

**805 R Street Parking Structure  
PROGRESSIVE DESIGN-BUILD SERVICES AGREEMENT  
WITH AN OPTION FOR  
A GUARANTEED MAXIMUM PRICE AGREEMENT**

**THIS AGREEMENT**, dated for identification \_\_\_\_\_, 20\_\_\_\_, is made and entered into between the CAPITOL AREA DEVELOPMENT AUTHORITY, a California joint powers authority ("CADA"), and \_\_\_\_\_, a \_\_\_\_\_ ("Contractor").

**1. REPRESENTATIVES OF THE PARTIES**

CADA Representative for this Agreement is:

**David Nystrom**  
McCuen Project Services  
c/o CADA  
1522 14th Street  
Sacramento, CA 95814  
Email: dnystrom@cadanet.org  
Phone: 916-481-6300

The Contractor Representative for this Agreement is:

All questions pertaining to this Agreement shall be directed to the respective party Representative. Unless otherwise provided in this Agreement, all correspondences shall be addressed to the Representatives and addresses set forth in this section.

**2. PROJECT AND SITE CONDITIONS**

The proposed parking structure will be a three bay, seven level building incorporating a slab-on-grade level and 6 ½ elevated deck levels. The structure will be approximately 70 feet in height. Additionally, the structure will contain approximately 10,800 square feet of retail space on the R Street frontage. The structure would span the entire length of the block between 8th and 9th Streets with the footprint extending to Quill Alley, approximately 320 feet by 160 feet, while the area of ground disturbance would be approximately 352 feet by 210 feet. Vehicular ingress and egress would be positioned at the ends of the structure with curb cuts on both 8th Street and 9th Street. The parking structure would have two pedestrian access points with both

elevators and stairs. The primary pedestrian access would be from R Street. The parking levels and pedestrian access would be differentiated and signed for simple way-finding for both drivers and pedestrians.

The parking structure would primarily serve existing State office buildings in the downtown area. However, the parking structure would be equipped with parking control systems to provide secure access for monthly patrons. Additionally, systems would be established for public parking during non-business hours and possibly a limited amount of public parking on an hourly basis during business hours.

### **3. CONTRACT DOCUMENTS**

The following documents, which are incorporated in this Agreement by this reference as if set forth in full, together with this Agreement form the "Contract Documents" or "Contract" between the parties:

- (a) CADA Request for Proposals for Progressive Design-Build Services issued \_\_\_\_\_
- (b) Contractor's Proposal dated \_\_\_\_\_
- (c) The City of Sacramento's Standard Specifications (available online from City's website)
- (d) The Additional Specifications provided by CADA, if any
- (e) Contractor's Guaranteed Maximum Price ("GMP") if accepted by CADA
- (f) The Plans and Technical Specifications to be developed, as approved by CADA and other permitting authorities.
- (g) Any modifications of any of the foregoing made or approved by CADA, including but not limited to duly authorized change orders
- (h) Labor Compliance Addendum
- (i) The Warranty Guaranty

Unless specifically noted otherwise, references to the "Standard Specifications" shall mean and refer to the Standard Specifications for Public Construction of the City of Sacramento approved by the Sacramento City Council on June 4, 2007 (Resolution No. 2007-350), and any subsequent amendments thereto approved by the Sacramento City Council or the Sacramento City Manager. Work called for in any one Contract Document and not mentioned in another is to be performed and executed as if mentioned in all Contract Documents. The table of contents, titles and headings contained in the Contract Documents are provided solely to facilitate reference to various provisions of the Contract Documents and in no way affect or limit the interpretation of the provisions to which they refer.

### **4. DEFINITIONS**

Unless otherwise specifically provided herein, all words and phrases defined in the Standard Specifications shall have the same meaning and intent in this Agreement.

### **5. AGREEMENT CONTROLS**

In the event of a conflict between any of the terms and conditions set forth in this Agreement and the terms and conditions set forth in other Contract Documents, the terms and conditions

set forth in this Agreement shall prevail, except that the provisions of any duly authorized change order shall prevail over any conflicting provisions in the Contract Documents or this Agreement.

## **6. SCOPE OF CONTRACT**

Contractor agrees to complete all work called for in the Contract Documents, including procuring and furnishing all materials, equipment, services and labor necessary to complete the design-build services and, if the GMP is accepted by CADA, to permit and construct the Project in a good and workmanlike manner (hereinafter the "Work") to the satisfaction of CADA. Contractor agrees to perform such Work in the manner designated in and in strict conformity with this Agreement and the Contract Documents.

## **7. CONTRACTOR'S LICENSE AND REGISTRATION**

Contractor is properly licensed by the State of California to perform the Work called for by the Contract Documents and shall remain so during performance of the Work. Contractor will employ only properly qualified and licensed design professionals and subcontractors to assist in performing the Work. Contractor and all of its subcontractors performing construction work to must be registered with the California Department of Industrial Relations prior to submittal of the GMP.

## **8. CONTRACT PRICE**

**1.1.** The Work shall be divided into two phases, the Pre-Construction Phase and the Construction Phase. The current Project budget includes approximately \$\_\_\_\_\_ for the two phases of Work to be performed by the Contractor. CADA may exercise its option for performance of the Work under Phase 2 by providing a written Notice to Proceed for Phase 2 to the Contractor to commence performance. CADA's rights under this Article 1.1 are independent of the "Termination for Convenience" rights as set forth in Section 37 herein. As such, if CADA opts to not proceed with Phase 2 after the completion of Phase 1, Contractor's right of recovery is limited to the fee for Phase 1. The Construction Phase covers all remaining Work as outlined in this Agreement and the GMP. Contractor acknowledges that CADA is not obligated to execute the "Construction Phase Amendment." CADA agrees to pay Contractor, as part of the Contract Price, on the following basis:

- A. Services and reimbursable expenses associated with the Pre-Construction Phase, (the "Design Services"), for a total not to exceed \$ \_\_\_\_\_.
- B. Services, reimbursable expenses, construction, materials and associated expenses for Construction Phase activities not to exceed the accepted GMP.

## **9. COST OF WORK**

The term "Cost of Work" shall mean all costs reasonably incurred by Contractor in the proper performance of the Work. Except as otherwise noted, the following are not included in the "Cost of Work":

- A. Cost for California Department of General Services or State Fire Marshall plan checks, permits and inspections. The additional Contractor or City costs for overtime charges, special inspections outside normal working hours, and any penalties, re-inspection fees or similar charges resulting from actions or inaction by Contractor shall be included in the Cost of Work;
- B. Cost of soils reports;
- C. Cost of hazardous materials investigation and abatement of existing materials on the property. The Contractor's cost for investigation and abatement of any hazardous materials that were deposited on the property from the direct or indirect actions of the Contractor shall be included in the Cost of Work; and
- D. Cost of materials testing and inspection. The additional Contractor costs for retesting, overtime, or return visits by testing personnel shall be included in the Cost of Work. Contractor shall be responsible for all Acceptance Testing and documentation required under Title 24 of the California Code of Regulations, and the cost thereof shall be included in the Cost of Work.

## **10. WORK PRODUCT**

### **A. Ownership of Work Product**

CADA shall have full ownership and control, including ownership of any copyrights, of all Information prepared, produced, or provided by Contractor pursuant to this Agreement. In this Agreement, the term "Information" shall be construed to mean and include: any and all work product, submittals, reports, plans, specifications, and other deliverables consisting of documents, writings, handwritings, typewriting, printing, photostatting, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. Contractor shall not be responsible for any unauthorized modification or use of such Information for other than its intended purpose by CADA.

### **B. Right to Information at Termination**

Should this Agreement be terminated, CADA retains the right to complete or execute the Work with consultants, professionals, contractors, sub-contractors and others hired directly or indirectly by the Contractor to prepare the "Information". Contractor agrees to encourage and facilitate the completion of the Work, and not prohibit or discourage designers, professionals, contractors, sub-contractors and others hired directly or indirectly by the Contractor from entering into contracts to complete the Work.

### **C. Confidentiality of Owner Information**

During performance of this Agreement, Contractor may gain access to and use CADA and State of California information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "Owner Information") that are valuable, special and unique assets of CADA and the State of California, as applicable. Contractor agrees to protect all Owner Information and treat it as strictly confidential, and further agrees that Contractor shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any Owner Information to any third party without the prior written consent of CADA. In addition, Contractor shall comply with all CADA policies governing the use of CADA network and technology systems. A violation by Contractor of this Section 10 shall be a material violation of this Agreement and shall justify legal and/or equitable relief.

## **11. PRE-CONSTRUCTION PHASE; DESIGN SERVICES**

Contractor shall accept assignment of design consultants International Parking Design, Inc. (IPD) and subcontractors to IPD. Contractor and design consultants shall provide the following design services to CADA:

## **A. Milestone Deliverables:**

### **a) Design Development**

#### **1. Project Schedule**

Prepare a construction schedule to determine length of time required to commence and complete construction of the Project.

#### **2. Project Budget**

Prepare, review and analyze design plans, construction drawings and cost estimates at the completion of design development phase. The construction cost estimate will include line items, unit prices and lump sums in sufficient detail to allow Contractor to advise CADA regarding areas of potential cost savings and the overall constructability of the Project. Include a construction contingency appropriate to the level of construction documentation. Contractor will meet with CADA staff at CADA's offices to review recommendations.

