

**SECTION 9 - CHANGES AND CLAIMS
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SECTION 9 CHANGES AND CLAIMS

9-1 AUTHORITY FOR CHANGES

The City of Elk Grove reserves the right to order corrections, alterations, additions, modifications, deletions or other changes as required for the proper completion of the Work. The order may be made prior to the final acceptance of the Contract without voiding the Contract, without notice to the Contractor's sureties, and in accordance with the provisions of Section 9-2, "Ordering of Changes", in this Section of these Specifications.

The Contractor shall not perform corrections, alterations, additions, modifications, deletions, or other changes to the Work without a written order from the City of Elk Grove, in accordance with Section 9-2, "Ordering of Changes", in this Section of these Specifications.

Payment for changed or extra work will not be made without the City of Elk Grove's written authorization.

9-2 ORDERING OF CHANGES

The City of Elk Grove may order a change, in writing, during the course of the Work, and the Contractor shall comply with the order. Changes to the Work shall in no way affect, vitiate, or make void the Contract or any part thereof, except that which is necessarily affected by such changes and is clearly the evident intention of the parties to the Contract.

Changes to the Work may be initiated as described in Section 4-5, "Field Instructions or Other Written Directives", of these Specifications. Changes that require an adjustment to the total Contract Price or the Contract Time will be formalized in a Contract Change Order, in accordance with Section 9-14, "Contract Change Order (CCO)", in this Section of these Specifications. Failure of the City of Elk Grove and Contractor to agree to terms of any order for change shall not relieve the Contractor of his obligation to complete all work specified in the order.

9-3 CONSTRUCTION INCENTIVE CHANGE PROPOSAL (CICP)

9-3.01 General

The Construction Incentive Change Proposal (CICP) Program provides a program for the Contractor to use his expertise to improve Contract performance to create an overall reduction in the Total Contract Price. Proposing to delete work is not a CICP. Deleted work is addressed in Section 4-8, "Deleted Items", in these Specifications. The CICP Program shall not apply to City of Elk Grove contracts of less than one hundred thousand dollars (\$100,000). The Contractor and Subcontractors may participate in the CICP Program. Participation of Subcontractors shall be through the Contractor, and the Contractor and his Subcontractor must agree upon the sharing arrangement; written evidence of such agreement must be submitted with the CICP.

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

9-3.02 Description

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

- Required function, reliability, and safety of the project will be maintained without detracting from the life expectancy or increasing maintenance requirements. The proposed change shall not cause undue interruption of the Work, nor shall it extend the Contract Time.
- The proposed change shall comply with all applicable permits, regulations, and code requirements, and any other requirements as set forth in the Contract. The proposed

change shall not involve payment of royalties by the City of Elk Grove to the Contractor.

9-3.03 Submittal

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

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

1. Name of individuals associated with the development and preparation of the CICIP.
2. A detailed description and duly signed plans and specifications showing work as presently designed and the proposed changes.
3. A clear identification of all advantages and disadvantages for each proposed change.
4. A detailed procedure and schedule for implementing the proposed change. This detailed procedure and schedule shall include all necessary Contract amendments. Also indicated must be the latest date that the CICIP can be approved for implementation.
5. A summary of estimated costs, including the following:
 - a. Project construction costs before and after the CICIP. This shall be a detailed estimate identifying the following items for each trade involved in the CICIP:
 - Quantities of material and equipment
 - Unit prices of materials and equipment
 - Labor hours and rates for installation
 - Subcontractor and prime Contractor mark ups
 - Operation and maintenance costs before and after the CICIP
 - Cost for implementing the CICIP not included elsewhere
 - b. Contractor's share of the savings based on the sharing provision in Section 9-3.05, "Sharing Provisions and Formula", in this Section of these Specifications.
 - c. Other data as required by local permits and regulations and code requirements as set forth in the Contract.
6. Time required for execution of the proposed change. To the extent indicated herein, the Contractor may restrict the City of Elk Grove's use of any CICIP or the supporting data submitted pursuant to this program. Suggested wording for inclusion in CICIP's is as follows:
"This data furnished pursuant to the construction incentive clause of the Contract shall not be disclosed or duplicated in whole or in part beyond what is necessary to accomplish the review. This restriction does not limit the City of Elk Grove's right to use the information if it is available from any source without limitations. The City of Elk Grove has the right to duplicate, use and disclose any information if the CICIP is accepted." The City of Elk Grove may modify, accept, or reject the CICIP. However, if the CICIP is modified or not acted upon within the time allotted in the proposal, the City of Elk Grove will not be liable for the Contractor's cost of developing the CICIP if it is withdrawn or rejected.

