



**AGENDA  
REGULAR MEETING  
CITY COUNCIL OF THE TOWN OF COLMA  
Wednesday, July 28, 2021  
Closed Session - 6:00 PM  
Regular Session - 7:00 PM**

*On March 17, 2020, the Governor issued Executive Order N-29-20 suspending certain provisions of the Ralph M. Brown Act in order to allow for local legislative bodies to conduct their meetings completely telephonically or by other electronic means. This suspension was extended by the Governor on June 11, 2021 by issuance of Executive Order N-08-21 which continues to allow for complete virtual City Council meetings. The purpose of these orders was to provide the safest environment for Council Members, staff and the public while allowing for public participation.*

*Members of the public may view the meeting by attending, via telephone or computer, the Zoom Meeting listed below:*

**Join Zoom Meeting:** <https://us02web.zoom.us/j/8128997626>  
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*Members of the public may provide written comments by email to the City Clerk at [ccorley@colma.ca.gov](mailto:ccorley@colma.ca.gov) before or during the meeting. Emailed comments should include the specific agenda item on which you are commenting or note that your comment concerns an item that is not on the agenda. The length of the emailed comment should be commensurate with the three minutes customarily allowed for verbal comments, which is approximately 250-300 words.*

## **CLOSED SESSION – 6:00PM**

1. In Closed Session Pursuant to Government Code Section 54957.6 – Conference with Labor Negotiators.

Agency Negotiator:	Austris Rungis, IEDA
Employee Organizations:	Colma Peace Officers Association and Colma Communications/Records Association
Unrepresented Employees:	All

## **PLEDGE OF ALLEGIANCE AND ROLL CALL – 7:00PM**

### **REPORT FROM CLOSED SESSION**

### **ADOPTION OF AGENDA**

### **PRESENTATION**

- Introduction of Associate Planner Laurel Mathews
- Introduction of Recreation Manager Angelika Abellana

### **PUBLIC COMMENTS**

Comments on the Consent Calendar and Non-Agenda Items will be heard at this time. Comments on Agenda Items will be heard when the item is called.

### **CONSENT CALENDAR**

2. Motion to Accept the Minutes from the July 14, 2021 Regular Meeting.
3. Motion Designating a Voting Delegate for the Annual League of California Cities Conference in September 2021.
4. Motion to Adopt a Resolution Approving and Authorizing the City Manager to Execute a Memorandum of Understanding Between San Mateo County and the Town of Colma and Authorizing San Mateo County to Provide Education and Enforcement Efforts for the Sustainable Food Ware Ordinance Within the Town of Colma.
5. Motion to Adopt a Resolution Approving the Second Revised and Restated Joint Exercise of Powers Agreement for the San Mateo County Operational Area Emergency Services Organization.
6. Motion to Adopt a Resolution Approving and Authorizing the City Manager to Execute the Agreement with the Archdiocese of San Francisco for the Donation of Land Fronting the Holy Cross Cemetery Property on Mission Road.

### **NEW BUSINESS**

#### **7. F STREET RETAINING WALL IMPROVEMENT PROJECT – BID PACKAGE APPROVAL**

*Consider:* Motion to Adopt a Resolution Approving Bid Document Package and Authorizing Staff to Advertise Notice Inviting Bids for the F Street Retaining Wall Improvement Project and Authorize the City Manager to Approve Changes to the Plan Documents as Needed or Required.

### **STUDY SESSION**

#### **8. SENATE BILL 1383 OVERVIEW PRESENTATION**

*This item is for discussion only; no action will be taken at this meeting.*

## REPORTS

Mayor/City Council

City Manager

## ADJOURNMENT

The City Council Meeting Agenda Packet and supporting documents are available for review on the Town's website [www.colma.ca.gov](http://www.colma.ca.gov) or at Colma Town Hall, 1198 El Camino Real, Colma, CA. Persons interested in obtaining an agenda via e-mail should call Caitlin Corley, City Clerk at 650-997-8300 or email a request to [ccorley@colma.ca.gov](mailto:ccorley@colma.ca.gov).

### Reasonable Accommodation

Upon request, this publication will be made available in appropriate alternative formats to persons with disabilities, as required by the Americans with Disabilities Act of 1990. Any person with a disability, who requires a modification or accommodation to view the agenda, should direct such a request to Pak Lin, ADA Coordinator, at 650-997-8300 or [pak.lin@colma.ca.gov](mailto:pak.lin@colma.ca.gov). Please allow two business days for your request to be processed.



1. In Closed Session Pursuant to Government Code Section 54957.6 – Conference with Labor Negotiators.

Agency Negotiator:	Austris Rungis, IEDA
Employee Organizations:	Colma Peace Officers Association and Colma Communications/Records Association
Unrepresented Employees:	All

*This is a Closed Session item; there is no staff report for this item.*



## MINUTES REGULAR MEETING

City Council of the Town of Colma  
Meeting Held Remotely via Zoom.us

**Wednesday, July 14, 2021**

**7:00 PM**

### PLEDGE OF ALLEGIANCE AND ROLL CALL

Mayor Diana Colvin called the meeting to order at 7:02 p.m.

Council Present – Mayor Diana Colvin, Vice Mayor Helen Fisicaro, Council Members Joanne F. del Rosario and John Irish Goodwin were present. Council Member Raquel Gonzalez was absent.

Staff Present – City Manager Brian Dossey, City Attorney Christopher Diaz, Chief of Police John Munsey, Director of Public Works Brad Donohue, City Engineer Cyrus Kianpour, City Planner Michael Laughlin, Senior Engineer Nichol Bowersox and City Clerk Caitlin Corley were in attendance.

The Mayor announced, “Welcome to another of our completely remote Council Meeting. A few notes about tonight’s meeting: We are accepting public comments through email or the chat function—you can email our City Clerk at ccorley@colma.ca.gov or use the chat function to let her know which item you would like to speak on. Please keep your comments to 3 minutes or less. Thank you.”

### ADOPTION OF THE AGENDA

Mayor Colvin asked if there were any changes to the agenda; none were requested. She asked for a motion to adopt the agenda.

**Action:** Council Member del Rosario moved to adopt the agenda; the motion was seconded by Council Member Goodwin and carried by the following vote:

Name	Voting		Present, Not Voting		Absent
	Aye	No	Abstain	Not Participating	
Diana Colvin, Mayor	✓				
Helen Fisicaro	✓				
Raquel Gonzalez					✓
Joanne F. del Rosario	✓				
John Irish Goodwin	✓				
	4	0			

### PUBLIC COMMENTS

Mayor Colvin opened the public comment period at 7:05 p.m. Resident Liz Taylor made a comment regarding two traffic accidents at Hillside and Lawndale Boulevards. The Mayor closed the public comment period at 7:13 p.m.

## CONSENT CALENDAR

1. Motion to Accept the Minutes from the June 23, 2021 Special Meeting.
2. Motion to Accept the Minutes from the June 23, 2021 Regular Meeting.
3. Motion to Approve Report of Checks Paid for June 2021.
4. Motion to Adopt an Ordinance Repealing Colma Municipal Code Subchapter 4.13 and Adopting a New Subchapter 4.13 Regulating the Use of Disposable Food Service Ware by Food Facilities Pursuant to CEQA Guideline 15061(b)(3) and 15308 (second reading).
5. Motion to Accept Informational Report on Recreation Department Programs, Activities, Events, and Trips for the Second Quarter of 2021.
6. Motion to Adopt a Resolution Accepting the Mission Road Bicycle and Pedestrian Improvement Project as Complete, Directing the Director of Public Works to File a Notice of Completion for the Project with the San Mateo County Recorder's Office, and Authorizing a Budget Amendment.

**Action:** Council Member del Rosario moved to approve the consent calendar items #1 through 6; the motion was seconded by Vice Mayor Fisicaro and carried by the following vote:

Name	Voting		Present, Not Voting		Absent
	Aye	No	Abstain	Not Participating	
Diana Colvin, Mayor	✓				
Helen Fisicaro	✓				
Raquel Gonzalez					✓
Joanne F. del Rosario	✓				
John Irish Goodwin	✓			Item #6 Only	
	4	0			

## NEW BUSINESS

### 7. SEWER ENTERPRISE REQUEST FOR PROPOSAL

Director of Public Works Brad Donohue and City Engineer Cyrus Kianpour presented the staff report. Mayor Colvin opened the public comment period at 7:19 p.m. and seeing no one request to speak, she closed the public comment period. Council discussion followed.

**Action:** Council Member Goodwin moved to Authorize Staff to Release a Request for Proposal for Professional Consulting Services to Prepare a Sewer Service Rate Study; the motion was seconded by Council Member Gonzalez and carried by the following vote:



Name	Voting		Present, Not Voting		Absent
	Aye	No	Abstain	Not Participating	
Diana Colvin, Mayor	✓				
Helen Fisicaro	✓				
Raquel Gonzalez					✓
Joanne F. del Rosario	✓				
John Irish Goodwin	✓				
	4	0			

## 8. ENGINEER REPORT OF SANITARY SEWER CHARGES FOR FY 2021-22

Director of Public Works Brad Donohue presented the staff report. Mayor Colvin opened the public hearing at 7:31 p.m. and seeing no one request to speak, she closed the public comment hearing. Council discussion followed.

**Action:** Vice Mayor Fisicaro moved to Adopt a Resolution Overruling Protests to and Adopting Engineer's Report on Sewer Service Charges for Fiscal Year 2021-22, Directing the City Engineer to File a Copy of the Engineer's Report with the San Mateo County Tax Collector, and Authorizing the County Tax Collector to Place the Charges on the Property Tax Roll and Direct the City Attorney to remove alternate provisions in sections 2a, 3a and 3b; the motion was seconded by Council Member del Rosario and carried by the following vote:

Name	Voting		Present, Not Voting		Absent
	Aye	No	Abstain	Not Participating	
Diana Colvin, Mayor	✓				
Helen Fisicaro	✓				
Raquel Gonzalez					✓
Joanne F. del Rosario	✓				
John Irish Goodwin	✓				
	4	0			

## STUDY SESSION

### 9. F STREET RETAINING WALL REPAIR PROJECT

Director of Public Works Brad Donohue, Senior Engineer/Project Manager Nichol Bowersox and CSG Consultant Tom Walker presented the staff report. Mayor Colvin opened the public hearing at 7:52 p.m. Business owner Yvette Cortes made a comment. The Mayor closed the public comment hearing. Council discussion followed.

*This item was for discussion only; no action was taken at this meeting.*

## COUNCIL CALENDARING

The next Regular Meeting will be on Wednesday, July 28, 2021 at 7:00 p.m. and it will be held remotely.

## REPORTS

City Manager Brian Dossey gave an update on the following topics:

- The Town had a plaque made honoring Madeleine Hur, Daly City Youth Poet Laureate and first ever youth poet laureate in San Mateo County. The plaque features one of Madeleine's poems.
- There will be a Closed Session on Wednesday, July 28, 2021 at 6pm.
- National Night Out will return in person on Tuesday, August 3 from 5:00 – 7:00 p.m. at the Colma Community Center.
- Summer Concerts will return on August 19 and August 26 at the Colma Community Center.
- The Regular Council Meeting on August 11, 2021 will be cancelled.

## ADJOURNMENT AND CLOSE IN MEMORY

Mayor Colvin announced, "Before we close the meeting, I do want to mention that we had two special birthdays this month! Council Member Gonzalez had a birthday on July 8 and Council Member del Rosario had a birthday on July 10. Please join me in wishing both of them a very happy birthday!"

Mayor Colvin adjourned the meeting at 8:33 p.m. in memory of: David Pieruccini, brother of Janet Fisicaro; James Nelson, resident of Veterans Village who had been there since the beginning and who spoke often about how happy he was to be a part of that community; and Rea Gogan, longtime Executive Assistant to the Chief of Police. In addition to keeping things at PD running day to day, Rea also coordinated the long running and highly respected county wide training program, Inner Perspectives for many years. She was a joy to work with, always professional, kind, and humble. Rea was the glue that holds the Colma Police Department together, and she will be greatly missed. The Mayor also read a tribute to Rea submitted by former Colma Chief of Police Bob Lotti.

