Allowance for SFPUC ROW analysis	\$ 4,000.00

##### Construction Phase

Mobilization and Site Services	\$ 50,000.00
Staking, Site Prep, Drainage, Sleeves, Root Protection	\$ 22,000.00
Allowance for GEOWEB	\$ 3,000.00

Import fill and shape track \$200,000.00 *% complete by volume of fill*

Pave track \$105,000.00 *% complete by track area paved*

Bike Repair Station \$ 5,000.00

Sealcoat and striping \$ 21,000.00

**Total \$500,000.00**

# Exhibit 5 PERSONNEL

## DESIGN-BUILD AGREEMENT



Organizational Chart



**Drew Perkins**  
Trails Planning Director  
drew@santacruztrails.org



**Travis Taylor**  
Account Manager  
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**Zach Wormhoudt**  
Landscape Architect  
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**Jacob Hyde**  
Trails Superintendent  
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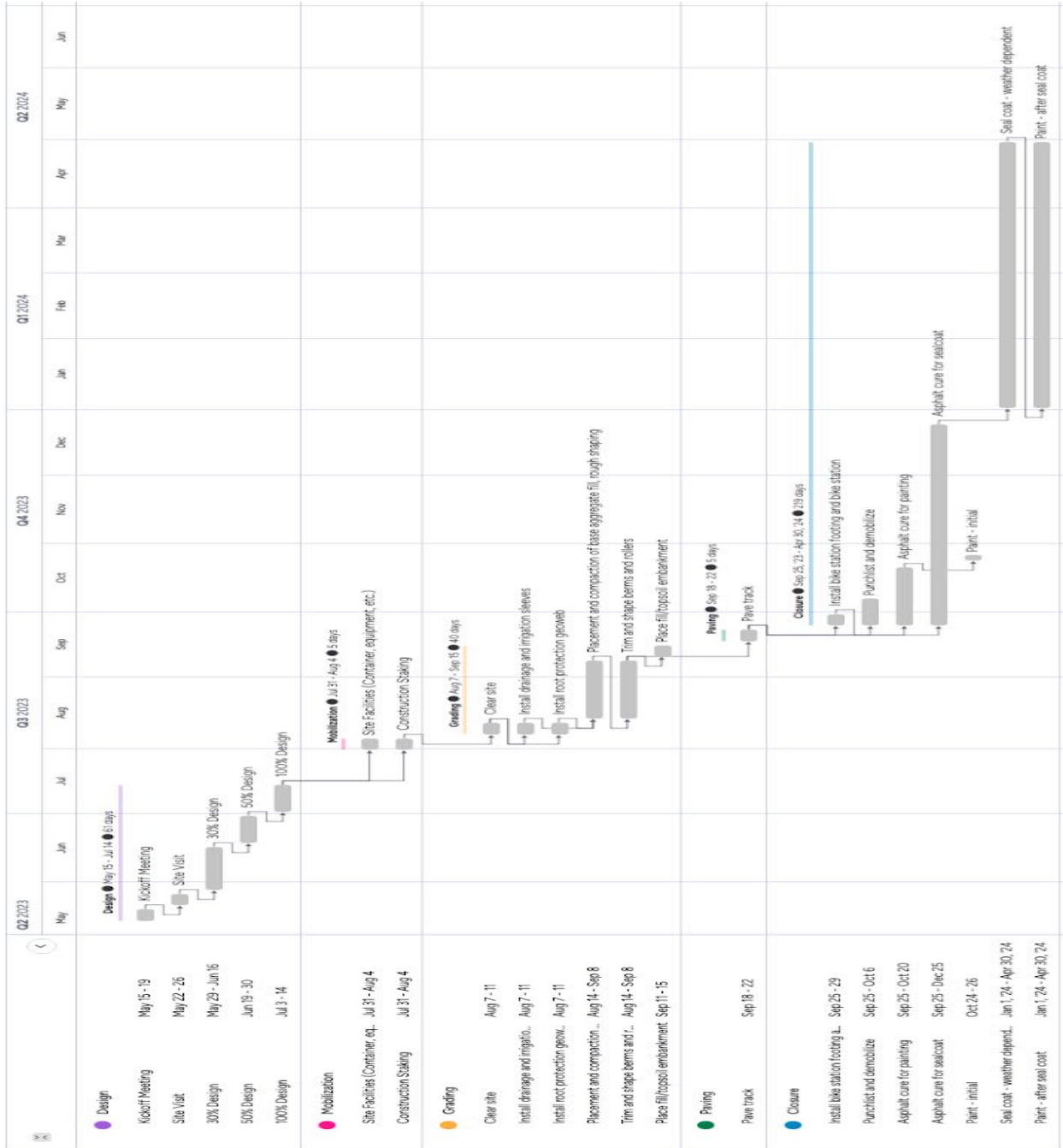
**Phillip Edwards**  
Geotechnical Engineer  
phillip@allearthgeo.com