9-3.04 Acceptance

The City of Elk Grove will use the processing procedure specified for Change Orders in Section 9-14, "Contract Change Order (CCO)", in this Section of these Specifications, if a CICIP is accepted. The City of Elk Grove's written approval of the CICIP is required. If the CICIP is rejected, the Contractor shall not appeal the decision.

9-3.05 Sharing Provisions and Formula

Upon acceptance of the CICIP, the Contractor will receive fifty percent (50%) of the Net Capital Savings based on the following formula:

$$\text{Net Capital Savings} = \text{Contract Cost Prior to CICIP} - (\text{Revised Contract Cost After CICIP} + \text{CICIP Development Cost} + \text{CICIP Implementation Cost})$$

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

The CICP implementation costs include, when appropriate, engineering costs for reviewing and redesigning the changes. However, City of Elk Grove costs for processing the CICP are excluded.

9-4 CHANGES TO THE CONTRACT

If directed by the City of Elk Grove, within ten (10) Calendar Days of issuance of an order for a change, the Contractor shall provide a cost and time proposal prepared in accordance with the requirements of Sections 9-8, “Payment for Changes”, and 9-12, “Time Extensions for Changes”, in this Section of these Specifications. The Contractor’s proposal shall indicate the amount to be added or deducted from the Total Contract Price, supported by complete details of all Contractor, Subcontractor, vendor or supplier costs per Section 9-6, “Cost and Pricing Data”, in this Section of these Specifications.

If the Contractor does not submit a proposal within ten (10) Calendar Days, and unless the City of Elk Grove is otherwise notified within ten (10) Calendar Days of a potential cost impact, the Contractor agrees to perform the work described in the order for change with no additional compensation. If the order for change is issued on a force account basis, the Contractor must immediately begin keeping records in accordance with Section 9-8.03, “Force Account”, in this Section of these Specifications.

9-5 PROSECUTION OF CHANGES TO THE CONTRACT

The Contractor shall comply with and prosecute all portions of the order for change with the same diligence and manner as if the changes were originally included in the Contract, except as otherwise provided in the order.

If agreement is reached regarding payment, but not a time adjustment, the City of Elk Grove shall have the right to direct the Contractor to proceed with the change at the agreed price. The impact of the changed work on the project schedule will be considered by the City of Elk Grove in accordance with Section 9-12, “Time Extensions for Changes”, in this Section of these Specifications.

When the City of Elk Grove and Contractor cannot agree on the credit for deleted work, the City of Elk Grove’s estimate will be deducted from the Total Contract Price, unless the Contractor presents proof prior to the Final Payment that the City of Elk Grove’s estimate is in error.

9-6 COST AND PRICING DATA

Cost and pricing data submitted by the Contractor shall be true, complete, accurate, and current. The City of Elk Grove may require a formal certification to verify Contractor-submitted cost and pricing data. Additional requirements for cost and pricing data may also be included in the Special Provisions. The City of Elk Grove shall have access to the records supporting such cost and pricing data in accordance with the following Section (Section 9-7, “Access to Records”).

9-7 ACCESS TO RECORDS

Upon reasonable notice and during normal business hours, the City of Elk Grove shall have access to the Contractor’s and Subcontractors’ records for the purpose of verifying and evaluating the accuracy of cost and pricing data submitted by the Contractor. “Records” as used in this Section shall include, but not be limited to: original estimates, subcontract agreements, purchase orders, books, documents, accounting records, papers, project correspondence, project files, and scheduling information necessary to determine the direct and indirect costs, job site, area and home office overhead, delay and impact costs. Records shall include the original Bid and all documents related to the Bid and its preparation, the as-planned construction schedule and all related documents.