Respectfully submitted,

Caitlin Corley  
City Clerk



# STAFF REPORT

TO: Mayor and Members of the City Council  
 FROM: Caitlin Corley, City Clerk  
 VIA: Brian Dossey, City Manager  
 MEETING DATE: July 28, 2021  
 SUBJECT: League of California Cities Conference Voting Delegate

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## RECOMMENDATION

Staff recommends that the City Council make:

MOTION DESIGNATING A VOTING DELEGATE FOR THE ANNUAL LEAGUE OF CALIFORNIA CITIES CONFERENCE IN SEPTEMBER 2021.

## EXECUTIVE SUMMARY

This year's League of California Cities Annual Conference will be held September 22 – September 24, 2021 in Sacramento. The final day of the conference includes the annual business meeting, where League membership considers and takes action on resolutions that establish League policy. The Council should designate a voting delegate to take part in the business meeting.

## FISCAL IMPACT

There is no direct fiscal impact associated with this action. Attendance at various conferences is budgeted in the 2021-22 budget.

## BACKGROUND

The Town of Colma is a longstanding member of the League of California Cities. In order to participate in voting at the Annual Business Meeting on Friday, September 24, 2021, the Town must officially designate a voting delegate. This delegate can be a member of City Council or a Town official, such as the City Manager. Designating a voting delegate will ensure Colma's interests are represented on key policy-related issues that may be considered at the Annual Business Meeting.

City Manager Brian Dossey will be attending the conference this year. If no Council Members attend the conference, Council may choose to designate the City Manager as the Voting Delegate so that the Town is represented and able to participate in the Annual Business Meeting.

Once Council has designated a delegate by motion, the City Clerk will complete and send in the Voting Delegate Form (Attachment A).

### **Council Adopted Values**

Participating in the Annual Business meeting furthers the Council's adopted values of *Responsibility* and *Vision* because providing input on important local, regional and state policy issues protects the Town's long-term financial stability and other interests.

### **Alternatives**

The Council could opt to not designate a voting delegate for the business meeting, however doing so would preclude the Town from having a voice in setting the League's policy initiatives for the upcoming year.

### **CONCLUSION**

Staff recommends Council designate a voting delegate for the League conference.

### **ATTACHMENTS**

- A. Voting Delegate Form


**Council Action Advised by August 31, 2021**

June 16, 2021

**TO: City Managers and City Clerks**

**RE: DESIGNATION OF VOTING DELEGATES AND ALTERNATES  
League of California Cities Annual Conference & Expo – September 22-24, 2021**

Cal Cities 2021 Annual Conference & Expo is scheduled for September 22-24, 2021 in Sacramento. An important part of the Annual Conference is the Annual Business Meeting (during General Assembly) on Friday, September 24. At this meeting, Cal Cities membership considers and acts on resolutions that establish Cal Cities policy.

In order to vote at the Annual Business Meeting, your city council must designate a voting delegate. Your city may also appoint up to two alternate voting delegates, one of whom may vote if the designated voting delegate is unable to serve in that capacity.

**Please complete the attached Voting Delegate form and return it to Cal Cities office no later than Wednesday, September 15. This will allow us time to establish voting delegate/alternate records prior to the conference.**

**Please note:** Our number one priority will continue to be the health and safety of participants. We are working closely with the Sacramento Convention Center to ensure that important protocols and cleaning procedures continue, and if necessary, are strengthened. Attendees can anticipate updates as the conference approaches.

- **Action by Council Required.** Consistent with Cal Cities bylaws, a city's voting delegate and up to two alternates must be designated by the city council. When completing the attached Voting Delegate form, please attach either a copy of the council resolution that reflects the council action taken, or have your city clerk or mayor sign the form affirming that the names provided are those selected by the city council. Please note that designating the voting delegate and alternates **must** be done by city council action and cannot be accomplished by individual action of the mayor or city manager alone.
- **Conference Registration Required.** The voting delegate and alternates must be registered to attend the conference. They need not register for the entire conference; they may register for Friday only. Conference registration will open mid-June at [www.cacities.org](http://www.cacities.org). In order to cast a vote, at least one voter must be present at the Business Meeting and in possession of the voting delegate card. Voting delegates and alternates need to pick up their conference badges before signing in and picking up the voting delegate card at the Voting Delegate Desk. This will enable them to receive the special sticker on their name badges that will admit them into the voting area during the Business Meeting.
- **Transferring Voting Card to Non-Designated Individuals Not Allowed.** The voting delegate card may be transferred freely between the voting delegate and alternates, but

*only* between the voting delegate and alternates. If the voting delegate and alternates find themselves unable to attend the Business Meeting, they may *not* transfer the voting card to another city official.

- **Seating Protocol during General Assembly.** At the Business Meeting, individuals with the voting card will sit in a separate area. Admission to this area will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate. If the voting delegate and alternates wish to sit together, they must sign in at the Voting Delegate Desk and obtain the special sticker on their badges.

The Voting Delegate Desk, located in the conference registration area of the Sacramento Convention Center, will be open at the following times: Wednesday, September 22, 8:00 a.m. – 6:00 p.m.; Thursday, September 23, 7:00 a.m. – 4:00 p.m.; and Friday, September 24, 7:30 a.m.– 11:30 a.m. The Voting Delegate Desk will also be open at the Business Meeting on Friday, but will be closed during roll calls and voting.

The voting procedures that will be used at the conference are attached to this memo. Please share these procedures and this memo with your council and especially with the individuals that your council designates as your city's voting delegate and alternates.

Once again, thank you for completing the voting delegate and alternate form and returning it to the League's office by Wednesday, September 15. If you have questions, please call Darla Yacub at (916) 658-8254.

Attachments:

- Annual Conference Voting Procedures
- Voting Delegate/Alternate Form



## Annual Conference Voting Procedures

1. **One City One Vote.** Each member city has a right to cast one vote on matters pertaining to Cal Cities policy.
2. **Designating a City Voting Representative.** Prior to the Annual Conference, each city council may designate a voting delegate and up to two alternates; these individuals are identified on the Voting Delegate Form provided to the Cal Cities Credentials Committee.
3. **Registering with the Credentials Committee.** The voting delegate, or alternates, may pick up the city's voting card at the Voting Delegate Desk in the conference registration area. Voting delegates and alternates must sign in at the Voting Delegate Desk. Here they will receive a special sticker on their name badge and thus be admitted to the voting area at the Business Meeting.
4. **Signing Initiated Resolution Petitions.** Only those individuals who are voting delegates (or alternates), and who have picked up their city's voting card by providing a signature to the Credentials Committee at the Voting Delegate Desk, may sign petitions to initiate a resolution.
5. **Voting.** To cast the city's vote, a city official must have in their possession the city's voting card and be registered with the Credentials Committee. The voting card may be transferred freely between the voting delegate and alternates, but may not be transferred to another city official who is neither a voting delegate or alternate.
6. **Voting Area at Business Meeting.** At the Business Meeting, individuals with a voting card will sit in a designated area. Admission will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate.
7. **Resolving Disputes.** In case of dispute, the Credentials Committee will determine the validity of signatures on petitioned resolutions and the right of a city official to vote at the Business Meeting.



**CITY:** \_\_\_\_\_

**2021 ANNUAL CONFERENCE  
VOTING DELEGATE/ALTERNATE FORM**

**Please complete this form and return it to Cal Cities office by Wednesday, September 15, 2021. Forms not sent by this deadline may be submitted to the Voting Delegate Desk located in the Annual Conference Registration Area. Your city council may designate one voting delegate and up to two alternates.**

To vote at the Annual Business Meeting (General Assembly), voting delegates and alternates must be designated by your city council. Please attach the council resolution as proof of designation. As an alternative, the Mayor or City Clerk may sign this form, affirming that the designation reflects the action taken by the council.

**Please note:** Voting delegates and alternates will be seated in a separate area at the Annual Business Meeting. Admission to this designated area will be limited to individuals (voting delegates and alternates) who are identified with a special sticker on their conference badge. This sticker can be obtained only at the Voting Delegate Desk.

**1. VOTING DELEGATE**

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

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

**2. VOTING DELEGATE - ALTERNATE**

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

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

**3. VOTING DELEGATE - ALTERNATE**

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

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

**PLEASE ATTACH COUNCIL RESOLUTION DESIGNATING VOTING DELEGATE AND ALTERNATES OR**

**ATTEST: I affirm that the information provided reflects action by the city council to designate the voting delegate and alternate(s).**

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

Email: \_\_\_\_\_

Mayor or City Clerk \_\_\_\_\_  
(circle one) (signature)

Date: \_\_\_\_\_ Phone: \_\_\_\_\_

**Please complete and return by Wednesday, September 15, 2021 to:**

Darla Yacub, Assistant to the Administrative Services Director

E-mail: [dyacub@cacities.org](mailto:dyacub@cacities.org)

Phone: (916) 658-8254





# STAFF REPORT

TO: Mayor and Members of the City Council

FROM: Kathleen Gallagher, Sustainable Programs Manager, CSG Consultants  
Jonathan Kwan, Associate Planner, CSG Consultants

VIA: Brian Dossey, City Manager

MEETING DATE: July 28, 2021

SUBJECT: Sustainable Food Ware Ordinance MOU

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## RECOMMENDATION

Staff recommends that the City Council adopt the following resolution:

RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A MEMORANDUM OF UNDERSTANDING BETWEEN SAN MATEO COUNTY AND THE TOWN OF COLMA AND AUTHORIZING SAN MATEO COUNTY TO PROVIDE EDUCATION AND ENFORCEMENT EFFORTS FOR THE SUSTAINABLE FOOD WARE ORDINANCE WITHIN THE TOWN OF COLMA

## EXECUTIVE SUMMARY

The City Council's adoption of the proposed resolution would approve a Memorandum of Understanding (MOU) to authorize San Mateo County (County) to provide education and enforcement efforts for the Sustainable Food Ware Ordinance within the Town of Colma. The MOU would be effective for one (1) year and automatically renews each year.

## FISCAL IMPACT

The adoption of the resolution to approve the MOU would have a positive fiscal impact because the County would provide education and enforcement efforts for the Sustainable Food Ware Ordinance. Should the City Council not adopt this resolution, costs would increase because Staff would have to provide the education and enforcement efforts required by the Sustainable Food Ware Ordinance.

## ANALYSIS

The Town's Sustainable Food Ware Ordinance includes an education and enforcement component. To promote consistency within jurisdictions throughout San Mateo County and leverage economies of scale, the County has offered to lead the education and enforcement efforts for the Sustainable Food Ware Ordinance in the incorporated cities of San Mateo County.

The approval of the MOU would authorize the County to provide these efforts to the businesses within the Town of Colma.

The MOU is effective for one (1) year and is automatically renewed each year. In addition, the MOU can be terminated without cause upon 30 days written notice from either party.

The MOU was approved by the County Office of Sustainability on July 13, 2021.

### **Council Adopted Values**

The proposed resolution to approve the MOU between San Mateo County and the Town of Colma is consistent with the Council values of **vision** and **responsibility**, because it allows the County to conduct education and enforcement of the Sustainable Food Ware Ordinance which reduces the amount of disposable food service ware in existing landfills and the bay, and improves public health and the environment through the reduction of plastic pollution.

### **Alternatives**

The City Council could choose not to adopt the resolution. This is not recommended since the County is conducting education and enforcement for jurisdictions in San Mateo County. Instead, the Town would need to conduct the education and enforcement of the Sustainable Food Ware Ordinance.

### **CONCLUSION**

Staff recommends the City Council adopt the resolution approving a memorandum of understanding between San Mateo County and the Town of Colma.

### **ATTACHMENTS**

- A. Resolution
- B. Memorandum of Understanding

**RESOLUTION 2021-\_\_**  
**OF THE CITY COUNCIL OF THE TOWN OF COLMA**

**RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A  
MEMORANDUM OF UNDERSTANDING BETWEEN SAN MATEO COUNTY AND THE  
TOWN OF COLMA AND AUTHORIZING SAN MATEO COUNTY TO PROVIDE  
EDUCATION AND ENFORCEMENT EFFORTS FOR THE SUSTAINABLE FOOD WARE  
ORDINANCE WITHIN THE TOWN OF COLMA**

The City Council of the Town of Colma does hereby resolve:

**1. Background and Findings.**

(a) San Mateo County repealed and replaced the existing County ordinance banning polystyrene disposable food service ware by food vendors with the Disposable Food Service Ware Ordinance on February 25, 2020.