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# Exhibit 6 SCHEDULE DESIGN-BUILD AGREEMENT





# Exhibit 7

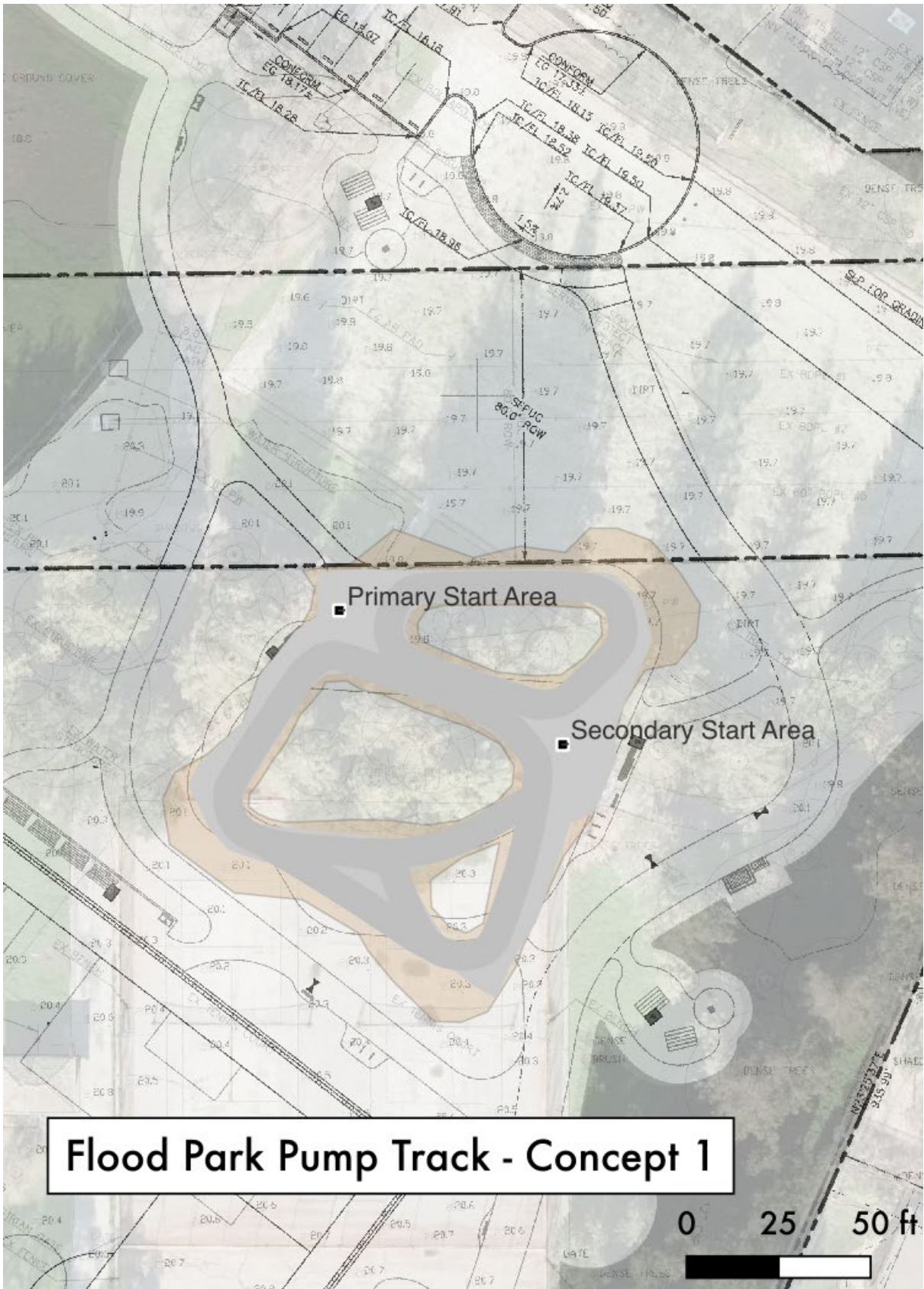
## CONCEPTUAL DESIGN DOCUMENTS

### DESIGN-BUILD AGREEMENT

#### Concept Design #1:

Concept 1 is composed of two separate tracks that share a lane. This gives an opportunity for more users to use the track simultaneously and allows one