Such access shall include the right to examine and audit such records and make excerpts, transcriptions, and photocopies at the City of Elk Grove’s cost.

9-8 PAYMENT FOR CHANGES

The method of payment agreed upon by the Contractor and the City of Elk Grove, or selected by the City of Elk Grove in the absence of agreement, shall be set forth in the order for change.

The three methods of payment are as follows:

9-8.01 Lump Sum Price

The Contractor shall submit a lump sum price proposal. The proposal shall include an estimate of labor, material, equipment, Subcontractor, and material supplier costs. The proposal shall include labor surcharges of twenty-six percent (26%), sales tax, and markups as stipulated in Section 9-9, “Markups for Changed Work”, in this Section of these Specifications.

9-8.02 Unit Prices

If payment for Contract work is based on unit prices, payment for changed work will be made based on actual quantities of work done at the unit prices contained in the Contract or unit prices otherwise agreed upon by the City of Elk Grove and Contractor if none are contained in the Contract. Payment for changed work based on Contract or agreed upon unit prices includes the full cost of the item of work including profit and overhead; and no additional payment or adjustment will be allowed. If the final quantity of any major item of work required under the Contract varies from the Engineer’s Estimate by twenty-five percent (25%) or more, compensation shall be adjusted in accordance with State Specification Section 4-1.03B, “Increased or Decreased Quantities”.

9-8.03 Force Account

In the absence of either an agreed lump sum price or unit prices for the change, the City of Elk Grove may direct the Contractor to proceed with the changed work on a force account basis. The Contractor shall keep and present, in a form acceptable to the City of Elk Grove, a complete and correct accounting of all costs associated with the change, including all pay records, vouchers, invoices, etc. The Contractor will be paid for labor, materials, and equipment actually used during the performance of the changed work as specified in this Section of these Specifications in Sections 9-8.03.A, “Labor”, 9-8.03.B, “Materials”, and 9-8.03.C, “Equipment”; plus the percentages stipulated in Section 9-9, “Markups for Changed Work”.

To facilitate agreement on direct craft labor hours, construction equipment hours, and material quantities, the Contractor shall notify the City of Elk Grove not less than four (4) hours prior to starting force account work. The Contractor shall submit Daily Work Reports (DWR’s) for signature not later than 9:00 a.m. the day following performance of any force account work. DWR’s shall list names of all Contractor’s staff, the staff person’s craft or trade, all craft or trade labor hours, and all material and construction equipment used. The Contractor shall use the City of Elk Grove’s DWR’s in preparing billings for force account work.

9-8.03.A Labor

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

9-8.03.A.(1) Actual Wages

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

9-8.03.A.(2) Labor Surcharge

Unless limited by the Contract Documents, up to a twenty-six percent (26%) surcharge for taxes, insurance, and all other payments made to or on the behalf of the employee shall be added to the actual wages, with proper verification.

9-8.03.A.(3) Subsistence and Travel

Any subsistence and travel shall be incidental to the work and will not be compensated by the City of Elk Grove.

9-8.03.B Materials

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

9-8.03.C Equipment

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

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

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

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

9-8.03.D Subcontracts

Subcontract costs shall be the actual cost to the Contractor for work performed by a Subcontractor. The provisions of Section 9-8.03, “Force Account”, in this Section of these Specifications, apply to the computation of subcontract costs. Subcontractors shall compute markups per the following Section (Section 9-9, “Markups for Changed Work”).

9-9 MARKUPS FOR CHANGED WORK

Only the direct costs directly attributable to the performance of the changed work shall be allowed. All other costs shall be included in the allowed markups, including, but not limited to, profit, home office overhead, jobsite indirect costs, jobsite office personnel, general field superintendence, general engineering, supervision of labor, bond and insurance premiums, and general field expense, and shall constitute full compensation for all costs not included as actual labor, materials, equipment, or Subcontractor costs. Markups for changed work shall not exceed the following:

| | |
|---------------------|-----|
| Labor | 15% |
| Materials | 15% |
| Equipment Rental | 15% |
| Bonds and Insurance | 2% |

The Contractor or Subcontractor, whomever actually performs the changed work, may add the markups to the total of allowable costs. When a Subcontractor performs work, the Contractor and any higher tiered Subcontractor may add as mark-up to the total of allowable costs an amount not to exceed five percent (5%), subject to the limitations of this Section.