(b) Similarly, the City Council of the Town of Colma adopted Ordinance No. 807 (Sustainable Food Ware Ordinance) on July 28, 2021 to implement similar provisions in the Town with the Ordinance requiring education and enforcement efforts for implementation.

(c) To promote consistency within jurisdictions throughout San Mateo County and leverage economies of scale, the County has offered to lead the education and enforcement efforts for the Sustainable Food Ware Ordinance in the incorporated cities of San Mateo County.

(d) There is a benefit to the Town in reducing single-use plastic and other food ware waste and lowering the cost of the implementation of education and enforcement efforts for the Sustainable Food Ware Ordinance.

(e) The Town would now like to enter into a Memorandum of Understanding (MOU) to allow the Town of Colma to being a cooperative relationship with San Mateo County to implement the Sustainable Food Ware Ordinance with the County providing education and enforcement efforts per the terms of the MOU.

(f) The MOU has been presented to this Council for consideration and staff is recommending that the City Council authorize approval of the MOU.

**2. Order.**

(a) The MOU, a copy of which is on file with the City Clerk, is hereby approved.

(b) The City Manager is hereby authorized to execute the MOU, with any minor non-technical changes deemed necessary by the City Attorney.

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### Certification of Adoption

I certify that the foregoing Resolution No. 2021-\_\_ was duly adopted at a regular meeting of said City Council held on July 28, 2021 by the following vote:

Name	Voting		Present, Not Voting		Absent
	Aye	No	Abstain	Not Participating	
Diana Colvin, Mayor					
Helen Fisicaro					
Raquel Gonzalez					
Joanne F. del Rosario					
John Irish Goodwin					
<i>Voting Tally</i>					

Dated \_\_\_\_\_

\_\_\_\_\_  
Diana Colvin, Mayor

Attest: \_\_\_\_\_  
Caitlin Corley, City Clerk

**MEMORANDUM OF UNDERSTANDING BETWEEN  
TOWN OF COLMA AND COUNTY OF SAN MATEO FOR  
DISPOSABLE FOOD SERVICE WARE ORDINANCE  
EDUCATION AND ENFORCEMENT ACTIVITIES**

THIS MEMORANDUM OF UNDERSTANDING (MOU), entered into this 13<sup>th</sup> day of August 2021, by and between the County of San Mateo, hereinafter called "the County" and the "Town of Colma" hereinafter called "the Town";

**W I T N E S S E T H:**

WHEREAS, the County's Board of Supervisors repealed and replaced the existing County ordinance banning polystyrene disposable food service ware by food vendors (Municipal Code Chapter 4.107) with the Disposable Food Service Ware Ordinance (Ordinance) on February 25, 2020; and

WHEREAS, to promote consistency within jurisdictions throughout San Mateo County and leverage economies of scale, the County has offered to lead the education and enforcement efforts for the Ordinance in the incorporated cities of San Mateo County; and

WHEREAS, the Town's City Council adopted the Ordinance (Ordinance No. 807) on July 28, 2021 and authorizes the County to provide education and enforcement services within the Town's jurisdiction.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

**1. Duties of the Town**

The County will lead education and enforcement efforts for the Ordinance if the Town satisfies the following criteria:

- a) Keeps as part of its municipal code either a reference incorporating the Ordinance in its entirety or an ordinance that contains each of the provisions of the Ordinance.
- b) Authorizes the County to enforce the municipal code provisions adopted pursuant to subsection a) above, including authorization to hold hearings, issue citations, and assess administrative fines on behalf of the Town.
- c) Remains a party to this MOU.

**2. Services to be Performed by the County**

- A. The County shall provide education and enforcement services within the Town's jurisdiction if the Town's governing body adopts the County's Ordinance.

- B. The County shall provide education and enforcement services for the Town as described in Exhibit A, attached hereto and incorporated by reference herein.
- C. The County shall hire a consultant to provide education services within jurisdictions in San Mateo County that adopt the Ordinance. If appropriate, interested cities will also have the option of entering into contractual agreement with the same consultant for education services specifically relating to provisions that *go beyond* and that fall outside the Ordinance. Please see Section 2.E. for additional information.
- D. The County shall only provide education and enforcement services for the Ordinance within the Town's jurisdiction if it has determined that it has adequate resources to do so.
- E. The County shall only offer to provide education and enforcement for services relating directly to the provisions of the Ordinance. If the Town adds new provisions that *go beyond* the existing provisions of the Ordinance, the County may, at its discretion, offer to provide education and enforcement services, pending further assessment by the County. The assessment will involve evaluating the alignment of the objectives of the Town's "add-on" provisions with those of the Ordinance and the level of effort and resources required for education and enforcement services.

As an alternative, if the County elects not to offer education and enforcement services for the "add-on" provisions, the Town can administer, implement, and fund its own education and enforcement services specifically for the "add-on" provisions. Specific to education services, if Town policy allows and the Town chooses to do so, the Town can enter into a separate contractual agreement with the same consultant that will be providing education services for the Ordinance, as referenced in Section 2.C. above.

- F. The County will not be obligated to provide education and enforcement services if modifications are made to the Ordinance by the Town, which specifically omit existing provisions and/or reduce the impact of the Ordinance in any way.

### **3. Consideration**

The benefit of this MOU to the Town is the opportunity to join a growing number of local governments that are leading the effort around reducing single-use plastic and other food ware waste. An additional benefit includes the implementation of education and enforcement efforts for the Ordinance within the Town's jurisdiction with minimal spending of resources by the Town.

The benefit of this MOU to the County is the implementation of a uniform, standardized, and coordinated effort throughout the incorporated and unincorporated areas of San Mateo County.

### **4. Relationship of Parties**

It is expressly understood that this is an agreement between two independent entities, the County and the Town, and that no individual agency, employee, partnership, joint venture, or other relationship is established by this MOU. The intent by both the County and the Town is to create an independent collaborative relationship.

## **5. Hold Harmless**

The County shall indemnify, defend, and hold harmless the Town and its officers, agents, employees, and servants against all damages, claims, liabilities, losses, and other expenses, including without limitation attorneys' fees and related costs, whether or not a lawsuit or other proceeding is filed, to the extent that they arise out of (1) the negligence or willful misconduct of County staff in performing the enforcement services described in this MOU; or (2) any allegation that the promotional or educational materials produced or used by County staff pursuant to this MOU infringe any third-party right of any kind, including without limitation any intellectual property right.

The Town shall indemnify, defend, and hold harmless the County and its officers, agents, employees, and servants against all damages, claims, liabilities, losses, and other expenses, including without limitation attorneys' fees and related costs, whether or not a lawsuit or other proceeding is filed, to the extent they arise out of (1) the act of adopting Ordinance No. 807 establishing food service ware regulations; or (2) any acts or omissions by Town staff in implementing Ordinance No. 807 that arise out of Town staff's negligence or willful misconduct; or (3) any allegation that the promotional or educational materials produced by Town staff pursuant to this MOU infringe any third-party right of any kind, including without limitation any intellectual property right.

A party seeking indemnity and defense under this section shall provide the indemnifying and defending party with prompt notice of any claim and give control of its defense and settlement to the indemnifying and defending party. The party seeking indemnity and defense shall also cooperate in all reasonable respects with the indemnifying and defending party, its insurance company, and its legal counsel in its defense of such claim. The obligation to defend and indemnify pursuant to this section shall not cover any claim in which there is a failure to give the indemnifying and defending party prompt notice, but only to the extent that such lack of notice prejudices the defense of the claim. The indemnifying and defending party may not settle any potential suit hereunder without the other party's prior written approval, which will not to be unreasonably withheld, conditioned, or delayed. If a party who owes indemnity and defense under this section fails to promptly indemnify and defend a covered claim, the other party shall have the right to defend itself, and in such case, the party owning indemnity and defense shall promptly reimburse the other party for all of its associated costs and expenses.

The obligations imposed by this section shall survive termination or expiration of the MOU.

## **6. Amendment of MOU and Merger Clause**

This MOU, including the Exhibit attached hereto and incorporated herein by reference, constitutes the sole MOU of the parties hereto and correctly states the rights, duties, and

obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in this body of the MOU conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any exhibit and/or attachment to this MOU, the provisions of this body of the MOU shall prevail. Any prior MOU, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and will become effective when signed by both parties.

## **7. Records**

The County shall maintain and preserve all records relating to this MOU in its possession and those of any third-party performing work related to this MOU for a period of five (5) years from the termination of this MOU.

## **8. Assignability**

The County shall have the right to assign this MOU or any portion thereof to a third party or subcontract with a third party to perform any act required under this MOU without the prior written consent of the Town.

## **9. Notices**

Any written notice, request, demand, or other communication required or permitted hereunder shall be deemed to be properly given when deposited with the United States Postal Service, postage prepaid, or when transmitted by email communication, addressed:

In the case of the County, to:

Carolyn Bloede, Director  
County of San Mateo Office of Sustainability  
455 County Center, 4th Floor  
Redwood City, CA 94065  
Email: [cbloede@smcgov.org](mailto:cbloede@smcgov.org)

In the case of the Town, to:

Brian Dossey, City Manager  
Town of Colma  
1198 El Camino Real, Colma, CA 94014  
Email: [bdossey@colma.ca.gov](mailto:bdossey@colma.ca.gov)

## **10. Controlling Law and Venue**

The validity of this MOU, the interpretation of its terms and conditions, and the performance of the parties hereto shall be governed by the laws of the State of California. Any action brought to enforce this action must be brought in the Superior Court of California in and for the County of San Mateo.

## **11. Term and Termination**



- A. The term of this MOU shall commence on August 13, 2021 and shall automatically be renewed from year to year on the same terms and conditions without any further action of the Parties.
- B. This MOU may be terminated without cause by the Town or the County at any time upon thirty (30) days written notice to the other Party.

**12. Authority**

The parties warrant that the signatories to the MOU have the authority to bind their respective entities.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

**COUNTY OF SAN MATEO**

By: \_\_\_\_\_  
Carolyn Bloede  
Director, Office of Sustainability

Date: \_\_\_\_\_

**TOWN OF COLMA**

By: \_\_\_\_\_  
Brian Dossey  
City Manager, Town of Colma

Date: \_\_\_\_\_

## EXHIBIT A - SCOPE OF ACTIVITIES

The below education and enforcement activities relating to the County of San Mateo's (the County) Disposable Food Service Ware Ordinance (Ordinance) will be conducted by the County and the Town of Colma (the Town) within the Town's jurisdiction.

### **I. Education and Outreach**

1. The County will conduct education and outreach to food facilities that operate in the Town's jurisdiction that may be impacted by the Ordinance. Per the Ordinance, the County will focus efforts only on entities that are defined as a "food facility" under the California Retail Food Code.<sup>1</sup> These entities are required to have a health permit with the County's Environmental Health Services (EHS) to serve food and beverages to the public. The County's Office of Sustainability (OOS) will collaborate with EHS to identify food facilities in the Town's jurisdiction that will be impacted.
2. The County will conduct education and outreach to the general public in the Town's jurisdiction.
3. The County will develop a *standardized* and *uniform* education and outreach strategy that will be rolled out in the Town's jurisdiction as well as in unincorporated areas of the county and other cities in the county that adopt the Ordinance. The County may utilize a combination of standardized strategies for education and outreach activities, which may include, but is not limited to development and distribution of educational materials (e.g., flyers, posters, resource guide that will have information on compliant disposable food ware products, signs, banners, etc.), mailers, phone calls, emails, social media posts, videos, newspaper ads, door-to-door visits, pilot and implementation of behavior change campaigns, etc.
4. As needed, the Town will supplement the County's efforts for the Ordinance with any additional education and outreach activities that are tailored to the Town's needs and managed by Town staff (e.g., Town's social media accounts, Town website, Town newsletter, internal Town sustainability activities, etc.).

### **II. Enforcement**

1. The County will conduct enforcement of the Ordinance within the Town's jurisdiction utilizing a complaint-based system. The County will respond to complaints or referrals from the public and/or from Town staff and work with food facility operators to investigate and resolve reported issue(s).
2. The County will follow enforcement provisions detailed in the County's Municipal Code [Chapter 1.40 – Administrative Remedies](#) to correct violations of the Ordinance committed in the Town's jurisdiction.