#### **3. Value Engineering Proposals**

Review design plans at completion of design development, including construction drawings and technical specifications, for constructability and value engineering. Work with CADA staff to determine if changes to the design plans and/or technical specifications would provide construction cost savings without compromising the elements and quality of Project Master Plan. Conduct a value engineering meeting and document results. Verify that the proposed design plan is constructable, will not result in unnecessary extra work, and the costs would not exceed the Project Budget.

If authorized by CADA, prepare design plan modifications that will maintain quality and design intent, while reducing the Cost of Work and meeting the Project Schedule. These services are not within the Design Services Pricing Proposal and would require issuance of an amendment to this Agreement to cover such additional service costs.

#### **4. Initial Constructability Review**

Conduct market research and determine availability of materials and labor in local construction market and make recommendations on materials and labor as cost savings considerations during design review process.

### **b) 50% Construction Documents**

#### **1. Updated Project Schedule**

Update construction schedule to determine length of time required to commence and complete construction of the Project.

#### **2. Updated Project Budget**

Prepare, review and analyze design plans, construction drawings and cost estimates to confirm whether cost estimates are accurate at the completion of design development. The construction cost estimate will include line items, unit prices and lump sums in

sufficient detail to assist CADA in determining areas of potential cost savings and the overall constructability of the Project. Include a construction contingency appropriate to the level of construction documentation. Contractor will meet with CADA staff at CADA's offices to review recommendations.

### **3. Value Engineering Proposals**

Prepare, review design plans at 50% completion, including construction drawings and technical specifications for constructability and value engineering. Work with CADA staff to determine if changes to the design plans and/or technical specifications would provide construction cost savings without compromising the elements and quality of Project Master Plan. Conduct a value engineering meeting and document results. Verify that the proposed design plan is constructible, will not result in unnecessary extra work, and the costs would not exceed the Project Budget.

If authorized by CADA, prepare design plan modifications that will maintain quality and design intent, while reducing the Cost of Work and meeting the Project Schedule. These services are not within the Design Services Pricing Proposal and would require issuance of an amendment to this Agreement to cover such additional service costs.

#### **c) 100% Construction Documents**

##### **1. Final Project Schedule**

Prepare final construction schedule to determine length of time required to commence and complete construction of the Project.

##### **2. Final Project Budget (Including accepted Value Engineering)**

Prepare, review and analyze final design plans, construction drawings and cost estimates to prepare final project budget to include all accepted value engineering items.

##### **3. Final Constructability Review with all Trades**

Finalize market research and determination of availability of materials and labor in local construction market for all trades, incorporating all CADA-accepted recommendations on materials and labor as cost savings considerations.

**B. Bid Packet Development.** At the 100% phase of documentation preparation, Contractor shall develop a bid package for the work that includes competitive bids from a minimum of three subcontractors for all trades, except for the work to be performed by the General Contractor.

**C. Construction Pricing Services.** Solicit at least three subcontractor bids for the Work that Contractor would ordinarily subcontract. Provide CADA with the results of the subcontractor bidding. Prepare the Guaranteed Maximum Price (GMP) based on the lowest responsive and responsible subcontractors, Contractor's cost of the Work, and a reasonable overhead and profit margin. Submit the GMP Proposal to CADA for review.

**D. Modification to Tasks.** During the course of design, CADA may request the expansion of

an existing task in the scope of work. This request will be presented in writing. The Contractor will prepare a fee and schedule change proposal based on the written request.

## **12. THE GUARANTEED MAXIMUM PRICE PROPOSAL**

A. Contractor shall prepare a "GMP Proposal" after receipt of the 100% complete construction document. The GMP Proposal shall include the following:

1. All Work required by the construction drawings, plans and specifications, and other Contract Documents;
2. Commissioning and testing requirements and responsibilities;
3. All work required to obtain permission to build the project by the necessary departments of the State of California;
4. Calculations when necessary or required by CADA to validate compliance with the Contract;
5. A schedule of values, allowances and unit prices;
6. A list of assumptions made by Contractor in preparing the GMP;
7. The Subcontractor Participation Form attached as Exhibit H that lists the type of work, services or supplies to be provided by each firm and includes their contractor's license, DIR registration, price proposal and if they are an LBE;
8. Contractor shall be required to provide three bids for any specialty work Contractor proposes to self-perform. CADA shall select two of the three subcontractors who will be invited to provide bids.
9. A resource and value loaded critical path performance schedule developed using Microsoft, Primavera or similar software acceptable to CADA;
10. Contractor's Hourly rates;
11. A list of alternates and their associated cost and time impact for completion of all the Work described in the Contract Documents if the entire Project cannot be completed within the approved Project Budget and/or Schedule;
12. The ability to obtain Performance and Payment Bonds in the amount of the GMP and required insurance necessary for completion of the Construction Phase; and
11. A Contingency amount, available for Contractor's exclusive use subject to CADA's prior written approval, for costs that are excluded from the "Cost of Work" as set forth in Section 9, or to pay for a change order for unforeseen conditions or circumstances such as by way of example, and not as a limitation, (a) trade buy-out differentials, (b) approved overtime/acceleration, and (c) costs in correcting defective, damaged or nonconforming work and design errors or omissions not the fault of Contractor and its subcontractor. The Contingency is not available for changes in scope, except where scope changes are necessary to meet the requirements in the Contract Documents. Contingency funds remaining at the end of the Project shall be returned or credited to CADA.



- B. Contractor does not guarantee the exact cost of any specific line item provided as part of the GMP, but agrees that it will be responsible for paying all costs of completing the Work which exceed the GMP.
- C. Review and Adjustment to GMP Proposal. After submission of the GMP Proposal, Contractor and CADA shall meet to discuss and review the GMP Proposal. If CADA has any comments regarding the GMP Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Contractor of such comments or findings. Contractor shall, upon receipt of CADA's notice, make appropriate adjustments to the GMP Proposal.
- D. Failure to Accept the GMP Proposal. CADA may reject the GMP Proposal for any reason. If CADA rejects the GMP Proposal, or fails to accept the GMP on or before 90 calendar days following CADA acknowledgement of receiving a complete GMP Proposal, unless Contractor agrees in writing to extend this time period, the GMP Proposal shall be deemed withdrawn and of no effect. In such event, CADA and Contractor shall meet and confer as to how the Project will proceed, with CADA having the following options:
  - 1. CADA may approve modifications and/or supplemental services necessary to achieve an acceptable GMP; or
  - 2. CADA may terminate this Agreement.
- E. Savings. If the sum of actual Cost of Work is less than the GMP, as adjusted by duly approved change orders over the course of construction of the Project, twenty percent (20%) of the difference ("Savings") shall be paid to the Contractor as an incentive upon issuance of the final payment to the Contractor. The remaining eighty percent (80%) of the savings shall remain with CADA.

### **13. CONSTRUCTION PHASE**

The Construction Phase shall commence only upon CADA's written acceptance of the GMP and authorization of the Construction Phase of the Project through the Construction Phase Amendment of this Agreement. CADA shall have no obligations whatsoever regarding the Construction Phase of the Contract unless and until the Construction Phase Amendment is approved and executed by CADA. Contractor agrees to perform all Work required under the Construction Phase Amendment by submission of the GMP Proposal.

### **14. CONTRACT AMOUNT AND PAYMENTS**

CADA agrees to pay and Contractor agrees to accept, as complete payment for the Work, in accordance with the schedule and procedures set forth in the Contract Documents, subject to deductions, withholdings and additions as specified in the Contract Documents, a total sum that shall not exceed the maximum payment specified in this Agreement for the Design Services and the amount set forth in the Construction Phase Amendment, as modified by any change order(s). In addition, subject to deductions, withholdings and additions as specified in the Contract Documents, for items of the Work for which a unit price is specified in Contractor's Proposal (Pre-Construction

Phase) or GMP (Construction Phase), Contractor shall be paid the sum computed at such unit price, or computed at a different price if such different price is determined by CADA in accordance with the Standard Specifications, based on the actual amount of each such item performed and/or furnished and incorporated in the Work, provided that in no event shall the total sum for a unit price item exceed the total bid amount set forth for such item in Contractor's Proposal or the GMP, unless authorized by change order.

## **15. PROGRESS PAYMENTS AND FINAL PAYMENT**

Subject to the terms and conditions of the Contract, CADA shall cause payments to be made upon demand of Contractor as follows:

- A. On the first of the month during the Pre-Construction Phase, the Contractor shall present to CADA an itemized invoice showing the Design services rendered and reimbursable expenses through the twentieth (20) calendar day of the preceding month. CADA shall inspect the invoice and, if approved, CADA shall process the invoice for payment. Compensation for services and reimbursable expenses during the Pre-Construction Phase are not subject to retention.
- B. On the first of the month during the Construction Phase, the Contractor shall present to CADA a pay request and associated schedule of values showing the amount of labor and materials incorporated in the Work through the twentieth (20) calendar day of the preceding month. CADA shall inspect the pay request and associate schedule of values. If pay request and schedule of values are approved, CADA shall issue payment for ninety percent (90%) of the amount it shall find to be due.
- C. No inaccuracy or error in the pay requests shall operate to release Contractor from damages arising from such Work or from enforcement of each and every provision of the Contract Documents, and CADA shall have the right subsequently to correct any error made in any estimate for payment.
- D. Contractor shall not be paid for any defective or improper Work.
- E. The remaining ten (10) percent of the value of the Work performed during the Construction Phase, if unencumbered and subject to any deductions or withholdings authorized or required under the Agreement or any applicable Laws or Regulations, shall be due and payable beginning thirty-five (35) days after completion and final acceptance of the Work by CADA that is evidenced by the recording of the notice of completion, provided that CADA may determine, in its sole discretion, to release up to fifty (50) % of such retention, in whole or in part, at any time. Acceptance by Contractor of the final payment shall constitute a waiver of all claims against CADA arising under the Contract Documents, except for disputed claims in stated amounts that the Contractor specifically reserves in writing, but only to the extent that the Contractor has complied with all procedures and requirements applicable to the presentation and processing of such claim(s) under the Contract Documents. Contractor shall be entitled to substitute securities for retention or to direct that payments of retention be made into escrow, as

provided in Public Contract Code section 22300, upon execution of CADA's Escrow Agreement for Security Deposits in Lieu of Retention.