track to have more beginner friendly features, size and shape. It would be accessed from the northwest and eastern sides. There is space to have multiple ride lines in the southern loop to create some variety and opportunities for line transfers.

(See Next Page.)



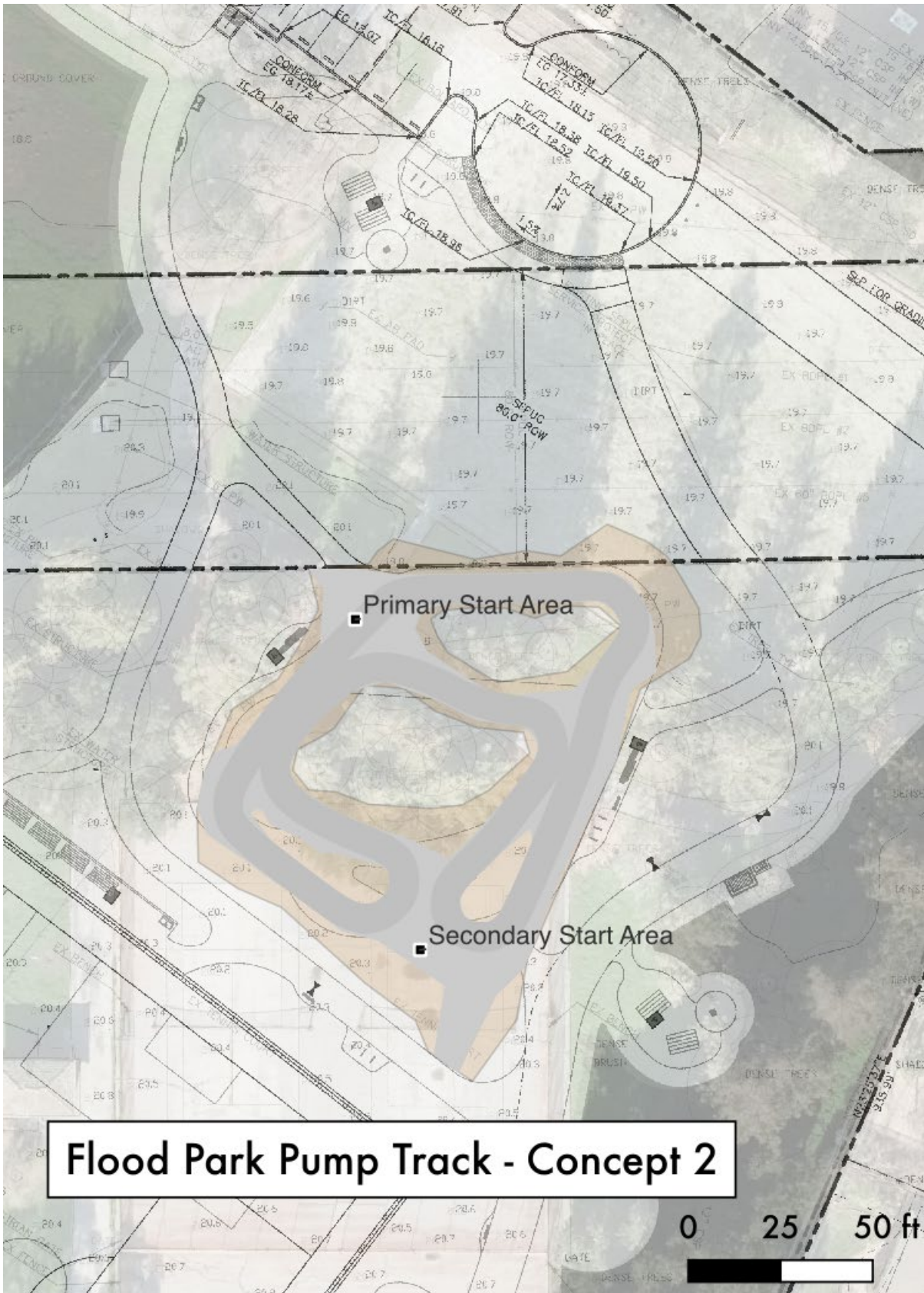
Asphalt Pump Track at Flood Park  
 Design-Build Agreement  
 Project Number 23-01