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<sup>1</sup> Although public schools are defined as a food facility under the California Retail Food Code, they are exempt from complying with the Ordinance based on the fact that the State has the sole authority to dictate their operations.

3. The County will lead the effort in reviewing requests for exemptions submitted by food facilities and approve them, as needed, in whole or in part, with or without conditions.
4. The County will keep detailed records of enforcement in the Town's jurisdiction for a minimum of five (5) years.
5. The County will notify the Town promptly about any related issues that arise that require Town assistance or leadership in resolving the issue(s) related to noncompliance.
6. The Town will work with the County on any related issues that arise that require Town assistance or leadership in resolving the issue(s) related to noncompliance.





# STAFF REPORT

TO: Mayor and Members of the City Council  
 FROM: Brian Dossey, City Manager  
 MEETING DATE: July 28, 2021  
 SUBJECT: Second Revised and Restated Joint Exercise of Powers Agreement for the San Mateo County Operational Area Emergency Services Organization

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## RECOMMENDATION

Staff recommends that the City Council adopt the following resolution:

RESOLUTION APPROVING THE SECOND REVISED AND RESTATED JOINT EXERCISE OF  
 POWERS AGREEMENT FOR THE SAN MATEO COUNTY OPERATIONAL AREA EMERGENCY  
 SERVICES ORGANIZATION

## EXECUTIVE SUMMARY

The proposed second revised and restated JPA agreement updates the previous JPA agreement to reflect clarifying changes. It has been extensively vetted through the San Mateo County Emergency Managers Group, and the respective participating City members of the San Mateo County Emergency Services Council (ESC)/JPA. It is now ready for Council review and approval.

## FISCAL IMPACT

There is no new fiscal impact with the approval of the revised and restated JPA because the funding formula has not been changed from the prior JPA agreement.

## BACKGROUND

The County of San Mateo created the Emergency Services Council with the mission to provide planning, preparedness, public information, training, and Federal/State intergovernmental emergency services coordination for the 20 cities/towns within San Mateo County, as well as for County government. The Emergency Services Council enables these cities and the County to respond to, minimize the impact of, and recover from a major emergency, disaster, or homeland security incident with the least possible loss of life or property. On April 3, 1997, the Emergency Services Council created the San Mateo County Operational Area Joint Powers Agreement establishing the San Mateo County Operational Area Emergency Services Organization.

On January 14, 2015, the City Council adopted a resolution approving the first revised and restated joint exercise of powers agreement for the San Mateo County Operational Area Emergency Services Organization. This change brought the agreement in to alignment with current laws and expanded on the organization's authority, function, operations and powers.

## **ANALYSIS**

There were a few significant changes from the 2015 first revised and restated JPA agreement to the 2021 second revised and restated JPA agreement.

1. References to the Sheriff's Office of Emergency Services were changed to the County Manager's Department of Emergency Management;
2. Article III has been expanded to include all community partners (i.e. schools, utilities, hospitals, etc), not just government or government related entities;
3. The glossary of emergency management was removed; and,
4. The section about forming the San Mateo County Emergency Managers Association was removed as the association is now an established organization

The second revised and restated JPA agreement was approved at the June 17, 2021 Emergency Service Council's meeting.

## **Values**

Approval of the second revised and restated JPA agreement is consistent with the Council's values of Responsibility and Vision because the JPA provides an important function regarding the Town's safety and fiscal stability in the event of a significant emergency event.

## **Alternatives**

The Council could choose to not adopt the resolution and to not approve the second revised and restated JPA agreement. The City Council could also direct staff to request revisions to the agreement. Doing so could compromise the Town's participation in the ESC and the JPA which is strongly discouraged.

## **CONCLUSION**

Staff recommends adoption of the attached resolution approving the Second Revised and Restated Joint Exercise Of Powers Agreement for The San Mateo County Operational Area Emergency Services Organization.

## **ATTACHMENTS**

- A. Resolution
- B. Joint Powers Agreement

**RESOLUTION NO. 2021-XX  
OF THE CITY COUNCIL OF THE TOWN OF COLMA**

**RESOLUTION APPROVING THE SECOND REVISED AND RESTATED JOINT EXERCISE  
OF POWERS AGREEMENT FOR THE SAN MATEO COUNTY OPERATIONAL AREA  
EMERGENCY SERVICES ORGANIZATION**

The City Council of the Town of Colma does hereby resolve as follows:

**1. Background**

- (a) The Town of Colma is a current party to the San Mateo County Operational Area Joint Powers Agreement, a joint powers authority established pursuant to California Government Code Section 6500 *et seq.*
- (b) The original Joint Exercise of Powers Agreement was approved and executed in 1997.
- (c) On January 14, 2015, the City Council adopted a resolution approving the First Revised and Restated Joint Exercise of Powers Agreement for the San Mateo County Operational Area Emergency Services Organization. This change brought the agreement in to alignment with current laws and expanded on the organization's authority, function, operations and powers.
- (d) The proposed Second Revised and Restated Joint Exercise of Powers Agreement updates the previous JPA agreement to reflect clarifying changes..
- (c) Staff is now recommending that the City Council approve the Second Revised and Restated Joint Exercise of Powers Agreement to continue to be a member of the joint powers authority, and to ensure the Town's safety in the event of a significant emergency.

**2. Order**

The City Council hereby approves and authorizes the Mayor to execute the Second Revised and Restated Joint Exercise of Powers Agreement for the San Mateo Operational Area Emergency Services Organization, a copy of which is on file with the City Clerk's Office

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### Certification of Adoption

I certify that the foregoing Resolution No. 2021-XX was duly adopted at a regular meeting of the City Council of the Town of Colma held on July, 28 2021, by the following vote:

Name	Voting		Present, Not Voting		Absent
	Aye	No	Abstain	Not Participating	
Diana Colvin, Mayor					
Helen Fisicaro					
Raquel Gonzalez					
Joanne F. del Rosario					
John Irish Goodwin					
<i>Voting Tally</i>					

Dated \_\_\_\_\_

\_\_\_\_\_  
Diana Colvin, Mayor

Attest: \_\_\_\_\_  
Caitlin Corley, City Clerk



**Second Revised and Restated  
Joint Exercise of Powers Agreement  
San Mateo County Operational Area Emergency Services Organization**

THIS JOINT POWERS AGREEMENT (“Agreement”) is made as of the Effective Date by and between the public entities set forth below, creating the San Mateo County Operational Area Emergency Services Organization Authority (“Organization”).

Each public entity executing this Agreement shall be referred to individually as a “Member Agency,” with all referred to collectively as “Member Agencies.”

**RECITALS**

**Whereas** the Member Agencies’ goal is to establish a unified emergency services organization; and

**Whereas** the Member Agencies agree that the purpose of this Organization will be to operate pursuant to Presidential Directive 5, the National Response Framework, National Incident Management System (NIMS), Presidential Directive 8, the National Preparedness Goal and California’s Standardized Emergency Management System (SEMS) and local adopted Emergency Operations Plans and Annexes.

**Whereas** the Member Agencies agree that the participants within this Organization may include all local governments within the geographic area of the County, special districts, unincorporated areas, and participating non-governmental entities; and

**Whereas** the Member Agencies agree that the collective goal is to provide coordinated plans for the protection of persons and property based on the phases of emergency management; and

**Whereas** the Member Agencies have the authority to enter into this Agreement under the Joint Exercise of Powers Act, California Government Code Section 6500 *et seq.* (“Act”).

**NOW, THEREFORE**, in consideration of the recitals and mutual obligations of the Member Agencies as herein contained, the Member Agencies agree as follows:

**Article I - GENERAL PROVISIONS**

**1.01 Purpose**

This Agreement creates an entity to exercise the powers shared in common by the Member Agencies to engage in local and regional cooperative planning and coordination and delivery of incident and event supporting services. As part of this Organization’s purpose, Member Agencies seek to meet or exceed the current standard of service in Emergency Response Planning and Management Capabilities within the Operational Area. Further, Member Agencies seek to support the regional Public Information and Notification Systems, and to support the regional hazardous materials emergency response program. Such purposes are to be accomplished and the Members Agencies’ common powers exercised as set forth in this Agreement.

### **1.02 Creation of Authority**

Pursuant to the Joint Exercise of Powers Act, the Member Agencies hereby reaffirm creation of a public entity to be known as the “San Mateo County Operational Area Emergency Services Organization Authority” (“Organization.”) The Organization shall be a public entity separate and apart from the Member Agencies. The geographic jurisdiction of the Organization is all territory within the geographic boundaries of the Member Agencies; however, the Organization may undertake any action outside those geographic boundaries as is necessary and incidental to accomplishing its purpose.

### **1.03 Membership in the Organization**

Membership in the Organization is limited to public entities, as defined by the Joint Exercise of Powers Act, located or operating within San Mateo County that have approved and executed this Agreement, and contributed resources of any kind toward establishing and supporting the Organization (including, but not limited to financial, personnel, equipment, or other resources) as approved by the Emergency Services Council.

### **1.04 Participating Members/Partners in the Organization**

Participation in the Organization is intended to ensure cooperative emergency planning and response; all participating Member Agencies and partners are expected to attend all regular and special meetings of the Emergency Services Council, encourage active participation by their jurisdictions in the development of plans and training programs, drills, exercises and training opportunities, and otherwise assist in supporting the implementation of this Agreement.

### **1.05 Powers of the Organization**

The Organization may purchase, lease, own and/or dispose of property and equipment and enter into contract(s), as required to satisfy the purposes of this Agreement. The Organization may employ agents and/or employees, operate works and improvements, sue and be sued in its own name, and invest surplus funds.

## **Article II – GOVERNANCE**

### **2.01 Composition of the Council**

The Organization shall be administered by the Emergency Services Council (“Council”) consisting of the following members:

- a) A member of the San Mateo County Board of Supervisors, who shall be designated by the Supervisors.
- b) Each governing body of a Member Agency shall annually select and appoint a representative to serve on the Council and may select and appoint an alternate representative. Each representative and alternative representative must be a member of the governing body of the Member Agency.
- c) The Chair of the Emergency Services Council shall be the representative from the Board of Supervisors.
- d) A Vice-Chair shall be selected by the Council.

## 2.02 General Purpose of the Organization

The general purpose of the Organization is to:

- a) Provide structure for administrative and fiscal policies and procedures;
- b) Identify and pursue funding sources;
- c) Set policy;
- d) Maximize the utilization of available resources; and
- e) Oversee all committee activities.

## 2.03 Specific Responsibilities of the Council

The specific responsibilities of the Council shall be as follows:

- a) To review and recommend adoption by the Board of Supervisors and City Councils of each City, Emergency Plans, programs and agreements, in addition to the basic agreements as deemed necessary to carry out the purpose of the Organization.
- b) To approve an annual budget in an amount necessary to carry out the purposes of the Organization. Upon review and approval of the annual budget by the Council, each Member Agency shall recommend the budget to the governing body of the Member Agency for the purpose of securing from each the appropriations in accordance with each Member Agency's identified allocation (via Budget Sheets.)
- c) Each Member Agency's Executive Officer shall identify and designate at the beginning of each fiscal year, a local coordinator for regular participation in the San Mateo County Emergency Managers Association. Should the identified Coordinator change at any time during the year, the Member Agency shall advise the Director of Emergency Management within 30 days.
- d) If a Member Agency participates in a contract relationship for the provision of emergency services, it is still required to name a local emergency coordinator to the Emergency Managers Association who will assure the continuity of communication between the Member Agency, the San Mateo County Department of Emergency Management (DEM) and the Organization.

## 2.04 Meetings of the Organization.

- a) **Regular Meetings:** The Council shall approve a schedule for its regular meetings provided, however, that the Council shall hold at least one regular meeting quarterly. The Council shall fix the date, hour and location of regular meetings by resolution and the Secretary shall transmit a copy of the resolution to each Member Agency at the first meeting of the fiscal year.
- b) **Special Meetings:** Special meetings of the Council may be called in accordance with the Brown Act by the Chair, a majority of the Council or the Director.
- c) **Call, Notice and Conduct of Meetings:** All meetings of the Council, including without limitation, regular, adjourned regular and special meetings, shall be noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act, California Government Code section 54950 *et seq.* As soon as practicable, but no later than the time of posting, the Secretary shall provide notice and the agenda to each Member Agency. Any Member Agency may request that an item be considered for placement on the Agenda by submitting the request to the Director of Emergency Management.