- F. The parties agree that, for purposes of the timely progress payment requirements specified in Public Contract Code section 20104.50, the date that CADA approves an invoice or pay request shall be deemed to constitute the date that CADA receives an undisputed and properly submitted payment request from the Contractor. Progress payments not made within 30 days after this date may be subject to payment of interest as provided in Public Contract Code section 20104.50.

## **16. RETENTION OF SUMS CHARGED AGAINST CONTRACTOR**

When, under the provisions of this Agreement or any applicable Laws or Regulations, CADA is authorized or required to withhold, deduct or charge any sum of money against Contractor, CADA may deduct and retain the amount of such charge from the amount of the next succeeding progress estimate(s), or from any other moneys due or that may become due Contractor from CADA. If, on completion or termination of the Agreement, sums due Contractor are insufficient to pay CADA's charges, CADA shall have the right to recover the balance from Contractor or its Sureties.

## **17. COMMENCEMENT AND PROSECUTION OF CONSTRUCTION PHASE**

Contractor shall commence the Construction Phase Work not later than fifteen (15) working days after the date of the written Notice to Proceed from CADA to Contractor and shall diligently prosecute the Work to final completion. The phrase "Commence the Construction Phase Work" means to engage in a continuous program on-site including, but not limited to, site clearance, grading, dredging, land filling and the fabrications, erection, or installation of the Work. The Notice to Proceed shall be issued following execution of the Construction Phase Amendment by CADA and the filing by Contractor of the required Payment and Performance Bonds and proof of insurance, provided that the Engineer may delay issuance of the Notice to Proceed if the Engineer determines, in the Engineer's sole discretion, that conditions on the site of the Work are unsuitable for commencement of the Construction Phase Work. After the Notice to Proceed is issued, the continuous prosecution of Work by Contractor shall be subject only to Excusable Delays as defined in the Contract Documents.

## **18. TIME OF COMPLETION**

The entire Work shall be brought to completion in the manner provided for in the Contract Documents on or before \_\_\_\_\_ days from the date of the Construction Phase Notice to Proceed (hereinafter called the "Completion Date") unless extensions of time are granted in accordance with the Contract Documents.

Failure to complete the entire Work by the Completion Date and in the manner provided for in the Contract Documents shall subject Contractor to liquidated damages as provided in this Agreement. Time is and shall be of the essence in the performance of the Work.

## **19. PAYMENTS DO NOT IMPLY ACCEPTANCE OF WORK**

The payment of any progress payment, or the acceptance thereof by Contractor, shall not constitute acceptance of the Work or any portion thereof and shall in no way reduce the liability of Contractor to replace unsatisfactory Work or material, whether or not the unsatisfactory character of such Work or material was apparent or detected at the time such payment was made.

## **20. ACCEPTANCE NOT RELEASE**

Contractor shall correct immediately any defective or imperfect Work or materials that may be discovered before final acceptance of the entire Work, whether or not such defect or imperfection was previously noticed or identified by CADA. The inspection of the Work, or any part thereof, shall not relieve Contractor of any of its obligations to perform satisfactory Work as herein specified.

Failure or neglect on the part of CADA or any of its officers, employees or authorized agents, to discover, identify, condemn or reject defective or imperfect Work or materials shall not be construed to imply an acceptance of such Work or materials, if such defect or imperfection becomes evident at any time prior to final acceptance of the entire Work, nor shall such failure or neglect be construed as barring CADA from enforcing Contractor's warranty(ies) or otherwise recovering damages or such a sum of money as may be required to repair or rebuild the defective or imperfect Work or materials whenever CADA may discover the same, subject only to any statutes of limitation that may apply to any such claim.

## **21. RIGHT TO TAKE POSSESSION OF THE WORK IN WHOLE OR IN PART**

CADA shall have the right at any time to enter upon the Work and perform Work not covered by this Contract, or to occupy and use a portion of the Work, prior to the date of the final acceptance of the Work as a whole, without in any way relieving Contractor of any obligations under this Agreement.

## **22. NO WAIVER OF REMEDIES**

Neither the inspection by CADA, its officers, employees or agents, nor any certificate or other approval for the payment of money, nor any payment for, nor acceptance of the whole or any part of the Work by CADA, nor any extensions of time, nor any position taken by CADA, its officers, employees or its agents shall operate as a waiver of any provision of the Contract Documents nor of any power herein reserved to CADA or any right to damages herein provided, nor shall any waiver of any breach of this Agreement be held to be a waiver of any other or subsequent breach. All remedies provided in the Contract Documents shall be taken and construed as cumulative. In addition to each and every other remedy herein provided, CADA shall have any and all equitable and legal remedies that it would in any case have.

## **23. WARRANTY**

Except as otherwise expressly provided in the Contract Documents, and excepting only items of routine maintenance, ordinary wear and tear and unusual abuse or neglect by CADA or the State of California, Contractor warrants and guarantees all Work executed and all supplies, materials and devices of whatsoever nature incorporated in or attached to the Work, or otherwise provided as a part of the Work pursuant to the Agreement, to be absolutely free of all defects of Workmanship

and materials for a period of one year after final acceptance of the entire Work by CADA. Contractor shall repair or replace all Work or material, together with any other Work or material that may be displaced or damaged in so doing, that may prove defective in Workmanship or material within this one year warranty period without expense or charge of any nature whatsoever to CADA or the State of California. Prior to commencement of construction of the Work, Contractor shall execute and deliver to CADA the Warranty Guaranty in the form attached as Exhibit E.

In the event that Contractor shall fail to comply with the conditions of the foregoing warranty within ten (10) days after being notified of the defect in writing, CADA and/or the State of California shall have the right, but shall not be obligated, to repair, or obtain the repair of, the defect and Contractor shall pay to CADA or the State of California, as applicable, on demand all costs and expense of such repair. Notwithstanding anything herein to the contrary, in the event that any defect in Workmanship or material covered by the foregoing warranty results in a condition that constitutes an immediate hazard to public health or safety, or any property interest, or any person, CADA and the State of California shall have the right to immediately repair, or cause to be repaired, such defect, and Contractor shall pay to CADA or the State of California, as applicable, on demand all costs and expense of such repair. The foregoing statement relating to hazards to health, safety or property shall be deemed to include both temporary and permanent repairs that may be required as determined in the sole discretion and judgment of CADA and the State of California.

In addition to the above, the Contractor shall make a written assignment of all manufacturer's and other product warranties to CADA and the State of California, prior to completion and final acceptance of the Work by CADA.

The Contractor's Performance Bond shall secure the performance of the Contractor's obligations under this Section 23, and the Contractor and its Surety shall be jointly and severally liable for these obligations.

#### **24. LIQUIDATED DAMAGES IF WORK NOT COMPLETED ON TIME**

- A. The actual fact of the occurrence of damages and the actual amount of the damages that CADA would suffer if the entire Work, and/or any specified portion thereof, were not completed within the time(s) specified herein are dependent upon many circumstances and conditions that could prevail in various combinations, and for this reason, it is impracticable and extremely difficult to fix the actual damages. Damages that CADA and the public would suffer in the event of such delay include: loss of the use of the garage; expenses of prolonged assignment to the Project of an architectural and/or engineering staff; prolonged costs of administration, inspection, and supervision; increased operational expenses and/or impaired operation of other facilities dependent upon completion of the Project; and the loss and inconvenience suffered by the public by reason of the delay in the completion of the Project or portion thereof. Accordingly, the parties agree, and by execution of this Agreement, Contractor acknowledges that it understands and agrees, that the amount(s) set forth herein as liquidated damages reflect the parties' best efforts at the time of entering into the Agreement to estimate the damages that may be incurred by CADA and the public due to the Contractor's delay in completion of the Work and/or any specified portion thereof, and shall

be presumed to be the amount of damages sustained by the failure of Contractor to complete the entire Work and/or any specified portion thereof within the time(s) specified herein.