When the City of Elk Grove is entitled to credit for deleted work, a ten percent (10%) credit for deleted overhead of the Contractor or Subcontractor, as applicable, will be added to such credit.

9-10 COMPENSABLE UNAVOIDABLE DELAYS

Payments will be made as follows for compensable unavoidable delays, as defined in Section 7-12.02, “Unavoidable Delays”, in these Specifications.

9-10.01 Construction Equipment

Compensation will be paid for construction equipment idle as a result of a compensable unavoidable delay to the extent costs are incurred. The prices paid for equipment will be those in the current edition of the Caltrans publication, “Labor Surcharge and Equipment Rental Rates”, with the following modifications:

- The right-of-way delay factor for each classification of equipment will be applied to the rental rate.
- Compensation will be provided for the actual time of the delay, but not more than eight (8) hours per day.

Compensation will be provided for each day or portion of a day, excluding Saturdays, Sundays and holidays, for the duration of the delay.

9-10.02 Jobsite Indirect Costs

Indirect costs shall be limited to the following:

1. Actual payroll costs for field office staff incurred as a result of the delay, including management, supervision, safety, estimating, engineering, drafting, clerical, secretarial and accounting. A twenty-six percent (26%) surcharge for taxes, insurance, and all other payments made to or on the behalf of the employee may be added to the payroll costs.
2. Actual cost for third-party services provided for the field office, such as management, supervision, safety, estimating, engineering, drafting, clerical, secretarial, and accounting utilized in lieu of employees.
3. Applicable field office expenses for rent and utilities that are substantiated by invoices. Compensation for on-site plant, incidentals, and facilities for non-field office personnel including branch office and home office personnel will not be provided. Compensation for these items and other incidentals is included in the following Section (Section 9-10.03, “Markup for Compensable Unavoidable Delays”).

9-10.03 Markup for Compensable Unavoidable Delays

Except for compensable unavoidable delays associated with archeological and cultural resources as described in Section 10-12, “Archeological and Cultural Resources”, of these Specifications and right-of-way delays, fifteen percent (15%) shall be added to job-site indirect costs for onsite plant, incidentals, overhead, home and branch office costs, bonds and profit. The Contractor shall determine the distribution of the markup among the Contractor, Subcontractors, and suppliers.

9-10.04 Duplicated Overhead Costs

If the Contractor is compensated for delays in accordance with this Section, and the delay is attributable to direct cost changes to which markups were added, equitable adjustments shall be made to eliminate the duplication of compensation for indirect and overhead costs and profit.

9-11 LIMITATIONS ON PAYMENTS FOR CHANGED WORK

The City of Elk Grove will not pay the Contractor for costs in excess of prevailing market values, unless the Contractor can establish, to the satisfaction of the City of Elk Grove, that the Contractor has investigated all possible means of providing the work and that the excess costs could not be avoided. The City of Elk Grove will be the sole judge of the necessity of incurring costs in excess of market value and whether the excess costs are directly required for performance of changed work. The City of Elk Grove’s determination will be final.

9-12 TIME EXTENSIONS FOR CHANGES

The Contractor is entitled only to adjustment in Contract Time if completion of the entire Work is extended due to the change impacting the controlling item of work. Each proposal submitted by the Contractor in accordance with Section 9-4, “Changes to the Contract”, in this Section of these Specifications shall state the amount of extra time the Contractor believes the change added to the overall project schedule. Failure to request a time extension within the time allowed constitutes a waiver of the Contractor’s right to subsequently claim an adjustment in Contract Time.

9-13 EFFECT ON SURETIES OF CHANGES TO THE WORK

No alterations, time extensions, extra or additional work or other changes authorized by these conditions or any part of the Contract shall affect the sureties’ obligations under the Contract.