- d) Meetings of the Council shall be conducted by the Chair or by the Vice-Chair in the absence of the Chairperson. In the absence of both Chair and Vice-Chair, the meeting shall be chaired by member of the Council selected by a majority vote of the Council.

### **2.05 Minutes**

The Secretary of the Organization shall cause to be kept a digital recording of each meeting, which shall be posted on the San Mateo County Department of Emergency Management Website. The Secretary will create brief summary written minutes for approval by the Council.

### **2.06 Voting**

All power of the Organization shall reside with the Council. Each Member Agency shall have one vote. A Member Agency's alternate representative may participate and vote in the proceedings of the Council only in the absence of that Member Agency's regular representative. No absentee ballot or proxy voting is permitted.

### **2.07 Quorum; Required Votes; Approvals**

A quorum of the Council is a majority of the representatives of the Member Agencies of the Organization. If the number of Member Agencies is an even number, a majority is fifty percent of the Member Agencies, plus one. The Council may not take any substantive action without a majority of the Member Agencies voting to take that action. Action on non-substantive procedural matters may be taken by a majority of a quorum.

## **Article III – PARTICIPATING PARTNERS, EMPLOYEES AND ADVISORY COMMITTEES**

### **3.01 Participating Partners**

In order to ensure cooperative emergency planning and response, a representative of any entity operating in San Mateo County may request in writing to be appointed and attend, as non-voting members, all regular and special meetings of the Council, participate in the development of plans and training programs, and otherwise assist in supporting the implementation of this Agreement. Entities eligible include, but are not limited to: schools, colleges special districts, non-profits, trade associations, utilities, hospitals as well as joint power and other authorities,.

Written requests for participation by an entity and appointment of a representative shall be directed to the Chair and will be submitted to the Council for approval.

### **3.02 Treasurer**

The Treasurer of the County of San Mateo shall be the Treasurer of the Organization. The Treasurer shall be the depository, shall have custody of the accounts, funds and money of the Organization from whatever source, and shall have the duties and obligations set forth in the Joint Exercise of Powers Act.

### **3.03 Auditor and Financial Accountability**

The Organization will ensure financial accountability as required by Section 6505 of the Government Code. The Organization will ensure that audits are conducted as required by that Section. Unless the Council votes to appoint a separate auditor, audits will be conducted in accordance with existing County policy, and by the auditor selected by the Office of the County

Manager. In the event that the Council selects a separate auditor, the full cost of the audit will be the responsibility of the Organization.

The Auditor shall perform the functions of auditor for the Organization and shall make or cause an independent annual audit of the accounts and records of the Organization by a certified public accountant, in compliance with the requirements of the Joint Exercise of Powers Act and generally accepted auditing standards.

### **3.04 Legal Counsel**

The San Mateo County Counsel's Office shall be the legal counsel for the Organization. To the extent permitted by the Joint Exercise of Powers Act, the Organization may change, by resolution, the legal counsel to the Organization. The full cost of outside legal counsel will be the responsibility of the Organization.

### **3.05 Secretary to the Organization**

The San Mateo County Department of Emergency Management shall provide a Secretary and administrative support to the Organization.

### **3.06 Contractors**

The Organization shall have the power by resolution to appoint and employ such other consultants and independent contractors as may be necessary to carry out the purposes of the Organization. The Organization will be responsible for any/all incurred costs.

### **3.07 Committees**

The Organization may form and dissolve Committees as determined by the Council.

### **3.08 Director of Emergency Management**

The County Manager or designee is the Director of the San Mateo County Department of Emergency Management ("Director"). The SMC DEM is responsible for the on-going operation of the San Mateo County Operational Area and is also responsible for achieving the purposes of the Organization as follows:

- a) Emergency Response Support - coordination and planning during any regional emergency in accordance with adopted emergency plans.
- b) Emergency Plans - preparation, development, coordination, and integration of compatible and complimentary unified area-wide emergency plans for approval by the State of California and adoption by the Council.
- c) Communications - coordination, development and maintenance of an area-wide emergency communications service, including public alert and warning systems, and other situational awareness tools.
- d) Public Education and Information - coordination and support of an area-wide public education and information program.
- e) Training and Exercise -coordination and assistance in the training and exercising of all County employees identified as Disaster Service Workers, as defined by Sect. 3100 of the California Government Code and volunteers. The Member Agencies will be responsible for the training and exercise of their identified employees; however, DEM will provide needed support as requested.

- f) Grant Program Administration - coordination and assistance with designated emergency coordinators within the Operational Area in the securing and distribution of grant funds for regional emergency management initiatives and program support.
- g) General Administration - coordination and assistance in the procurement and inventory of emergency equipment, management of, maintenance and distribution of area-wide inventories of vital supplies and equipment.
- h) The Organization does not intend to acquire title to any property. But in the event that it does, pursuant to Section 6505.1 of the Government Code, the Organization designates the Director to handle that property. In the event that the Organization does acquire title to property, the Director will obtain a bond in the amount determined by the contracting parties.

### **3.09 Staffing Reimbursement**

The County Department of Emergency Management is a division of the County Manager's Office, staffed by employees of the County of San Mateo. The DEM supports the purposes of the Organization. A portion of the cost of DEM staff is reimbursed by the Organization in an amount determined by the funding allocation in this Agreement.

### **Article IV – BUDGET AND COST-SHARING**

In consideration of the mutual promises herein contained, it is hereby agreed that the cost of maintaining the Organization will be shared as described below.

- a) From the total amount of the annual budget there shall be deducted estimated revenue from federal "matching funds," state grants, and other service revenues.
- b) The balance of the annual budget remaining after anticipated revenues have been deducted shall be paid as follows:
  - 1. The county shall pay 50% of the remaining balance.
  - 2. The cities shall pay the remaining 50% of the balance, apportioned in accordance with the following formula:
    - i. One half of said 50% to be apportioned by people units or population.
      - a) Total population of all member cities divided into one-half of the total of the cities' share of the budget equals a factor in cents.
      - b) Population of each member city times the factor in cents equals the share for each city.

- ii. The remaining one-half of said 50% to be apportioned on the basis of assessed valuation as follows:
  - a) Total assessed value of real and personal property in all member cities divided into one-half of the total of the city's share of the budget equals a factor in mils.
  - b) Assessed value of real and personal property of each member city times the factor in mils equals the share for each city.
- c) For the purpose of this Agreement the total assessed valuation of real and personal property in all Member Agencies shall be the most recent such total maintained by the offices of the County Assessor.
- d) The figures used for population in each city shall be determined by a method and from a source that is mutually acceptable to the majority of members.
- e) It is understood and agreed that the financial obligations incurred by the Member Agencies under the provisions of this Agreement will be incurred annually, subject to the limitation that the county and cities are financially able to make funds available.
- f) If the Member Agencies representing 25% or more of the county's population do not approve the budget in any fiscal year, the proposed budget will be referred back to the Director and a finance committee for revision and recommendation. If no resolution can be reached by the committee, the Member Agencies may proceed to adopt budgets that provide those services they deem necessary for adequate emergency services protection as a whole, but any Member Agency shall be financially responsible for that portion of the budget unilaterally adopted. Any Member Agency that does not meet its financial commitment under the adopted budget will lose its voting status and/or other such privileges of membership as determined by the Council.
- g) It is further agreed that any excess in federal or state funds, in any year, shall be reviewed by a finance committee, who will then make a recommendation to the Council, as to the disposition of the excess funds.
- h) With respect any Member Agency that is not a City or the County, the amount to be contributed is determined by a negotiation between those Member Agencies and the Director of Emergency Management and must be approved by the Council. A letter memorializing the agreed contribution will be an attachment to this Agreement.

## **Article V - INSURANCE**

- a) The County shall add the Organization and Emergency Services Council to its existing excess liability insurance coverage and shall maintain such coverage in full force and effect during the life of the Agreement. Member Agencies understand that the County is partially self-insured. Unless the Organization decides otherwise, County shall provide for the defense of any claims or litigation within the self-insured retention. Legal representation by the County will ordinarily be provided by the County Counsel.
- b) Any out-of-pocket expense or loss, by way of judgment or settlement, arising out of the operation of this Agreement, within the limits of the County's self-insured retention shall be shared by the parties in accordance with the formula as described in Article V (b).

## **Article VI - EFFECTIVENESS**

This Agreement shall be effective upon its execution by all Member Agencies. It is effective as to new Members Agencies upon adoption and approval by the Council and by the new Member

Agency's governing body. This Agreement shall continue in effect until terminated as provided herein.

## **Article VII – TERM AND TERMINATION**

### **7.01 Withdrawal by Members**

- a) Any Member Agency may withdraw from this Agreement by written notice given by such Member Agency to all other Member Agencies, which notice shall be given at least 120 days prior to the commencement of the fiscal year in which it is to take effect. For the purpose of such notice, a fiscal year is defined as July 1 of a calendar year through June 30 of the succeeding calendar year.
- b) Any former or prospective Member Agency may enter or re-enter the organization by petition to the Council by its governing body, and majority approval of the petition by the Council. Upon approval, the new Member Agency must agree in writing to all terms of this Agreement.
- c) Should a Member Agency withdraw less than 120 days prior to the commencement of the fiscal year, the withdrawal will be effective, but that Member Agency will be responsible for its calculated contribution for that year pursuant to Article V.
- d) Should a Member Agency give required notice and withdraw from the Agreement, the prior contribution of that Member Agency will be divided equally by formula among the remaining Member Agencies.

### **7.02 Termination of Organization and Disposition of Surplus Money and Property**

This Agreement shall terminate effective upon a vote of the Council, the County and by at least eleven (11) cities representing the majority of the population of the County. In the event that the Organization ceases to exist, surplus funds will be returned consistent with Section 6512 of the Government Code in proportion to the contributions made. The Organization does not intend to acquire title to any property. But in the event that it does, title to all property acquired by the Organization, shall be owned by the County of San Mateo to be used for "County Wide" purposes.

### **7.03 Amendments**

Any proposed Amendments to this Agreement may be recommended by the Council but must be ratified by each Member Agency's governing body.

### **7.04 Bylaws**

The Council may, from time to time, adopt and/or amend Bylaws for the conduct of its affairs; provided the purpose is consistent with this Agreement and/or are necessary and appropriate.

## **Article VIII - MISCELLANEOUS PROVISIONS**

### **8.01 Notices**

It shall be the responsibility of the County Manager or designee to ensure all notices are provided to Member Agencies and posted in compliance with the legal requirements of the Agreement.

### **8.02 Severability**

If any one or more of the terms, provisions, promises, covenants, or conditions of this Agreement were, to any extent, adjudged invalid, unenforceable, void, or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises,



covenants, and conditions of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

### **8.03 Supersession**

It is mutually understood and agreed by the Member Agencies that this Agreement supersedes the 2014 San Mateo County Operational Area Joint Powers Agreement, any previous agreements on this subject matter and any amendments thereto.

### **8.04 Assignment**

No Member Agency shall assign any rights or obligations under this Agreement without the prior written consent of the Council.

### **8.05 Governing Law**

This Agreement is made and to be performed in the State of California, and as such, California substantive and procedural law shall apply. Venue for any litigation under this Agreement shall be in the County of San Mateo.

### **8.06 Headings**

The section headings herein are for convenience only and are not to be construed as modifying or governing the language of this Agreement.

### **8.07 Counterparts**

This Agreement may be executed in counterparts, each of which will be deemed an original and all of which shall constitute this Agreement.

### **8.08 No Third Party Beneficiaries**

This Agreement and the obligations hereunder are not intended to benefit any party other than the Authority and its Members Agencies, except as expressly provided otherwise herein. No entity that is not a signatory to this Agreement shall have any rights or causes of action against any party to this Agreement as a result of that party's performance or non-performance under this Agreement, except as expressly provided otherwise herein.

### **8.09 Filing of Notice of Agreement**

Within 30 days after the Effective Date, the Secretary shall cause to be filed with the Secretary of State the notice of Agreement required by the Act. Within 30 days after any amendment to this Agreement, the Secretary shall file the amendment with the Secretary of State.

### **8.10 Conflict of Interest Code**

The Organization has adopted a conflict of interest code as required by law. Member Agencies understand that representatives and alternate representatives are listed on the Organization's Conflict of Interest Code and will be responsible for filing a Form 700 with the Organization.