- B. Contractor shall pay liquidated damages to CADA for failure to complete the entire Work by the Completion Date (as extended in accordance with the Contract Documents, if applicable) in the amount of ONE THOUSAND FIVE HUNDRED DOLLAR dollars (\$1,500.00) for each calendar day after the Completion Date (as extended in accordance with the Contract Documents, if applicable), continuing to the time at which the entire Work is completed. Such amount is the actual cash value agreed upon by CADA and Contractor as the loss to CADA and the public resulting from Contractor's default.
- C. The parties agree, and by execution of this Agreement, Contractor acknowledges that it understands and agrees, that the foregoing provisions provide for the imposition of liquidated damages from the Completion Date (as extended in accordance with the Contract Documents, if applicable) until the date of completion of the entire Work as determined by the Engineer in accordance with Section 8-4 of the City of Sacramento's Standard Specifications, whether or not the Work or any portion thereof is claimed or determined to be substantially complete prior to such date of completion.

## **25. CONTRACTOR SHALL ASSUME RISKS**

Until the completion and final acceptance by CADA of all Work under this Agreement, the Work shall be under Contractor's responsible care and charge, and Contractor, at no cost to CADA or the State of California, shall rebuild, repair, restore and make good all injuries, damages, re-erections, and repairs occasioned or rendered necessary by accidental causes of any nature, to all or any portions of the Work.

## **26. GENERAL LIABILITY OF CONTRACTOR**

Except as otherwise herein expressly stipulated, Contractor shall perform all the Work and furnish all the labor, materials, tools, equipment, apparatus, facilities, transportation, power and light, and appliances, necessary or proper for performing and completing the Work herein required in the manner and within the time herein specified. The mention of any specific duty or liability of Contractor shall not be construed as a limitation or restriction of any general liability or duty of Contractor, and any reference to any specific duty or liability shall be construed to be solely for the purpose of explanation.

## **27. INDEMNITY AND HOLD HARMLESS**

- A. Contractor shall defend, hold harmless and indemnify CADA, the City of Sacramento (City), the State of California (collectively "indemnitees") and their respective officers, employees, and agents, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, whether arising on or off the site of the Work, including, but not limited to, any fees and/or costs reasonably incurred by the Indemnitees' staff attorneys or outside attorneys and any fees and expenses incurred in

enforcing this provision (hereafter collectively referred to as “Liabilities”), including but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform the Work by the Contractor, any subcontractor or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder, or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense to the extent arising from the sole negligence or willful misconduct of, or defects in design furnished by the Indemnitees and their respective officers, employees, agents or independent contractors who are directly responsible to the Indemnitees.

- B. The existence or acceptance by CADA of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of the Indemnitees' rights under this Section 27, nor shall the limits of such insurance limit the liability of Contractor hereunder. The provisions of this Section 27 shall survive any expiration or termination of the Agreement.

## **28. BONDING**

In accordance with Section 3-4 of the City of Sacramento’s Standard Specifications, and as a precondition to CADA’s approval of the Construction Phase Amendment, Contractor shall provide Performance and Payment Bonds to CADA, each for a sum equal to one hundred percent (100%) of the GMP using the forms attached as Exhibit D.

## **29. INSURANCE**

During the entire term of this Agreement and until completion and final acceptance of the Work as provided in the Contract Documents, Contractor shall maintain in full force and effect the insurance coverage described in this section.

Full compensation for all premiums that Contractor is required to pay for the insurance coverage described herein shall be included in the compensation specified for performance of the Work under the Agreement. No additional compensation will be provided for Contractor’s insurance premiums.

It is understood and agreed by the Contractor that its liability to CADA and the State of California shall not in any way be limited to or affected by the amount of insurance coverage required of or carried by the Contractor.

### **A. Minimum Scope and Limits of Insurance Coverage**

- (1) Commercial General Liability Insurance, providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than five

million dollars (\$5,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.

- (2) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than two million dollars (\$2,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the Contractor.
- (3) Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Worker's Compensation policy shall include a waiver of subrogation.
- (4) Builders Risk Property Insurance. Contractor shall maintain Builder's Risk property insurance coverage in the amount of replacement value of the Work. Such property insurance shall be maintained by Contractor until final payment has been made under this Agreement. This insurance shall include the interests of CADA, the State of California, Contractor, their contractors, subcontractors, as their interest may appear.

This property insurance shall be on an "all-risk" or equivalent policy form and shall include without limitation, insurance against the perils of fire, earthquake, and physical loss or damage including theft, vandalism, malicious mischief, collapse, flood, windstorm, falsework, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Contractor's services and expenses required as a result of such insured loss. Contractor shall fund the deductible which shall not exceed \$250,000.

Contractor shall provide CADA with a certificate of insurance and loss payee endorsement showing proof of coverage prior to commencement of construction activities.

B. Additional Insured Coverage

- (1) Commercial General Liability Insurance: CADA, the City of Sacramento, and the State of California, including their officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of activities performed by or on behalf of Contractor, products and completed operations of Contractor, and premises owned, leased or used by Contractor. The general liability additional insured endorsement must be signed by an authorized representative of the insurance carrier.

If the policy includes a blanket additional insured endorsement or contractual additional insured coverage, the above signature requirement may be fulfilled by



submitting that document with a signed declaration page referencing the blanket endorsement or policy form.

- (2) Automobile Liability Insurance: CADA, the City of Sacramento, and the State of California including their officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.
- (3) Professional Liability Insurance for Design Professionals. Design Professionals retained by Contractor, if any, shall be required to carry professional liability insurance on a claim's made basis for errors, omissions or malpractice with limits of not less than two million dollars (\$2,000,000 dollars) at all times during the performance of such services and for a minimum period of three (3) years after CADA issues a notice of completion. Contractor shall furnish CADA with certificates of insurance evidencing such coverage at the time such professionals are retained.

C. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

- (1) Contractor's insurance coverage shall be primary insurance as respects CADA, City of Sacramento, and the State of California, and their officials, employees and volunteers. Any insurance or self-insurance maintained by CADA, City of Sacramento, or State of California, or their officials, employees and agents shall be in excess of Contractor's insurance and shall not contribute with it.
- (2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CADA, City of Sacramento, and State of California, and their officials, employees and agents.
- (3) Coverage shall state that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (4) CADA will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

D. Acceptability of Insurance

Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section 29 must be declared to and approved by CADA in writing prior to execution of this Agreement.

E. Verification of Coverage

- (1) Contractor shall furnish CADA with certificates and required endorsements evidencing

the insurance required. The certificates and endorsements shall be forwarded to CADA representative designated by CADA. Copies of policies shall be delivered to CADA on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.

- (2) CADA may withdraw its offer of contract or cancel the Agreement if the certificates of insurance and endorsements required have not been provided prior to execution of this Contract. CADA may withhold payments to Contractor and/or cancel the Agreement if the insurance is canceled or Contractor otherwise ceases to be insured as required herein.

F. Subcontractors

Contractor shall require and verify that all subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in subsection A, above.

**30. FAILURE TO MAINTAIN BONDS OR INSURANCE**

If, at any time during the performance of this Contract, Contractor fails to maintain any item of the bonds and/or insurance required under the Agreement in full force and effect, Contractor shall immediately suspend all Work under the Agreement and notify CADA in writing of such failure. After such notice is provided, or if CADA discovers such failure and notifies Contractor, CADA thereafter may withhold all Contract payments due or that become due until notice is received by CADA that such bonds and/or insurance have been restored in full force and effect and that the premiums therefore have been paid for a period satisfactory to the Division of Risk Management. Contractor shall not resume Work until notified by CADA to do so, and CADA shall have no responsibility or liability for any costs incurred by Contractor as a result of such suspension of Work.

In addition to the foregoing, any failure to maintain any item of the required bonds and/or insurance at any time during the performance of this Agreement will be sufficient cause for termination of the Agreement by CADA.

The Contractor shall be solely responsible for, and shall defend, indemnify and hold harmless CADA, the City of Sacramento, the State of California, and their respective officers, employees and agents against and from, any and all damages, claims, losses, actions, costs or other expenses of any kind incurred by any party as a direct or indirect result of any suspension of Work or termination of the Agreement under the provisions of this Section 30.

**31. EXCUSABLE DELAYS**

For the purpose of this Agreement, the term "Excusable Delay" shall mean, and is limited to, delay caused directly by: acts of God; acts of a public enemy; fires; inclement weather as determined by the Engineer; riots; insurrections; epidemics; quarantine restrictions; strikes; lockouts; sitdowns; acts of a governmental agency; priorities or privileges established for the manufacture, assemble, or allotment of materials necessary in the Work by order, decree or otherwise of the United States or by any department, bureau, commission, committee, agent, or administrator of any legally constituted public authority; changes in the Work ordered by CADA insofar as they necessarily

require additional time in which to complete the Work; the prevention of Contractor from commencing or prosecuting the Work because of the acts of others, excepting Contractor's subcontractors or suppliers; or the prevention of Contractor from commencing or prosecuting the Work because of a citywide failure of public utility service.

The term "Excusable Delay" shall specifically not include: (i) any delay that could have been avoided by the exercise of care, prudence, foresight and diligence on the part of Contractor (ii) any reasonable delay resulting from time required by CADA for review of any Contractor submittals and for the making of surveys, measurements and inspections; and (iii) any delay arising from an interruption in the prosecution of the Work on account of reasonable interference by other contractors employed by CADA or the State of California working at the Project site that does not necessarily prevent the completion of the entire Work within the time specified. Excusable Delays, if any, shall operate only to extend the Completion Date (not in excess of the period of such delay as determined by CADA) and shall not under any circumstances increase the amount CADA is required to pay Contractor except as otherwise provided in this Agreement.