9-14 CONTRACT CHANGE ORDER (CCO)

The City of Elk Grove will issue a Contract Change Order (CCO) for approval if a change to the Total Contract Price or Contract Time is necessary. The Contractor shall not be entitled to any adjustments in either Total Contract Price or Contract Time for changes performed before receipt of a Contract Change Order approved by the Board. A Contract Change Order is generally comprised of one or more Field Instructions or other written directives, and contains a summary of each change and changes to the Total Contract Price and Contract Time.

9-15 ACCEPTANCE OF ORDERS FOR CHANGES

The Contractor’s written agreement of a Contract Change Order, Field Instruction, or other written directive will constitute his final and binding agreement to the provisions of the Contract Change Order, Field Instruction, or other written directive, and a waiver of all claims in connection therewith, whether direct or consequential in nature, including those of any Subcontractors or suppliers. If the Contractor disagrees with any Contract Change Order, Field Instruction, or other written directive, the Contractor may submit a notice of potential claim to the City of Elk Grove in accordance with Section 9-17, “Notice of Potential Claim”, in this Section of these Specifications. Disagreement with the provisions of a Change Order, Field Instruction, or other written directive will not relieve the Contractor of the Contractor’s obligations under the Contract.

9-16 DISPUTE REGARDING CONTRACT REQUIREMENTS

If the Contractor and City of Elk Grove fail to agree whether or not any work or other matter is within the scope of the Contract, the Contractor shall nevertheless immediately perform such work upon receipt of a written Field Instruction or other written directive. Within fourteen (14) Calendar Days after receipt of the Field Instruction or other written directive, the Contractor may submit a written

protest detailing the Contract requirements exceeded and the approximate cost and/or time change. Failure to submit a protest within the specified period constitutes a waiver of the Contractor's rights to adjustments in the Total Contract Price or Contract Time for the disputed Contract requirement.

The Contractor shall not stop performing the Work pending resolution of a dispute, unless ordered in writing by the City of Elk Grove.

If the City of Elk Grove agrees with the Contractor's written protest, the Total Contract Price and/or Contract Time will be adjusted through a Contract Change Order. Protests and claims denied by the City of Elk Grove will be so stated in writing.

9-17 NOTICE OF POTENTIAL CLAIM

The Contractor shall not be entitled to payment of any additional compensation for any cause, including any disagreement, protest, or change, any act or failure to act by the City of Elk Grove, or the happening of any event, thing or occurrence, unless the Contractor has given the City of Elk Grove due advance written notice of potential claim as hereinafter specified. The written notice of potential claim shall set forth the reasons for which the Contractor believes additional compensation and/or time will or may be due, the nature of the costs and/or time involved, and, insofar as possible, the amount of the potential claim.

Except as required below, the Contractor shall promptly provide written notification to the City of Elk Grove upon discovery of concealed or unknown conditions or any disagreement, protest, situation, event, or occurrence that may result in a claim. This notice shall be submitted no more than two (2) Working Days after the discovery or occurrence of any event that may be the basis for a claim for additional compensation; failure to do so waives the claim.

9-18 SUBMISSION OF CLAIMS

9-18.01 Claims Less Than \$375,000

Claims for three hundred seventy-five thousand dollars (\$375,000) or less shall be in accordance with Section 20104 of the Public Contract Code.

9-18.02 Claims Greater Than \$375,000

For claims greater than three hundred seventy-five thousand dollars (\$375,000), the Contractor shall furnish claim documentation as herein specified.

Contractor shall submit three (3) certified copies of all claim documentation. All claim documentation shall be complete when submitted. The evaluation of the Contractor's claim will be based on City of Elk Grove's records and the claim documentation submitted by Contractor.

Claim documentation shall conform to generally accepted auditing standards and shall be in the following format:

1. Introduction and background
2. Issues
 - a. Index of issues b.For each issue:
 - Background
 - Chronology
 - Contractor's position (reason for City's potential liability)
 - Supporting documentation of merit
 - Supporting documentation of damages
3. Critical path method schedules, as-planned versus as-built, and delay analysis
4. Productivity and damages exhibits
5. Summary of issues and damages

Supporting documentation of merit for each issue shall be cited by reference, photocopies, or

explained. Supporting documentation may include, but not be limited to, general conditions, technical specifications, drawings, correspondence, conference notes, shop drawing logs, survey books, inspection reports, delivery schedules, test reports, daily reports, subcontracts, fragmentary critical path method schedules, photographs, technical reports, requests for information, field instructions, and other related records.