### **8.11 Indemnification**

The Organization shall defend, indemnify and hold harmless each Member Agency (and each Member Agency's officers, agents, and employees) from any and all liability, including but not limited to claims, losses, suits, injuries, damages, costs and expenses (including attorney's fees,) arising from or as a result of any acts, errors or omissions of the Organization or its officers, agents or employees.

Each Member Agency shall defend, indemnify and hold harmless the other Member Agencies (and their officers, agents, and employees) from any and all liability, including but not limited to claims, losses, suits, injuries, damages, costs and expenses (including attorney's fees,) arising from or as a result of any acts, errors or omissions of that party or its officers, agents or employees.

#### **8.12 Dispute Resolution/Legal Proceedings**

Disputes regarding the interpretation or application of any provision of this Agreement shall, to the extent reasonably feasible, be resolved through good faith negotiations between the Member Agencies and/or the Organization.

#### **8.13 Authorization to Enter Into Agreement**

Each party warrants that the person signing this Agreement on its behalf is authorized to bind that party to this Agreement.

#### **8.14 Confirmation of Jurisdictional Authority**

By signing this Agreement, the Member Agencies retain all authority granted to them by the State and/or their respective Charters. The powers and/or authority granted pursuant to this Agreement shall in no way serve to limit or restrict an individual Member Agency's jurisdictional authority.

**(SIGNATURES ARE ON FOLLOWING PAGE)**

IN WITNESS WHEREOF, each Member Agency has caused this Agreement to be executed and attested by its proper officers thereunto duly authorized, as follows:

Signatories	Resolution/Action Number	Date of Adoption
Atherton		
Belmont		
Brisbane		
Burlingame		
Colma		
Daly City		
East Palo Alto		
Foster City		
Half Moon Bay		
Hillsborough		
Menlo Park		
Millbrae		
Pacifica		
Portola Valley		
Redwood City		
San Bruno		
San Carlos		
San Mateo		
South San Francisco		
Woodside		
County of San Mateo		





# STAFF REPORT

TO: Mayor and Members of the City Council  
 FROM: Brian Dossey, City Manager  
 Christopher J. Diaz, City Attorney  
 MEETING DATE: July 28, 2021  
 SUBJECT: Donation of Land to the Town of Colma

## RECOMMENDATION

Staff recommends that the City Council adopt the following:

RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT WITH THE ARCHDIOCESE OF SAN FRANCISCO FOR THE DONATION OF LAND FRONTING THE HOLY CROSS CEMETERY PROPERTY ON MISSION ROAD

## EXECUTIVE SUMMARY

The Archdiocese of San Francisco has offered to donate a strip of land that fronts the Holy Cross Catholic Cemetery property along Mission Road from their north gate entrance to their south gate entrance (attachment B). The area of land that is to be considered as a donation, to the Town as a result of Mission Road Bicycle and Pedestrian Improvement Project (Project) is a portion of land between the existing historical rock wall and the Town's Right of Way boundary. (see attachment C)

Staff recommends that the City Council authorize the City Manager to enter into an agreement with the Archdiocese of San Francisco accepting the land donation (see attachment D).

If the City Council adopts the resolution approving and authorizing the City Manager to execute the agreement with the Archdiocese of San Francisco, staff will introduce a Capital Improvement Project with design concepts and estimated constructions costs and annual maintenance obligations for City Council consideration at a meeting in the fall. At that same time, staff will also present the required CEQA analysis for approval of any future Capital Improvement Project.

## FISCAL IMPACT

There may be some minimal costs associated with an environmental assessment of the property to be donated and minimal closing costs associated with the real estate transaction. Further, a Capital Improvement Project will be brought to the City Council for consideration in the future along with an estimated budget. The project will include beautification and safety features.

## **BACKGROUND**

The Mission Road residential and business neighborhood was identified with safety and accessibility deficiencies through the Town's ADA (Americans with Disabilities Act) Transition Plan. One of the primary goals of the Mission Road Improvement project was to identify those areas where accessibility improvements were needed to be constructed and or improved. One of the areas of improvement is the frontage of the Holy Cross Cemetery from their North gate to their South gate. Much of this frontage is either a non-compliant sidewalk and pedestrian ramps or no sidewalk at all, (Attachment C).

To fund the Mission Road project and the various improvements, outside funding (a combination of Federal, State and local Grants) was applied for and awarded to the Town for the specific improvements. One of the main concerns that was identified in the Federal grant program and the National Environmental Protection Agency (NEPA) documents, was whether there was going to be additional land needed to complete these improvements. Staff stated that there was not any additional ROW that was required to construct the various essential improvements and all the improvements would be constructed within the existing ROW. If additional ROW were required to construct the essential parts of the project the Town would have had to go through a lengthy process obtaining ROW certification and approval from CalTrans and the Federal Highway Administration (FHA).

Being that the area between the Town's right of way boundary and Holy Cross's rock wall was going to be dedicated to Landscaping only, staff did not want to sacrifice time and more money being spent on outside consultants to work through the ROW certification process with CalTrans and the FHA.

In February, staff received a letter from the Archdiocese offering to donate the land fronting the Holy Cross property to the Town of Colma, to complete the improvements along Mission Road. The City Council authorized staff to negotiate the land donation agreement with the Archdiocese of San Francisco at the April 28, 2021 meeting during a study session.

## **ANALYSIS**

The unimproved area left by the Town's Project created an unintended consequence for the Archdiocese of San Francisco and the Holy Cross Cemetery. At present time the area appears unfinished, unattractive and in some areas creates some safety issues.

Upon looking closer and having staff re-survey the area and identify clearly what property is the Town's and what property is Holy Cross', it appears that the Town would be accepting a very small strip of land when considering the whole unimproved area. A majority of the land in question appears to be the Town's property.

Therefore, since the issue was created by the Town's Project and the Town owns most of the unimproved area in question, staff recommends the City Council approve and authorize the City Manager to enter into the land donation agreement with the Archdiocese of San Francisco.

### ***Next steps***

If the City Council is inclined to accept the donation, the City Attorney's office has prepared the attached draft donation agreement to memorialize the donation and the legal obligations of each party. The City Attorney's office will work to finalize the agreement if Council directs staff to prepare documents for formal consideration and acceptance.

As detailed in the attached donation agreement, Section 2 generally notes the obligations of the donor (Holy Cross) and includes the following:

- That the donor shall transfer a fee interest in the property to the Town free and clear of all liens, encumbrances, easements, leases, bonds, assessments, and taxes with some exceptions.
- The donation agreement will have standard representations and warranties regarding hazardous substances, compliance with laws, litigation, leases and possessory interests, property condition, vehicular access, and the donor's authority to enter into the agreement.

Further, the donor will also need to confirm that all required disclosures have been made and must indemnify the Town for any liability associated with any breach of any of the above warranties and any intentional acts or willful misconduct of the donor that leads to a third-party claim prior to the date the property is transferred to the Town.

Finally, the donation agreement contemplates a feasibility period of 60 days where the Town would have the ability to inspect the property, conduct environmental assessments, and have the ability to terminate the agreement if any unfavorable information is learned about the property. During the feasibility period, the parties will need to determine the approximate value of the donated property for purposes of determining the insured value for the City's title policy.

If City Council agrees, staff will prepare documents to accept the land donation, and also will bring back a Capital Improvement Project with design concepts and estimated costs for Council consideration.

### **Environmental**

If City Council adopts the resolution approving and authorizing the City Manager to enter into the land donation agreement, an environmental assessment of the property will be explored. Further, once the Capital Improvement Project returns to the City Council, staff will also present the required CEQA analysis for approval of any future Capital Improvement Project. The City Council's adoption of the resolution approving and authorizing the City Manager to enter into the land donation agreement will not create any change in the environment triggering the need for CEQA review and the action is therefore exempt under CEQA Guideline 15061(b)(3) as it can be seen with certainty that the mere acceptance of land will not create any direct or indirect change in the environment. Further, analyzing the environmental impacts of a future Capital Improvement Project is speculative at this time until such project is scoped. Once scoped, CEQA analysis will be conducted prior to any project approval.

## **Council Adopted Values**

The City Council is acting *responsibly* by accepting the offer of a land donation from the Archdiocese of San Francisco, improving safety and beautification on Mission Road.

## **CONCLUSION**

Staff recommends the City Council adopt the resolution approving and authorizing the City Manager to enter into an agreement with the Archdiocese of San Francisco accepting the donation of land that is fronting the Holy Cross property along Mission Road.

## **ATTACHMENTS**

- A. Resolution
- B. Letter of Land Donation from the Archdiocese of San Francisco
- C. Pictures and Map of Land for consideration
- D. Land Donation Agreement



**RESOLUTION NO. 2021-\_\_**  
**OF THE CITY COUNCIL OF THE TOWN OF COLMA**

**RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER TO  
EXECUTE THE AGREEMENT WITH THE ARCHDIOCESE OF SAN  
FRANCISCO FOR THE DONATION OF LAND FRONTING THE HOLY  
CROSS CEMETERY PROPERTY ON MISSION ROAD**

The City Council of the Town of Colma does hereby resolve:

**1. Background**

(a) The Mission Road residential and business neighborhood was identified with safety and accessibility deficiencies through the Town's ADA (Americans with Disabilities Act) Transition Plan.

(b) One of the primary goals of the Mission Road Improvement project was to identify those areas where accessibility improvements were needed to be constructed and or improved. One of the areas of improvement is the frontage of the Holy Cross Cemetery from their North gate to their South gate.

(c) Once the project was undertaken, it became clear that additional property was needed to ensure the ADA deficiencies were addressed. Staff could either obtain new property by accessing the right of way or through Holy Cross, the neighboring landowner.

(d) In February of 2021, staff received a letter from the Archdiocese of San Francisco, the owner of Holy Cross, offering to donate the land fronting the Holy Cross property to the Town of Colma, to complete the improvements along Mission Road.

(e) On April 28, 2021, the City Council authorized staff to negotiate the land donation agreement with the Archdiocese of San Francisco.

**2. Findings**

(a) The City Council finds and staff has confirmed that the acceptance of the land would be consistent with the Town's General Plan because the land will be used to improve the pedestrian experience on Mission Road. This is consistent with the Town's Complete Streets Policy found in the Section 5.03.811 of the Circulation Element. Namely, that the Town is committed to creating and maintaining complete streets that provide for safe, comfortable and convenient travel along and across streets for all users. Improvements to sidewalks and landscaping should contribute to a strong sense of place.

**3. Order**

(a) The land donation agreement between the Town of Colma and Holy Cross, a copy of which is on file with the City Clerk, shall be and hereby is approved by the City Council of the Town of Colma.

(b) The City Manager shall be, and hereby is, authorized to execute said agreement on behalf of the Town of Colma, with such technical amendments as may be deemed appropriate by the City

Attorney.

### Certification of Adoption

I certify that the foregoing Resolution No. 2021-\_\_ was duly adopted at a regular meeting of the City Council of the Town of Colma held on July 28, 2021, by the following vote:

Name	Voting		Present, Not Voting		Absent
	Aye	No	Abstain	Not Participating	
Diana Colvin, Mayor					
Helen Fisicaro					
Raquel "Rae" Gonzalez					
Joanne F. del Rosario					
John Irish Goodwin					
<i>Voting Tally</i>					

Dated \_\_\_\_\_

\_\_\_\_\_  
Diana Colvin, Mayor

Attest: \_\_\_\_\_  
Caitlin Corley, City Clerk



# THE ARCHDIOCESE OF SAN FRANCISCO

LEGAL OFFICE

ONE PETER YORKE WAY, SAN FRANCISCO, CA 94109-6602 (415) 614-5623 FAX (415) 614-5624

February 23, 2021

Mr. Brian Dossey  
Colma City Manager  
1198 El Camino Real  
Colma, CA 94014

RE: Donation of Land to Town of Colma

Dear Mr. Dossey:

As is well-documented by now, the Town of Colma is currently constructing a beautification and enhanced safety project titled the "Mission Road Bicycle & Pedestrian Improvements Project" (hereafter the "Project") on Old Mission Road, adjacent to Holy Cross Cemetery, a ministry of the Archdiocese of San Francisco. While the Project has achieved the dual goals of pedestrian/bicyclist safety, it has also resulted in an unintended consequence: a significant grading differential between the elevated sidewalks and the unimproved sidewalk area which abuts the fence line of the Cemetery property fronting Old Mission Road. This has created its own safety risks which did not exist prior to the Project. As we understand, the improvements performed by the Town of Colma's contractor, using federal funds, stopped at the property line of the Cemetery.