### **32. CONTRACTOR TO SERVE NOTICE OF DELAYS**

Whenever Contractor foresees any delay in the prosecution of the Work, and in any event as soon as possible (not to exceed a period of ten (10) calendar days) after the initial occurrence of any delay that Contractor regards as or may later claim to be an Excusable Delay, the Contractor shall notify the Engineer in writing of such delay and its cause, in order that the Engineer: (i) may take immediate steps to prevent if possible the occurrence or continuance of the delay; and/or (ii) may determine whether the delay is to be considered excusable, how long it continues, and to what extent the prosecution and completion of the Work are delayed thereby. The written notice shall constitute an application for an extension of time only if the notice requests such an extension and sets forth the Contractor's estimate of the additional time required together with a full description of the cause of the delay relied upon.

After the completion of any part or whole of the Work, the Engineer, in estimating the amount due Contractor, will assume that any and all delays that may have occurred in its prosecution and completion were not Excusable Delays, except for such delays for which the Contractor has provided timely written notice as required herein, and that the Engineer has found to be excusable. Contractor shall not be entitled to claim Excusable Delay for any delay for which the Contractor failed to provide such timely written notice.

### **33. EXTENSION OF TIME**

If the Contractor complies with Section 32, above, and the Engineer finds a delay claimed by the Contractor to be an Excusable Delay, the Contractor shall be allowed an extension of time to complete the Work that is proportional to the period of Excusable Delay determined by the Engineer, subject to the approval by CADA of a change order granting such time extension. During a duly authorized extension for an Excusable Delay, CADA shall not charge liquidated damages against the Contractor for such delay.

If CADA extends the time to complete the Work as provided herein, such extension shall in no way release any warranty or guarantee given by Contractor pursuant to the provisions of the Contract Documents, nor shall such extension of time relieve or release the sureties of the Bonds provided

pursuant to the Contract Documents. By executing such Bonds, the Sureties shall be deemed to have expressly agreed to any such extension of time. The granting of any extension of time as provided herein shall in no way operate as a waiver on the part of CADA of its rights under this Contract, excepting only extension of the Completion Date for such period of Excusable Delay as may be determined by the Engineer and approved by a duly authorized change order.

#### **34. NO PAYMENT FOR DELAYS**

No damages or compensation of any kind shall be paid to Contractor or any subcontractor because of delays in the progress of the Work whether or not such delays qualify for extension of time under this Agreement; except that this provision shall not preclude the recovery of damages for a delay caused by CADA that is unreasonable under the circumstances and that is not within the contemplation of the parties, provided that the Contractor timely submits all such written notice(s) and fully complies with such other procedures as may be specified in the Contract Documents or any Laws or Regulations for Contractor to claim damages for such delay.

#### **35. CHANGES IN THE WORK**

Changes in the Work authorized or directed in accordance with the Contract Documents and extensions of time of completion made necessary by reason thereof shall not in any way release any warranty or guarantee given by Contractor pursuant to the provisions of the Contract Documents, nor shall such changes in the Work relieve or release the Sureties on Bonds provided pursuant to the Contract Documents. By executing such Bonds, the Sureties shall be deemed to have expressly agreed to any such change in Work and to any extension of time made by reason thereof.

#### **36. TERMINATION AFTER COMPLETION DATE**

In addition to any other rights CADA may have, if any services or Work required under the Agreement (including but not limited to punch list items) are not completed as of the Completion Date (as adjusted by any extensions of time for Excusable Delays granted pursuant to this Agreement), CADA may terminate the Agreement at any time after the Completion Date by providing a written notice to Contractor specifying the date of termination. Such notice may instead specify conditions or requirements that Contractor must meet by a specific date to avoid termination of the Agreement. If Contractor fails to fulfill all such conditions and requirements by such termination date, or, if no such conditions or requirements are specified, Contractor shall cease rendering services and performing Work on such termination date, and shall not be entitled to receive any compensation for services rendered or Work performed after such termination date. In the event of such termination, Contractor shall remain liable to CADA for liquidated damages incurred for any period of time prior to the termination date.

In addition to any other charges, withholdings or deductions authorized under the Agreement or any Laws or Regulations, if CADA terminates the Agreement pursuant to this Section 36, CADA may withhold and deduct from any payment and/or retention funds otherwise due Contractor any sum necessary to pay CADA's cost of completing or correcting, or contracting for the completion or correction of, any services or Work under the Agreement that are not completed to the satisfaction of CADA or that otherwise are deficient or require correction as of such termination date, including but not limited to incomplete punch list items. Such costs shall include all of CADA's direct and indirect costs incurred to complete or correct such services or Work, including CADA's administrative

and overhead costs. If the amount of payment(s) and/or retention funds otherwise due the Contractor are insufficient to pay such costs, CADA shall have the right to recover the balance of such costs from the Contractor and/or its Surety(ies).

### **37. TERMINATION FOR CONVENIENCE**

Upon written notice to the Contractor, CADA may at any time, without cause and without prejudice to any other right or remedy, elect to terminate the Agreement for the convenience of CADA. In such case, the Contractor shall be paid (without duplication of any items, and after deduction and/or withholding of any amounts authorized to be deducted or withheld by the Contract Documents or any Laws or Regulations):

- A. For Work executed in accordance with the Contract Documents prior to the effective date of termination and determined to be acceptable by the Engineer, including fair and reasonable sums for overhead and profit on such Work;
- B. For reasonable claims, costs, losses, and damages incurred in settlement of terminated contracts with subcontractors, suppliers, and others; and
- C. For reasonable expenses directly attributable to termination.

Contractor shall not be paid for any loss of anticipated profits or revenue for any Work not performed prior to termination, nor for any economic loss arising out of or resulting from such termination, except for the payments listed in this section. Contractor's warranty under Section 23 of this Agreement shall apply even if the Agreement is terminated prior to completion of the Work, and Contractor shall remain responsible for all obligations related to such warranty with respect to all portions of the Work performed prior to the effective date of the termination for convenience. CADA shall be entitled to have any or all remaining Work performed by other contractors or by any other means at any time after the effective date of a termination for convenience in accordance with the provisions of Section 36, above.

### **38. TERMINATION FOR BREACH OF AGREEMENT**

If (i) the Contractor abandons the Work, (ii) this Agreement or any portion of the Work is sublet or assigned by Contractor without the consent of CADA, (iii) the Engineer determines, in the Engineer's sole discretion, that the rate of progress of the Work is not being reasonably fulfilled or any part thereof is unnecessarily delayed, (iv) the Contractor violates or breaches, or fails to execute in good faith, any of the terms or conditions of the Agreement, (v) the Contractor refuses or fails to supply enough properly skilled labor or materials, (vi) the Contractor refuses or fails to make prompt payment to subcontractors for material or labor, or (vii) the Contractor disregards any Laws or Regulations or proper instruction or orders of the Engineer; then, notwithstanding any provision to the contrary herein, CADA may give Contractor and its Surety(ies) written notification to immediately correct the situation or the Agreement shall be terminated for breach.

In the event such notice is given and the situation is not corrected, or arrangements for correction satisfactory to CADA are not made, within ten (10) calendar days from the date of such notice or within such other period of time as may be specified by CADA in the notice; the Agreement shall

upon the expiration of said period cease and terminate. In the event of any such termination, CADA may take over the Work and prosecute the Work to completion, or otherwise, and the Contractor and its Surety(ies) shall be liable to CADA for any cost incurred by CADA as set forth in this Agreement.

In the event CADA has to complete the Work, the Contractor is not entitled to any payment after issuance of the notice of termination until the Work is complete. The cost of completing the Work, including but not limited to, extra costs of project administration and management incurred by CADA, both direct or indirect, shall be deducted from any sum then due, or that becomes due, to Contractor from CADA. If sums due to Contractor from CADA are less than the cost of completing the Work, Contractor and its Surety(ies) shall pay CADA a sum equal to this difference on demand. In the event CADA completes the Work, and there is a sum remaining due to Contractor after CADA deducts the costs of completing the Work, then CADA shall pay such sum to Contractor. The Contractor and its Surety(ies) shall be jointly and severally liable for all obligations imposed on Contractor hereunder.

No act by CADA before the Work is finally accepted, including, but not limited to, exercise of other rights under the Agreement, actions at law or in equity, extensions of time, payments, assessments of liquidated damages, occupation or acceptance of any part of the Work, waiver of any prior breach of the Agreement or failure to take action pursuant to this Section upon the happening of any prior default or breach of Contractor, shall be construed to be a waiver or estoppel of CADA's right to act pursuant to this Section upon any subsequent event, occurrence or failure by Contractor to fulfill the terms and conditions of the Agreement. The rights of CADA to terminate this Agreement pursuant to this Section and pursuant to Sections 37 and 38 are cumulative and are in addition to all other rights of CADA pursuant to the Agreement and at law or in equity.

### **39. CONTRACTOR BANKRUPT**

If Contractor should commence any bankruptcy proceeding, or if Contractor is adjudged a bankrupt, or if Contractor makes any assignment for the benefit of creditors, or if a receiver is appointed on account of Contractor's insolvency, then CADA may, without prejudice to any other right or remedy, terminate the Agreement and complete the Work by giving notice as provided in Section 38, above.