Exhibit 7 – Schematic Design Documents

## **Concept Design #2**

Concept 2 provides a single path around the track with a variety of turn angles (60, 90, 120, and 180 degrees). This concept also provides several opportunities for line transfers and direction changes. Access would be from the northwest and southeast corners of the track.

(See Next Page.)



Asphalt Pump Track at Flood Park  
Design-Build Agreement  
Project Number 23-01

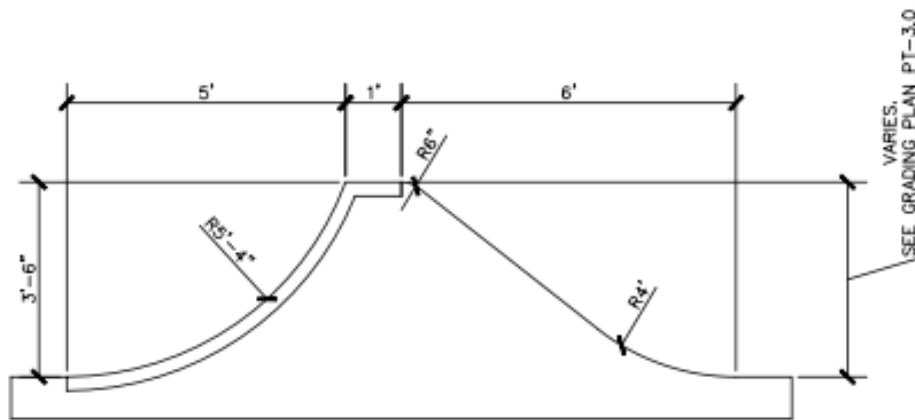
Exhibit 7 – Schematic Design Documents

## General Notes

These drawings are highly conceptual and are intended to develop an approximate track layout and footprint, asphalt square footage, and fill volumes for preliminary project costing. Exact placement and size of features, embankment size, embankment slopes and treatments will need to be refined in the design process.

## Sections

Below are some typical section and details of the pumptrack ride areas and asphalt. Dimensions and specifications subject to change during design process.



**NOTE:**

1. SEE DETAIL 2/PT-6.0 FOR TYPICAL RIDE LANE SECTION.
2. SEE DETAIL 3/PT-6.0 FOR TYPICAL RIDE FEATURE SECTION.

3-6" MAIN PUMPTRACK BERM

1/2" = 1'-0" (10)

(End of Agreement)