Prior to the Project, the collective understanding of the Town of Colma and the Cemetery was that the Cemetery's stone fence marked the property line. A surveyor engaged by the contractor during the beginning of the Project has shown otherwise. For purposes of this discussion, the Cemetery and the Archdiocese accept the surveyor's findings.

As a result of the Project, the Cemetery is forced to consider a series of Hobson's choices: Spend the resources necessary to have the Cemetery land match the new construction, convert the strip to a planting area and maintain the landscaping, deconstruct the existing stone wall and construct a new wall which abuts the new pedestrian walkway, or consider a donation of the affected land to the Town of Colma.

The Cemetery Board has considered these options, and the expense associated therewith, and proposes to the Town of Colma that it accept the affected strip as a gift. With this proposed gift, the Town of Colma could convert the affected land to a landscaping buffer and maintain the landscaping, in furtherance of the dual purpose of the original Project: beautification and public safety.

MAR 1 21 AM 11:17

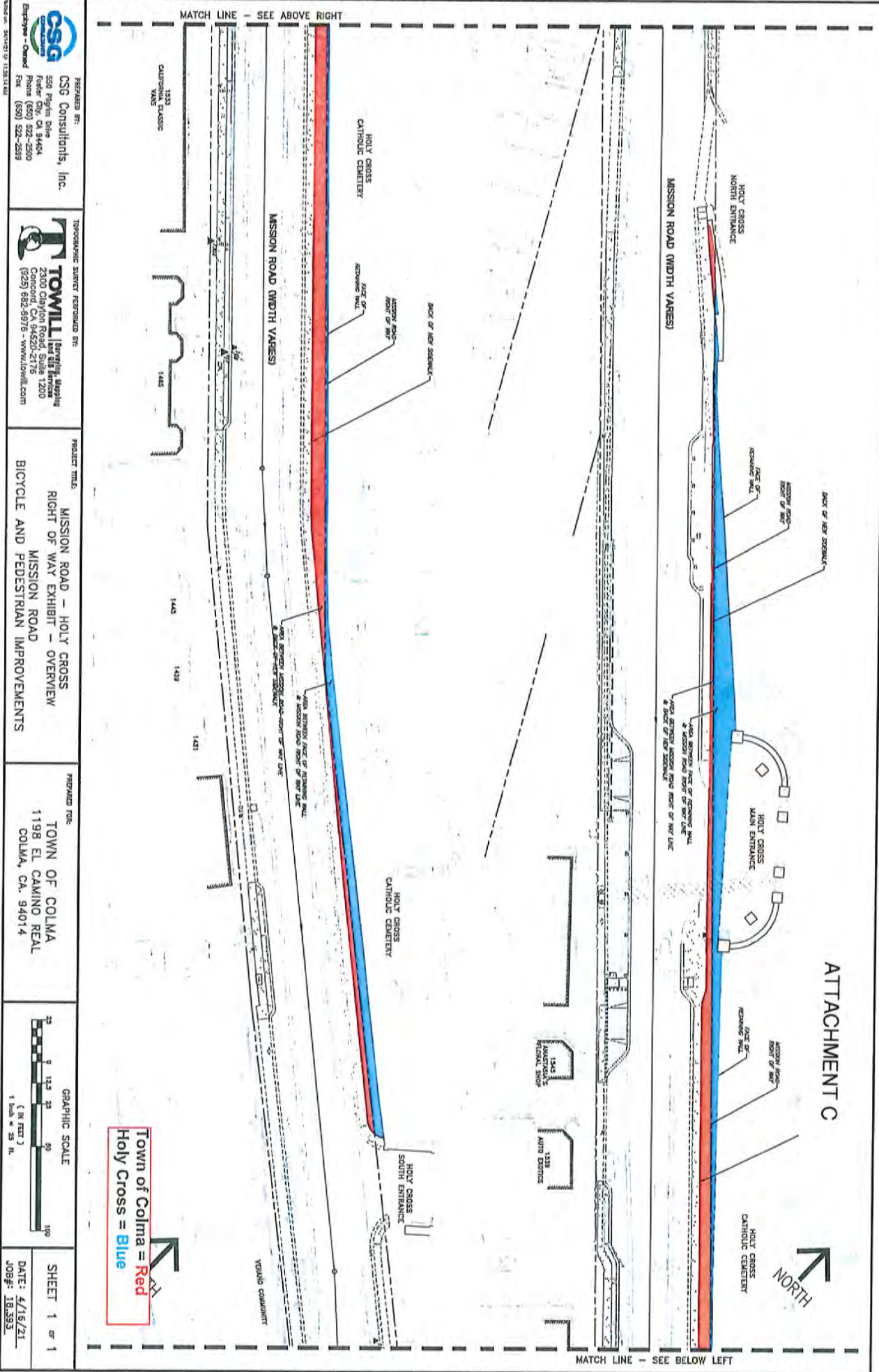
We ask that you place this proposal on the agenda for the Council's meeting. We hope this proposed gift will receive favorable consideration, so that we may, collectively, move forward and remedy the unintended consequences and associated risks resulting from an otherwise laudable project.

Very Truly Yours,

A handwritten signature in black ink, reading "Paula F. Carney". The signature is fluid and cursive, with the first name "Paula" and last name "Carney" clearly legible. The middle initial "F." is smaller and less distinct.

Paula F. Carney  
General Counsel  
Archdiocese of San Francisco

cc: Rev. Patrick Summerhays, Vicar for Administration  
Mr. John Bermudez, Holy Cross Cemetery  
Mr. John Christian, Real Property Support Corporation





APN: 011-370-180

**DONATION AGREEMENT**

THIS AGREEMENT ("Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 2021 by and between the Town of Colma in San Mateo County, California herein called "RECIPIENT," and the Roman Catholic Archbishop of San Francisco, a corporation sole, the Archdiocese of San Francisco Parish and School Juridic Persons Real Property Support Corporation, and Holy Cross Cemetery herein collectively called "DONOR." The RECIPIENT and DONOR are sometimes individually referred to as "Party" and collectively as "Parties."

WHEREAS, DONOR is the owner of certain real property located in San Mateo County, and as more particularly described on Exhibit A attached hereto (the "Property");

WHEREAS, RECIPIENT desires to acquire the Property for purposes of wildlife and plant life conservation; and

NOW, THEREFORE, RECIPIENT and DONOR agree as follows:

1. Donation of Property. DONOR shall grant the Property to RECIPIENT and, in consideration of the donation to RECIPIENT, RECIPIENT shall accept the grant of the Property, or interest therein, upon the terms and conditions set forth in this Agreement. While no money shall change hands between the parties, DONOR shall receive the benefits of a donation to RECIPIENT, as well as transferring the obligations associated with the Property to RECIPIENT, and RECIPIENT is willing to accept such obligations in exchange for the Property.

2. Obligations of Donor.

2.1 Fee Interest. Upon acceptance by RECIPIENT, DONOR shall convey, assign and transfer its fee interest in the Property to RECIPIENT, free and clear of all liens, encumbrances, easements, leases (recorded or unrecorded), bonds, assessments, and taxes except for (i) liens for non-delinquent property taxes and assessments, and (ii) those liens and encumbrances and easements which, in the sole discretion of RECIPIENT, are acceptable pursuant to Section 6.

2.2 Representations and Warranties of Donor. DONOR represents and warrants to RECIPIENT that as of the date of this Agreement and as of the Recordation Date as defined in Section 8.4 below:

2.2.1 Hazardous Substances. The Property is: (i) free from Hazardous Substances; (ii) contains no buried or partially buried storage tanks located on the Property; (iii) has not been used for the generation, storage or disposal of any Hazardous Substance and no Hazardous Substance has been spilled, disposed of, or stored on, under, or at the Property; and (iv) has never been used as a dump or landfill;

2.2.2 Compliance with Law. The Property is in material compliance with all applicable Laws and Environmental Laws;

2.2.3 Leases. No leases, licenses, or other agreements allowing any third party rights to use the Property are or will be in force as of the Closing;

2.2.4 Litigation and Investigations. There is no pending or threatened litigation, administrative proceeding, or other legal or governmental action with respect to the Property, and Donor has received no notice, warning, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions on the Property are or have been in violation of any Laws or Environmental Laws, or informing DONOR that the Property is subject to investigation or inquiry regarding the violation of any Laws or Environmental Laws.

2.2.5 Condition of Property. There are no natural or artificial conditions upon the Property or any part of the Property that could result in a material and adverse change in the condition of the Property;

2.2.6 Access to the Property. There is vehicular access to the Property either directly through a public right of way or through a recorded easement; and

2.2.7 No Insolvency Proceedings. DONOR has not (i) made a general assignment for the benefit of creditors; (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by its creditors; (iii) suffered the appointment of a receiver to take possession of all or substantially all of its assets; (iv) suffered the attachment or other judicial seizure of substantially all of its assets; or (v) admitted in writing its inability to pay its debts as they come due.

2.2.8 No Other Agreements, Undertakings or Tenancies. DONOR will not enter into any agreements or undertake any new obligations prior to Recordation Date which will in any way burden, encumber or otherwise affect the Property without the prior written consent of the RECIPIENT.

2.2.9 Disclosure. DONOR has disclosed to RECIPIENT all information, records, and studies in DONOR's possession in connection with the Property, including any reports or studies concerning Hazardous Substances. All information that DONOR has delivered to RECIPIENT, either directly or through DONOR's agents, is accurate and DONOR has disclosed all material facts concerning the operation, development, or condition of the Property.

DONOR shall promptly notify RECIPIENT of any facts that would cause any of the representations contained in this Agreement to be untrue as of the Recordation Date. If RECIPIENT reasonably concludes that a fact materially and adversely affects the Property, RECIPIENT shall have the option to terminate this Agreement by delivering written notice to Donor and Title Officer.

2.3 Indemnity. DONOR agrees to indemnify RECIPIENT and agrees to defend and hold RECIPIENT harmless from all loss, cost, liability, expense, damage, or other injury, including without limitation, attorneys' fees and expenses, to the fullest extent not prohibited by applicable law, and all other costs and expenses incurred by reason of, or in any manner resulting from (i) the breach of any warranties and representations in Section 2.2, and (ii) all third-party claims for DONOR's intentional acts or willful misconduct related to the Property occurring prior to the Recordation Date.



## 2.4 Definitions.

2.4.1 “Environmental Laws” means all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance (as defined subsequently in this Agreement), or pertaining to occupational health or industrial hygiene (and only to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations relate to Hazardous Substances on, under, or about the Property), occupational or environmental conditions on, under, or about the Property, as now in effect, including without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and the Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 U.S.C.A. §§ 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 (RCRA) and the Solid Waste Disposal Act [42 U.S.C.A. §§ 6901 et seq.]; the Clean Water Act, also known as the Federal Water Pollution Control Act (FWPCA) [33 U.S.C.A. §§ 1251 et seq.]; the Toxic Substances Control Act (TSCA) [15 U.S.C.A. §§ 2601 et seq.]; the Hazardous Materials Transportation Act (HMTA) [49 U.S.C.A. §§ 1801 et seq.]; the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) [7 U.S.C.A. §§ 136 et seq.]; the Clean Air Act (CAA) [42 U.S.C.A. §§ 7401 et seq.]; the Safe Drinking Water Act (SDWA) [42 U.S.C.A. §§ 300f et seq.]; the Surface Mining Control and Reclamation Act of 1977 (SMCRA) [30 U.S.C.A. §§ 1201 et seq.]; the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA or EPCRTKA) [42 U.S.C.A. §§ 11001 et seq.]; the Occupational Safety and Health Act of 1970 (OSHA) [29 U.S.C.A. §§ 655, 657]; the California laws regarding the underground storage of hazardous substances [H & S C §§ 25280 et seq.]; the Hazardous Substance Account Act [H & S C §§ 25300 et seq.]; the California laws regarding hazardous waste control [H & S C §§ 25100 et seq.]; the Safe Drinking Water and Toxic Enforcement Act of 1986 [H & S C §§ 25249.5 et seq.]; the Porter-Cologne Water Quality Control Act [Wat C §§ 13000 et seq.], and any amendments of or regulations promulgated under the statutes cited above and any other federal, state, or local law, statute, ordinance, or regulation now in effect that pertains to occupational health or industrial hygiene, and only to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations relate to Hazardous Substances on, under, or about the Property, or the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use.