### **40. SURETIES' OBLIGATIONS UPON TERMINATION**

If CADA terminates the Agreement pursuant to Sections 37, 38 or 39, above:

A. The Surety under Contractor's performance bond shall be fully responsible for all of the Contractor's remaining obligations of performance under this Agreement as if the Surety were a party to this Agreement including, without limitation, Contractor's obligations as provided in the Contract Documents to complete the Work and provide a one-year warranty for the entire Work, pay liquidated damages, and indemnify, defend and hold harmless CADA, up to the full amount of the performance bond.

B. The Surety under Contractor's payment bond shall be fully responsible for the performance of all of the Contractor's remaining payment obligations for Work, services, equipment and materials performed or provided in connection with the Work or any portion thereof, up to the full amount of the payment bond.

#### **41. EQUAL EMPLOYMENT OPPORTUNITY.**

During the performance of this Agreement, Contractor, for itself, its assignees and successors in interest, agrees as follows:

- A. Compliance With Regulations: Contractor shall comply with the Executive Order 11246 entitled "Equal Opportunity in Federal Employment", as amended by Executive Order 11375 and 12086, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), herein collectively referred to as the "Regulations".
- B. Nondiscrimination: Contractor, with regards to the work performed by it after award and prior to completion of the work pursuant to this Contract, shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation in selection and retention of subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in discrimination prohibited by the Regulations.
- C. Solicitations for Subcontractors, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by Contractor for work to be performed under any subcontract, including all procurement of materials or equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligation under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation.
- D. Information and Reports: Contractor shall provide all information and reports required by the Regulations, or by any orders or instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by CADA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish this information, Contractor shall so certify to CADA, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of noncompliance by Contractor with the nondiscrimination provisions of this Contract, CADA shall impose such sanctions as it may determine to be appropriate including, but not limited to:
  - 1. Withholding of payments to Contractor under this Agreement until Contractor complies; and

2. Cancellation, termination, or suspension of the Agreement, in whole or in part.

F. Incorporation of Provisions: Contractor shall include the provisions of subsections A through E, above, in every subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations, or by any order or instructions issued pursuant thereto. Contractor shall take such action with respect to any subcontract or procurement as CADA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Contractor may request CADA to enter such litigation to protect the interests of CADA.

#### **42. ACCOUNTING RECORDS OF CONTRACTOR**

During performance of the Agreement and for a period of three (3) years after completing the entire Work, Contractor shall maintain all accounting and financial records related to the Agreement and performance of the Work in accordance with generally accepted accounting practices, and shall keep and make such records available for inspection and audit by representatives of CADA and the State of California upon reasonable written notice.

#### **43. USE TAX REQUIREMENTS**

During the performance of this Agreement, Contractor agrees that for all leases and purchases of materials, equipment, supplies, or other tangible personal property used to perform the Work and shipped from outside California, the Contractor and any subcontractors leasing or purchasing such materials, equipment, supplies or other tangible personal property shall obtain a Use Tax Direct Payment Permit from the California State Board of Equalization ("SBE") in accordance with the applicable SBE criteria and requirements.

#### **44. MODIFICATION**

No waiver, alteration, modification, or termination of this Agreement will be valid unless made in writing and signed by the authorized parties to this Agreement.

#### **45. ENTIRE CONTRACT**

The Contract Documents and the Exhibits attached hereto form the entire Agreement between CADA and Contractor and by incorporation herein are as fully binding on the parties. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

#### **46. AUTHORITY**



The person signing this Agreement for Contractor hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of Contractor and to bind Contractor to the performance of its obligations hereunder.

#### **47. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement on the date set for opposite their names.

#### **CONTRACTOR**

Under penalty of perjury, I certify that the taxpayer identification number and all other information provided here are correct.

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**Signature of Authorized Person**

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Print Name and Title

---

Additional Signature *(if required)*

---

Print Name and Title

---

Federal ID#

---

State ID#

---

City of Sacramento Business Operation Tax  
Certificate No.

Type of Business Entity *(check one)*:

\_\_\_\_\_ Individual/Sole Proprietor

\_\_\_\_\_ Partnership

\_\_\_\_ Corporation  
\_\_\_\_ Limited Liability Company  
\_\_\_\_ Other (*please specify:* \_\_\_\_\_)

**CAPITOL AREA DEVELOPMENT AUTHORITY,**  
a Joint Powers Authority

By: \_\_\_\_\_

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED TO AS FORM:

\_\_\_\_\_  
CADA Attorney

ATTEST:

\_\_\_\_\_  
CADA Clerk

- Exhibit A: Special Provisions
- Exhibit B: Contractor's Design Services Professional Hourly Rates
- Exhibit C: Local Business Enterprise (LBE) Program Requirements
- Exhibit D: Performance and Payment Bond Forms
- Exhibit E: Warranty Guaranty Form
- Exhibit F: Covenant to Restrict Use of Property – Environmental Restriction
- Exhibit H: Subcontractor and LBE Participation Form
- Exhibit I: Assignment of Architect's Contract, Plans and Specifications

**EXHIBIT A**  
**SPECIAL PROVISIONS**

**1. Public Information Releases**

Contractor, and all associated firms and/or individuals, shall not release information concerning this Project for public relations or promotional purposes without the specific written authorization of CADA. This limitation shall not prohibit the Contractor from referencing this Project in proposals developed by the Contractor to secure other contracts provided that CADA is contacted in advance and approves such use and reference. Upon request by CADA, Contractor shall provide information necessary for the public information releases by CADA.

**2. Supporting Information Services**

Contractor agrees to work with CADA and develop, prepare and provide information requested by regulatory agencies for reviews, environment assessments, and similar activities necessary to obtain required consensus, reviews, permits and approvals for the Project, the Work, and related activities.

**3. Separate CADA Consultants**

CADA may secure the services of multiple separate consultants throughout the duration of the Project and this Agreement. Contractor shall meet, coordinate, provide supporting information, and generally support the work efforts of these consultants in a timely and expeditious manner at no additional cost to the Project.

**4. Incentives, Rebates and Tax Benefits**

Contractor shall be responsible for reviewing the Project scope and objectives with CADA staff and investigating the availability and impact of current or anticipated incentives and/or rebates for energy efficient design improvements available to the Project. Contractor shall evaluate the operational and lifecycle impacts of materials and equipment with CADA staff. Contractor shall prepare all documentation, calculations and supporting paperwork required to file for any incentives and/or rebates.

Rebates and incentives available to the owner or occupant shall remain the property of the CADA. However, incentives and tax benefits available exclusively to the Contractor shall remain the property of the Contractor in addition to compensation set forth in this Agreement. The Contractor is responsible for all documentation, testing, certification and similar actions necessary to document qualifications for incentives and/or tax benefits for Contractor. CADA assumes no responsibility for loss of incentives or tax benefits to the Contractor due to actions by CADA.

## **5. Energy Efficient Design Requirements**

Contractor is encouraged to develop energy efficient design options and alternatives for the design of the site and systems and maximize energy efficiency throughout the Project by addressing site design, systems and similar criteria.

## **6. Building Maintenance, Operations, Servicing**

Contractor shall meet with representatives from CADA and the State of California to determine how systems will be facilitated for servicing and maintenance and provide and document all Operations and Maintenance manuals. Contractor shall coordinate and conduct all systems start-up activities and training for CADA and State of California staff. Training shall include use and application of all systems, supporting documentation, worksheets, maintenance and effective use of operations and maintenance manuals.

## **7. As-Built Documents**

Contractor shall maintain a set of “as-built” drawings on site and updated on a weekly basis, and available for CADA to review. Contractor shall incorporate all construction changes in the final digital version of the drawings and specifications and provide the “As-Built” Computer-aided design “CAD” drawings to CADA at the completion of the Work with all operations and maintenance manuals. The “As-Built” drawings shall be in AutoCAD format on electronic media as well as TIFF images of each drawing and specifications shall be provided in Microsoft Word format as well as Adobe Acrobat format.

## **8. Information Format**

Contractor shall provide all information developed for the Project in an electronic format for CADA’s use for reports, public notices, press releases, presentations and similar activities. The format shall be compatible with existing CADA software and resources.

## **9. Code / Regulatory Interpretation or Conflict**

Where an interpretation, regulation, law or code conflicts with other interpretations, regulations, law or codes the Contractor shall follow the most stringent requirement.

## **10. Title 24 Access Conflicts with ADA**

Where a conflict or apparent conflict occurs between Title 24 access requirements and requirements set forth under the Americans with Disabilities Act, both requirements shall be met and the Contractor shall follow the most stringent requirement.

## **11. Review and Coordination**

Contractor's Representative shall be reasonably available to CADA and shall have the necessary expertise and experience required to supervise the Work. Contractor's Representative shall communicate regularly with CADA and shall be vested with the authority to act on behalf of Contractor. Contractor's Representative may be replaced if requested by CADA.

Contractor shall organize and conduct reviews of design, details and assumptions with CADA as needed for efficient execution of the Work, and to insure CADA is involved in the development of the Project design. On or about the time of the scheduled submissions, Contractor shall establish a preliminary list of meetings necessary for the efficient execution of the Work. The meetings, document preparation, and submittal deadlines shall be incorporated into the Project schedule.

Minutes of all meetings shall be prepared and maintained by Contractor and provided to all attendees for review within five (5) calendar days of the meeting.