Supporting documentation of damages for each issue shall be cited, photocopied, or explained. Supporting documentation may include, but not be limited to, certified detailed labor, materials, equipment, and construction equipment and services costs; purchase orders; invoices; project as-planned and as-built costs; subcontractor payment releases; quantity reports; other related records; general ledger and any other accounting materials.

Each copy of claim documentation shall include the following certification, signed in the same manner as the Contract was signed:

“I, _____, being the *(must be an officer)* of *(general contractor)*, declare under penalty of perjury under the laws of the State of California, and do personally certify and attest that: I have thoroughly reviewed the attached claim for additional compensation and/or extension of time, and know its contents, and said claim is made in good faith; the supporting data is truthful and accurate; that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the City of Elk Grove is liable; and, further, that I am familiar with California Penal Code Section 72 and California Government Code Section 12650, et seq., pertaining to false claims, and further know and understand that submission or certification of a false claim may lead to fines, imprisonment and/or other severe legal consequences.
(Signature of officer) _____ *(Date)* ”

If the Contractor is unable to support any part of a claim and it is determined that such inability is attributable to falsity of such certification or misrepresentation of fact or fraud by the Contractor, the Contractor shall be liable to the City of Elk Grove for three (3) times the amount of damages which the City of Elk Grove sustains, plus the cost of civil action, and may be liable to the City of Elk Grove for a civil penalty of up to ten thousand dollars (\$10,000) for each false claim.

9-19 ENGINEER’S DECISION

The Engineer may be requested to consider a dispute or claim if the City of Elk Grove and Contractor representatives reach an impasse. A request for an Engineer’s Decision shall be made by the Contractor, in writing, within fourteen (14) days of the date of impasse. In requesting an Engineer’s Decision, each party shall provide a detailed description of their position and state the objections to the position of the other party. Evidence, records, and supporting information shall be included. Copies of all correspondence and information shall be provided to both parties.

The Engineer will review the facts of the dispute and may request additional information, evidence, or testimony. The Engineer will render a fair, impartial decision based on the Contract, and the evidence submitted by the City of Elk Grove and Contractor representatives.

The Engineer may decline to consider a dispute and refer the matter to a Dispute Review Board, if provided for in the Contract.

9-20 ALTERNATIVE DISPUTE RESOLUTION

After all remedies and provisions of the Contract are exhausted, any dispute related to the Work or Contract may be resolved by Mediation if the Contractor and the City of Elk Grove agree in writing. The Contractor shall submit a written request for Mediation no later than thirty (30) days after the City of Elk Grove issues the final written decision.

Said Mediation is voluntary, non-binding, and intended to provide an opportunity for the parties to evaluate each other's cases and arrive at a mutually agreeable solution. These provisions relating to voluntary Mediation shall not be construed or interpreted as mandatory arbitration.

9-20.01 Initiation of Mediation

Any party to a dispute or claim may initiate Mediation by notifying the other party or parties in writing.

9-20.02 Request for Mediation

A Request for Mediation shall contain a brief statement of the nature of the dispute or claim, and the names, addresses, and phone numbers of all parties to the dispute or claim, and those who will represent them, if any, in the Mediation.

9-20.03 Selection Of Mediator

Upon receipt of a Request for Mediation, within thirty (30) days, the parties will meet and confer to select an appropriate Mediator agreeable to all parties. If the parties cannot agree on a Mediator, they hereby agree to accept a Mediator appointed by a recognized association such as the American Arbitration Association.

9-20.04 Qualifications Of A Mediator

Any Mediator selected shall have expertise in the area of the dispute and be knowledgeable in the Mediation process. No person shall serve as a Mediator in any dispute in which that person has any financial or personal interest in the result of the Mediation. Before accepting an appointment, the prospective Mediator shall disclose any circumstances likely to create a presumption of bias or prevent a prompt meeting with the parties. Upon receipt of such information, the parties shall meet and confer and decide whether to select another Mediator.