CADA's review and approval of interim submissions are for the sole purpose of establishing a set of Contract Documents compatible with the requirements of the Work. Neither CADA's review nor approval of any interim submissions of Construction Documents shall release the Contractor from compliance with all requirements in the Contract Documents unless specific item(s) are identified for modification, addition or removal and approved in writing by both CADA and Contractor.

## **12. Monthly Status Report**

Contractor shall provide CADA with a monthly construction status report detailing the progress of the Work, including whether (i) the Work is proceeding according to schedule, (ii) discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) health and safety issues exist in connection with the Work, or (iv) other items require resolution so as not to jeopardize Contractor's ability to complete the Work for the Contract Price by the Completion Date.

## **13. City of Sacramento Standard Specifications**

This contract incorporates the City of Sacramento's Standard Specifications ("Standard Specifications"). The Standard Specifications are hereby amended as follows (deletions are indicated by strikethrough and insertions are indicated by double underline):

1-9 "CADA" shall mean the California joint powers authority known as the Capital Area Development Authority, in the State of California.

1-10 "Board of Directors" shall mean the Board of Directors of CADA

1-11 "Executive Director" shall mean the Executive Director of CADA acting either directly or through properly authorized representatives acting within the scope of their authorized duties.

Any references in the Standard Specifications to the "City," "City of Sacramento," or "City Manager" are hereby amended to refer to "CADA," "Board of Directors," and "Executive Director" respectively. Any references to City employees or agents in the Standard Specifications shall be deemed to be references to CADA employees or agents.

Emerging Small Business Enterprise ("ESBE") participation is inapplicable to this project, and any reference to ESBE participation in the Standard Specifications should be disregarded.

CADA has dispensed with competitive bidding for this project as authorized by the City of Sacramento Charter, from which CADA derives its contracting authority. This Agreement will be let by Request for Proposals. Any reference to bids or bidding in the Standard Specifications is inapplicable and should be disregarded. Section 2 of the Standard Specifications is hereby deleted. Sections 3-1 through 3-3, 3-5, and 3.7 are hereby deleted.

**Exhibit B:**

**Contractor's Design Services Professional Hourly Rates**



**Exhibit C:**  
**Performance and Payment Bond Forms**

**PERFORMANCE BOND**

**Bond No.:** \_\_\_\_\_

**Premium:** \_\_\_\_\_

**WHEREAS**, the CAPITOL AREA DEVELOPMENT AUTHORITY, State of California,

hereinafter called CADA, has conditionally awarded to:

as principal, hereinafter called Contractor, a contract for construction of:

**805 R Street Garage**

which contract is by reference incorporated herein and made a part hereof as if the Surety named below were a party to the contract, and is hereinafter referred to as the Contract; and

**WHEREAS**, under the terms of the Contract, Contractor is required to furnish a bond for the faithful performance of the Contract.

**NOW, THEREFORE**, we the Contractor and *(here insert full name and address of Surety)*:

\_\_\_\_\_,  
a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California, hereinafter called Surety, are held and firmly bound unto CADA and the City of Sacramento (City), as obligees, in the sum of:

\_\_\_\_\_, for the payment of which sum well and truly to be made, we the Contractor and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally. The condition of this obligation is such that, if the Contractor, Contractor's heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and fully perform all covenants, conditions and agreements required to be kept and performed by Contractor in the Contract and any changes, additions or alterations made thereto, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meanings, and shall indemnify and save harmless CADA and the City and their respective officers, employees and agents, as therein provided, then the Surety's obligations under the Contract and this bond shall be null and void; otherwise they shall be and remain in full force and effect. This obligation shall remain in full force and effect through the end of the Contract warranty period, which will expire one year after the completion of work date specified in the Notice of Completion filed for the above-named project.

As part of the obligations secured hereby and in addition to the sum specified above, there shall be included all costs, expenses and fees, including attorney's fees, reasonably incurred by CADA and the City in successfully enforcing such obligations, all to be taxed as costs and included in any judgment rendered.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or to the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration or addition.

**IN WITNESS WHEREOF**, this instrument has been duly executed by authorized representatives of the Contractor and Surety. SIGNED AND SEALED on \_\_, 20 \_\_.

_____ (Contractor) (Seal)	_____ (Surety) (Seal)
By _____	By _____
Title _____	Title _____
	Agent Name and Address _____
	_____
	_____
	Agent Phone # _____
	Surety Phone # _____
	California License # _____

**PAYMENT BOND**

**Bond No.:** \_\_\_\_\_

**Premium:** \_\_\_\_\_

**WHEREAS**, the CAPITOL AREA DEVELOPMENT AUTHORITY, in the State of California, hereinafter called CADA, has conditionally awarded to:

hereinafter called Contractor, a contract for construction of:

**805 R Street Garage**

Which contract is by reference incorporated herein and made a part hereof, and is hereinafter referred to as the Contract; and

**WHEREAS**, under the terms of the Contract and pursuant to Chapter 5 of Title 3 of Part 6 of Division 4 of the California Civil Code (commencing with Civil Code Section 9550), Contractor is required to furnish a good and sufficient payment bond to secure payment of the claims to which reference is made in Civil Code Section 9554.

**NOW, THEREFORE**, we the Contractor and *(here insert full name and address of Surety)*:

\_\_\_\_\_, a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California, hereinafter called Surety, are held and firmly bound unto the City, and unto all persons or entities entitled to assert a claim against a payment bond under any of the aforesaid Civil Code provisions in the sum of \_\_\_\_\_, on the condition that if Contractor shall fail to pay for any materials or equipment furnished or used in performance of the Contract, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, or for any amounts required to be deducted, withheld, and paid over to the Franchise Tax Board or the Employment Development Department from the wages of employees of the Contractor and all subcontractors with respect to such work or labor, then the Surety shall pay the same in an amount not exceeding the sum specified above. If suit is brought upon this bond, Surety shall pay, in addition to the above sum, all costs, expenses and fees, including attorney's fees, reasonably incurred by any party in successfully enforcing the obligation secured hereby, all to be taxed as costs and included in any judgment rendered. Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect, and shall bind Contractor, Surety, their heirs, executors, administrators, successors and assigns, jointly and severally.

It is hereby stipulated and agreed that this bond shall inure to the benefit of all persons, companies, corporations, political subdivisions, State agencies and other entities entitled to assert a claim against a payment bond under any of the aforesaid Civil Code provisions, so as to give a right of action to them or their assigns in any suit brought upon this bond. The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or to the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration or addition.

**IN WITNESS WHEREOF**, this instrument has been duly executed by authorized representatives of the Contractor and Surety. SIGNED AND SEALED on \_\_, 20\_\_.

(Contractor) (Seal)  
By \_\_\_\_\_  
Title \_\_\_\_\_

(Surety) (Seal)  
By \_\_\_\_\_  
Title \_\_\_\_\_

Agent Name and  
Address

---

Agent Phone # 

---

Surety Phone # 

---

California License #

---

**Exhibit D**  
**Warranty Guaranty Form**

**WARRANTY GUARANTY**

We hereby guarantee to the Capitol Area Development Authority (CADA) and the State of California the \_\_\_\_\_ for one (1) year from final acceptance of the Work. We agree to repair or replace any or all such Work, together with all or any other work which may be displaced in so doing, that may be proven defective in workmanship or material within the one-year period from the date of final acceptance without any expense whatsoever to CADA or the State of California, ordinary wear and tear and unusual abuse or neglect excepted.

In the event of our failure to comply with the above-mentioned conditions within five (5) business days after being notified in writing, we collectively or separately, do hereby authorize CADA and the State of California to proceed to have the defects repaired and made good at our expense and will pay the costs and damages, including but not limited to any related attorney fees and CADA and State of California staff and administrative expenses, therefor immediately upon demand.

Dated: \_\_\_\_\_

Signed:

\_\_\_\_\_

\_\_\_\_\_  
**Printed Name**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Company**

\_\_\_\_\_  
**Address**

**Exhibit E**  
**Property Description**

## **LABOR COMPLIANCE ADDENDUM**

### **1. PREVAILING WAGE**

A. The Work contemplated herein constitutes a public work within the meaning of Labor Code sections 1720 and 1771. It shall be mandatory upon the Consultant and upon any Subcontractor, to pay not less than the said specified prevailing rates of wages to all workers employed by them under the Contract in accordance with Labor Code section 1774. The Director of the Department of Industrial Relations ("DIR") of the State of California has determined the general prevailing rate of wages of per diem wages in the locality in which the work is to be performed for each craft or type of worker needed to execute the Contract. The Consultant acknowledges that it has examined the prevailing rate of per diem wages as established by the DIR. Copies of the current schedules for prevailing wages are on file at CADA's main office, and the contents of those schedules are incorporated herein as if set forth in full. The Consultant shall post a copy of the applicable prevailing wage determinations at each job site, along with any other work place posters required by law.

B. CADA will not recognize any claims for additional compensation because of the payment of prevailing wages. The possibility of wage increases is one of the elements to be considered by the Consultant in determining its proposal, and will not under any circumstances be considered as the basis of a claim against CADA.

C. By executing this Contract Consultant warrants that it has registered with the Department of Industrial Relations in accordance with Labor Code section 1725.5.

### **2. PREVAILING WAGE RECORDS**

A. The Consultant and each subcontractor shall keep an accurate payroll record which shows the name, address, social security number, correct work classification (in accordance with the wage decision), both straight and overtime worked each day and week, and hourly rate of pay, gross wages earned, deductions made and net wages paid to each journeyman, apprentice, worker or other employee paid by the Consultant /subcontractor in connection with the Work. These payroll records shall be certified and shall be made available at Consultant's principal office. These records shall be maintained during the course of the Work. The Consultant and all subcontractors shall make the certified payroll records available for inspection by City representatives upon request and shall permit such representatives to interview employees during the work hours on the job site.

B. CADA shall notify the Consultant in writing of any discrepancies or violations that are discovered during such inspections. Written notification pursuant to this Section shall include the actions that will be necessary to resolve the discrepancies and/or violations. The Consultant shall be held entirely responsible for the prompt resolution of all non-compliances with the prevailing wage laws, including those pertaining to all subcontractors and any lower-tier subcontractors. The Consultant shall forfeit as penalty to CADA the amount specified by law for each calendar day or portion thereof for each worker (whether employed by the Consultant or any subcontractor) paid less than the stipulated prevailing rates for any work done under the Contract in violation of the provisions of the Labor Code and in particular, Section 1775.

C. To the extent applicable, Consultant and subcontractors shall maintain and furnish to the Department of Industrial Relations ("DIR"), a certified copy of each weekly payroll (but no less often than



monthly), with a statement of compliance signed under penalty of perjury. Such certified payroll reports shall be transmitted electronically to the DIR.

D. CADA will not recognize any claims for additional compensation because of the payment of the prevailing wages. The possibility of wage increases is one of the elements to be considered by the Consultant in entering into the Contract, and will not under any circumstances, other than delays caused by CADA, or CADA's agents, be considered as the basis of a claim against CADA.

### **3. Labor Discrimination**

Attention is directed to Section 1735 of the Labor Code, which reads as follows:

"No discrimination shall be made in the employment of persons upon public works because of their race, color, national origin or ancestry, physical handicap, mental condition, marital status, or sex of such person, except as provided in Section 12940 of the Government Code, and every General Contractor for public works violating this section is subject to all the penalties imposed for a violation of this chapter."

### **4 Eight-Hour Day Limitation**

(a) In accordance with the provisions of the Labor Code, and in particular, Sections 1810 to 1815 thereof, inclusive, incorporated herein by reference, eight hours labor shall constitute a day's work, and no worker in the employ of Consultant, or any Subcontractor, doing or contracting to do any part of the work contemplated by the Contract, shall be required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of those provisions; provided that subject to Labor Code Section 1815, a worker may perform work in excess of either eight (8) hours per day or forty (40) hours during any one week upon compensation for all hours worked in excess of eight (8) hours per day or forty (40) hours during any one week at not less than one and one-half times the basic rate of pay.

(b) The Consultant and each Subcontractor shall also keep an accurate record showing the names and actual hours worked of all workers employed by them in connection with the Contract. This record shall be open at all reasonable hours to the inspection of CADA. It is hereby further agreed that, except as provided in (a) above, the Consultant shall forfeit as a penalty to CADA the sum of twenty-five dollars (\$25) for each worker employed in the performance of the Contract by the Consultant or by any of its Subcontractors for each calendar day during which such worker is required or permitted to labor more than eight (8) hours in and one calendar day and forty (40) hours in any one calendar week in violation of Sections 1810 through 1815.

### **5. Compliance with State Requirements for Employment of Apprentices**

(a) The Consultant's attention is directed to Section 1777.5 of the Labor Code. Provisions of said Section pertaining to employment of registered apprentices are hereby incorporated by reference into this Contract. As applicable, the Consultant or any Subcontractor employed by the Consultant in the performance of this Contract shall take such actions as necessary to comply with the provisions of Section 1777.5.

## **ASSIGNMENT OF ARCHITECT'S CONTRACT, PLANS AND SPECIFICATIONS**

This Assignment of Architect's Contract, Plans and Specifications ("Assignment") is made as of \_\_\_\_\_, 2020, by **Capitol Area Development Authority**, a California joint powers authority ("Authority"), to \_\_\_\_\_ ("Contractor").

### **RECITALS**

A. On June 22, 2017, Authority and International Parking Design, Inc. ("Consultant") entered into a Consultant Agreement, Contract No. # C18-051, as amended by Change Order dated April 5, 2018 (collectively, the "Consultant Contract"), for certain design work in connection with a project commonly known as the R Street Parking Garage ("Project"). Consultant has completed the schematic designs for the Project.

B. On \_\_\_\_\_, 2020, Authority released a Request for Proposals ("RFP") in order to solicit proposals from contractors to construct the Project using a design-assist method in coordination with the Consultant. Contractor submitted a proposal, and on \_\_\_\_\_, 2020, Authority awarded the contract to Contractor.

C. In furtherance of the design-assist process, Authority desires to assign the Consultant Contract and all rights and obligations thereunder to Contractor, and Contractor desires to accept assignment of the Consultant Contract and all rights and obligations thereunder.

**NOW THEREFORE**, for good and valuable consideration, the receipt whereof is hereby acknowledged:

### **AGREEMENT**

1. Assignment. Authority hereby assigns, transfers and conveys to Contractor all of Authority's right, title and interest in and to (i) the Consultant Contract, together with any and all existing and future amendments, modifications, supplements, general conditions and addenda thereto heretofore or hereafter entered into with Consultant or prepared by Consultant for the account of Authority pertaining to Consultant's architectural services in connection with the Project, and (ii) all surveys, site plans, and plans and specifications for onsite and offsite improvements prepared in connection with the Project, together with any and all existing and future amendments, modifications, supplements, general conditions and addenda thereto heretofore or hereafter prepared by Consultant for the account of Authority (collectively "Consultant's Plans and Specifications"). As used herein, the term "Assigned Documents" shall mean, collectively, the Consultant's Contract and the Consultant's Plans and Specifications.

2. General Provisions. This Assignment is made on the following terms, covenants and conditions:

2.1 Authority's Representations and Warranties. Authority hereby represents and warrants to Contractor that (a) Authority has not previously made any assignment of Authority's interest in and to or rights under the Assigned Documents, and (b) all covenants, agreements and conditions required to be performed or to occur under the Assigned Documents as of the date hereof by Authority have been performed or occurred.

2.2 Authority's Reservation of Claims. Authority hereby reserves any claims it may have against Consultant that accrued prior to the Effective Date.

2.3 Indemnification of Authority and Release. From and after the Effective Date, Contractor shall protect, indemnify, defend and hold Authority, its successors, agents, employees, contractors, attorneys, directors or officers (hereinafter "Indemnitees"), free and

harmless from and against any and all claims, causes of action, demands, damages, liens, liabilities, losses, costs and expenses (including reasonable attorney's fees) of any kind or nature whatsoever (collectively, "Claims") which (a) may be asserted by anyone against Authority in connection with the Assigned Documents or obligations thereunder occurring after the Effective Date, or (b) Authority may incur in exercising any or Authority's rights under this Assignment, except where caused by the gross negligence or willful misconduct of Authority. Contractor shall and hereby does release and forever discharge Authority and Indemnitees against any and all Claims that arise or accrue in connection with the Assigned Documents after the Effective Date.

2.4 Binding Obligations Under This Agreement. This Assignment shall be binding on and inure to the benefit of the parties to it, their heirs, executors, administrators, successors in interest, and assigns.

2.5 Severability. If any one or more of the provisions contained in this Assignment shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Assignment, but this Assignment shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

2.6 Governing Law; Venue. This Assignment shall be governed by and construed in accordance with the internal law of the State of California. Venue shall lie in Sacramento County.

2.7 Attorney's Fees. In the event of any dispute arising out of this Assignment or any action or processing to enforce the provisions of this Assignment, the prevailing party in such dispute, action or proceeding shall be entitled to recover from the losing party all costs and expenses incurred by the prevailing party in connection therewith, including without limitation court costs and reasonable attorney's fees and expenses.

**IN WITNESS WHEREOF**, Authority and Contractor have executed this Agreement as of the date first above written.

AUTHORITY

**Capitol Area Development Authority**  
a California joint powers authority

By: \_\_\_\_\_  
**Wendy S. Saunders**, Executive Director

CONTRACTOR

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **CONSENT**

The undersigned hereby consents to the transfer and assignment recited in the Assignment to which this Consent is attached.

The undersigned hereby agrees and acknowledges that upon the Contractor or its successors or assigns giving the undersigned written notice of Contractor's exercise of its rights under the Assignment, the undersigned will recognize and attorn to Contractor in accordance with the Assignment.

The undersigned further acknowledges and represents that:

(i) The undersigned has not assigned its interest under the Assigned Documents to any other person or entity;

(ii) There presently exists no unpaid claims due to the undersigned arising out of the performance by the undersigned relating to the Assigned Documents (provided, however, that certain invoices may be unpaid as of the date of the execution of this Consent, but the undersigned expects such invoices to be paid by Authority in the regular and ordinary course of business); and

(iii) The undersigned has no present claim against or lien upon the Property arising out of the undersigned's performance of any work or service on or relating to the Property.

Dated: \_\_\_\_\_

**International Parking Design, Inc.,**

a \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_