9-20.05 Vacancies

If any Mediator shall become unwilling or unable to serve, another Mediator shall be selected unless the parties agree otherwise.

9-20.06 Representation

Any party may be represented by persons of their choice, who shall have full authority to negotiate. The names and addresses of such persons shall be communicated in writing to all parties and to the Mediator.

9-20.07 Time and Place Of Mediation

The Mediator shall set the time of each Mediation session. The Mediation shall be held at any convenient location agreeable to the Mediator and the parties, as the Mediator shall determine. All reasonable efforts will be made by the parties and the Mediator to schedule the first session within thirty (30) days after selection of the Mediator.

9-20.08 Identification Of Matters In Dispute

At least ten (10) days before the first scheduled Mediation session, each party shall provide the Mediator with a brief memorandum setting forth its position with regard to the issues that need to be resolved. Such memoranda shall be mutually exchanged by the parties. At the first session, the parties will be expected to produce all information reasonably required for the Mediator to understand the issue presented. The Mediator may require each party to supplement such information.

9-20.09 Authority Of Mediator

The Mediator does not have authority to impose a settlement upon the parties but will attempt to help the parties reach a satisfactory resolution of their dispute. The Mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the Mediator may also obtain expert advice concerning technical aspects of the dispute, provided the parties agree and assume the expenses of obtaining such advice. Arrangements for

obtaining such advice shall be made by the Mediator or the parties, as the Mediator shall determine. The Mediator is authorized to end the Mediation whenever, in the Mediator's judgment, further efforts at Mediation would not contribute to a resolution of the dispute between the parties.

9-20.10 Privacy

Mediation sessions are private. The parties and their representatives may attend Mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the Mediator.

9-20.11 Confidentiality

Confidential information disclosed to a Mediator by the parties or by witnesses in the course of the Mediation shall not be divulged by the Mediator. All records, reports, or other documents received by a Mediator while serving as Mediator shall be confidential. The Mediator shall not be compelled to divulge such records or to testify in regard to the Mediation in any adversary proceeding or judicial forum. The parties shall maintain the confidentiality of the Mediation and shall not rely on, or introduce as evidence in any arbitration, judicial or other proceedings or any of the following: (a) Views expressed or suggestions made by the other party with respect to a possible settlement of the dispute; (b) Statements made by the other party in the course of the Mediation proceedings; (c) Proposals made or views expressed by the Mediator; or (d) Whether the other party had or had not indicated willingness to accept a proposal for settlement made by the Mediator.

9-20.12 No Stenographic Record

There shall be no stenographic record of the Mediation.

9-20.13 Termination Of Mediation

The Mediation shall be terminated (a) by the execution of a settlement agreement by the parties; (b) by a written declaration of the Mediator to the effect that further efforts at Mediation are no longer worthwhile; or (c) by a written declaration of a party or parties to the effect that the Mediation proceedings are terminated.

9-20.14 Exclusion Of Liability

No Mediator shall be a necessary party in judicial proceedings related to the Mediation. No Mediator shall be liable to any party for any act or omission in connection with any Mediation conducted hereunder.

9-20.15 Interpretation and Application Of These Mediation Provisions

The Mediator shall interpret and apply these Mediation provisions insofar as they relate to the Mediator's duties and responsibility.

9-20.16 Expenses

The expenses of witnesses for either side shall be paid by the party producing the witnesses. All other expenses of the Mediation, including required traveling and other expenses of the Mediator, the expenses of any witness called by the Mediator, and the cost of any proofs or expert advice produced at the request of the Mediator, shall be split equally between the parties.

9-21 NO ALTERNATIVE CLAIMS PROCEDURE

Nothing in the Contract constitutes an agreement for an alternative claim procedure under the provisions of Government Code Section 930.2, nor relieves the Contractor of the requirements of Government Code, Part 3, Chapters 1 and 2 and Title 1, Division 3.6, Chapters 1, 2, 3, and 4.

9-22 ASSIGNMENT OF CLAIMS

The Contractor shall not assign any portion of the moneys due the Contractor without written City of Elk Grove approval. No person other than the party signing the Contract has any claim under the Contract, except as provided in the Contract.