### 2.4.2 “Hazardous Substances” includes without limitation:

(i) Those substances included within the definitions of “hazardous substance,” “hazardous waste,” “hazardous material,” “toxic substance,” “solid waste,” or “pollutant or contaminant” in CERCLA, RCRA, TSCA, HMTA, or under any other Environmental Law;

(ii) Those substances listed in the United States Department of Transportation (DOT) Table [49 CFR 172.101], or by the Environmental Protection Agency (EPA), or any successor agency, as hazardous substances [40 CFR Part 302];

(iii) Other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state, or local laws or regulations; and

(iv) Any material, waste, or substance that is: a petroleum or refined petroleum product, asbestos, polychlorinated biphenyl, designated as a hazardous substance pursuant to 33 U.S.C.A. § 1321 or listed pursuant to 33 U.S.C.A. § 1317, a flammable explosive, or a radioactive material.

3. Escrow. INTENTIONALLY DELETED

4. Feasibility Period.

4.1 During the period commencing on the date of this Agreement and terminating on a date which is sixty (60) days from the date of this Agreement (“Feasibility Period”), RECIPIENT may undertake at RECIPIENT’s expense an inspection of the Property. Said inspection may include: (i) a review of the physical condition of the Property, including but not limited to, inspection and examination of soils, environmental factors, Hazardous Substances, if any, and archeological information relating to the Property; and (ii) a review and investigation of the effect of any zoning, maps, permits, reports, engineering data, regulations, ordinances, and laws affecting the Property. Within ten (10) days following the full execution of this Agreement by both parties, DONOR shall deliver to RECIPIENT copies of all architectural plans, surveys, specifications, and other documents pertaining to the physical, geological, or environmental condition of the Property that are owned by or in the possession of DONOR.

4.2 If RECIPIENT’s environmental consultant requires additional time to determine the existence and extent of any Hazardous Substances on the Property, RECIPIENT shall have the right, exercisable by delivering written notice to Donor prior to the expiration of the Feasibility Period, to extend the Feasibility Period for up to an additional sixty (60) days to complete the testing.

4.3 If RECIPIENT disapproves of the results of the inspection and review or the results of any Phase I Environmental Report, RECIPIENT may elect, prior to the last day of the Feasibility Period (or any extension thereof), to terminate this Agreement by giving DONOR written notification prior to the last day of the Feasibility Period (or any extension thereof). If RECIPIENT fails to properly notify DONOR of the intent to terminate this Agreement, RECIPIENT shall be deemed to be satisfied with the results of the inspection and shall be deemed to have waived the right to terminate this Agreement pursuant to this provision.

5. Access.

5.1 Access to the Property during the Feasibility Period shall be given to RECIPIENT, its agents, employees, or contractors during normal business hours upon at least one (1) business days’ notice to DONOR, at RECIPIENT’s own cost and risk, for any purposes, including, but not limited to, inspecting the Property, taking samples of the soil, and conducting an environmental audit (including an investigation of past and current uses of the Property). RECIPIENT shall indemnify and defend DONOR against and hold DONOR harmless from all losses, costs, damages, liabilities, and expenses, including, without limitation, reasonable attorney fees arising out of RECIPIENT’s entry onto the Property or any activity thereon by RECIPIENT or its agents, employees, or contractors prior to the Recordation Date except to the extent any such losses, costs, damages, liabilities, and expenses arise out of the gross negligence or willful acts of

DONOR. Any entry onto the Property by RECIPIENT or its agents, employees, or contractors shall be at reasonable times. The provisions of this Section shall survive the Recordation Date. Notwithstanding anything herein to the contrary, RECIPIENT and DONOR agree that RECIPIENT shall not incur any liability hereunder merely by the discovery of an "Existing Adverse Condition" (as defined below) regardless of whether such Existing Adverse Condition, once revealed, negatively impacts the value of the Property or otherwise causes DONOR to incur liabilities, costs or expenses. The term "Existing Adverse Condition" shall mean an adverse condition existing on or with respect to the Property that is discovered or revealed by RECIPIENT in the course of its Property inspection hereunder.

5.2 In addition to the provisions of Section 4.1, RECIPIENT and its agents, employees, or contractors shall have the right, from the date of this Agreement until the Recordation Date, to contact any federal, state, or local governmental authority or agency to investigate any matters relating to the Property. DONOR agrees to cooperate reasonably with RECIPIENT and its agents, employees, or contractors in the inspection of the Property and agrees to deliver to RECIPIENT all information in DONOR's possession or control pertaining to the condition of the Property, including engineering and environmental reports, studies, tests, monitoring results, and related documentation.

6. Title.

6.1 Immediately following the execution of this Agreement by both Parties, RECIPIENT shall cause Title Officer to issue to RECIPIENT (with a copy to DONOR) a preliminary report for an ALTA Standard Policy of Title Insurance, setting forth all liens, encumbrances, easements, restrictions, conditions, pending litigation, judgments, administrative proceedings, and other matters affecting DONOR's title to the Property ("Preliminary Report"), together with copies of all documents relating to title exceptions referred to in the Preliminary Report.

6.2 Following the full execution of this Agreement by both Parties, RECIPIENT may cause a survey and/or an ALTA Survey of the Property to be prepared by a registered surveyor or professional engineer ("Survey"). DONOR agrees to deliver to RECIPIENT, promptly following the full execution and delivery of this Agreement, copies of any survey of the Property in the possession of DONOR.

6.3 RECIPIENT shall approve or disapprove, in writing to DONOR with a copy to Title Officer, each exception shown on the Preliminary Report and each encroachment, overlap, or boundary line dispute, or any other matter that materially and adversely affects title to the Property or that violates any law, rule, or regulation reflected on the Survey (each an "Exception") within twenty (20) business days following the receipt of the Preliminary Report or the Survey, whichever is later. RECIPIENT's failure to object within the twenty (20) day period shall be deemed to be a disapproval of the Exceptions. The Exceptions approved by RECIPIENT hereunder shall be referred to as the "Approved Exceptions."

6.4 If any Exception is disapproved or deemed disapproved (each a "Disapproved Exception"), DONOR shall have the right, but not the obligation, within thirty (30) days following expiration of the twenty (20) day period provided under Section 6.3 above, to cause

each Disapproved Exception to be discharged, satisfied, released, or terminated, as the case may be, of record, and in a form that is reasonably satisfactory to RECIPIENT and Title Officer, all at DONOR's sole cost and expense.

7. [INTENTIONALLY DELETED]

8. Closing and Recordation Date.

8.1 Title. Simultaneously with the Recordation Date, Title Officer shall issue an ALTA Standard Policy of Title Insurance (formerly referred to as a CLTA Title Policy) ("Title Policy") in the amount of \$\_\_\_\_\_, subject only to (i) liens for real property taxes, bonds, and assessments not then due, and (ii) the Approved Exceptions.

8.2 Donor's Deposits. DONOR shall deposit with Title Officer on or prior to the Recordation Date a grant deed in the form attached hereto as Exhibit "B" executed and acknowledged by Donor, conveying to RECIPIENT good and marketable fee simple title to the Property, subject only to the Approved Exceptions ("Deed").

8.3 RECIPIENT's Deposits. An executed Certificate of Acceptance for the Deed.

8.4 Recordation Date. The conveyance of the Property to RECIPIENT and the closing of this transaction ("Closing") shall take place within one hundred twenty (120) days ("Recordation Date") following the execution of this Agreement.

8.5 Closing Statements. Intentionally Deleted.

8.6 Closing Instructions. On the Recordation Date (or any extension thereof), Title Officer shall do the following:

(i) record the Deed (marked for return to RECIPIENT) with the San Mateo County Recorder;

(ii) issue the Title Policy;

(iii) If Title Officer is unable to simultaneously perform all of the instructions set forth above, Title Officer shall notify RECIPIENT and DONOR and retain all funds and documents pending receipt of further instructions jointly issued by RECIPIENT and DONOR.

8.7 Closing Costs and Prorations. RECIPIENT shall pay the following closing costs and prorations through the Recordation Date:

(i) All governmental conveyancing fees and taxes due upon transfer of the Property, except that no documentary transfer tax will be payable with respect to this transaction, pursuant to Revenue and Taxation Code Section 11922;

(ii) The recording charges in connection with recordation of the Deed;

(iii) All charges in connection with issuance of the Title Policy in the amount of \$ \_\_\_\_\_;

(iv) All costs associated by environmental reports, including the Phase I Environmental Site Assessment Report, and any further testing and reports which may be reasonably necessary as a result of such report;

(v) All charges related to any survey undertaken in connection with an ALTA Extended Policy of Title Insurance;

(vi) All charges in connection with removing any Disapproved Exceptions pursuant to Section 6.4 and to cure any defect in vesting in order to satisfy the condition set forth in Section 9(v).

(vii) All fees and charges levied by Title Officer.

8.8 Real Estate Taxes, Bonds, and Assessments. DONOR shall pay real property taxes to the San Mateo County Tax Assessor's office prior to the Recordation Date based on the most current real property tax bill available, including any additional property taxes that may be assessed after the Recordation Date, regardless of when notice of those taxes is received or who receives the notice. DONOR may seek reimbursement from the San Mateo County Tax Assessor's office for any property taxes that have been assessed for a period after the Recordation Date as RECIPIENT is a public agency exempt from payment of such taxes. RECIPIENT further agrees to cooperate with DONOR to provide any necessary information to the Assessor's office in connection with such request for refund. All installments of any bond or assessment that constitutes a lien on the Property at the Recordation Date shall be paid by DONOR.

8.9 Possession. Possession of the Property shall be delivered to RECIPIENT at the Recordation Date.

9. Acceptance. The acceptance of the Property by RECIPIENT and the Recordation Date (as defined in Section 8) are subject to the satisfaction of the following no later than the Recordation Date:

(i) RECIPIENT's approval of the condition of the Property as provided in Section 4 and title to the Property as provided in Section 6. In addition, DONOR shall remove any debris or trash from the Property prior to the Recordation Date;

(ii) The representations and warranties of DONOR set forth in Section 2.2 shall be true and accurate as of the Recordation Date;

(iii) DONOR's performance of all obligations under this Agreement;

(iv) No adverse material change shall have occurred with respect to the condition of the Property from the end of the Feasibility Period through the Recordation Date; and

(v) Title Officer being prepared to issue the Title Policy on the Recordation Date, subject only to the Approved Exceptions.

10. [INTENTIONALLY DELETED]

11. The performance by the RECIPIENT of its obligations under this Agreement shall relieve the RECIPIENT of any and all further obligations or claims on account of the acceptance of the offer of dedication. The RECIPIENT agrees to use the Property for the purposes of wildlife and plant habitat conservation pursuant to the MSHCP.

12. This Agreement may be terminated by RECIPIENT upon three (3) days written notice to DONOR and Title Officer if the conditions to closing set forth in Section 9 have not been fulfilled on or before the Recordation Date. Upon termination by RECIPIENT pursuant to this Section 12, DONOR shall be responsible for all costs and expenses of Title Officer.

13. As used in this Agreement, notice includes but is not limited to, the communication of any notice, request, demand, approval, statement, report, acceptance, consent, waiver and appointment. All notices must be in writing. Notice is given either (i) when delivered in person to the person or company intended named below, or (ii) when sent via reputable overnight courier (such as Federal Express), addressed by name and addressed to the party or persons intended, as follows:

To RECIPIENT:

Town of Colma  
1198 El Camino Real  
Colma, CA 94014  
Attn: Public Works Division

To DONOR:

until such time as a party gives notice of the change of address in accordance with the terms of this section.

14. This Agreement shall not be changed, modified or amended except upon the written consent of the Parties hereto.

15. This Agreement is the result of negotiations between the Parties and is intended by the Parties to be a final expression of their understanding with respect to the matters herein contained. This Agreement supersedes any and all other prior agreements and understandings,

oral or written, in connection therewith. No provision contained herein shall be construed against the RECIPIENT solely because it prepared this Agreement in its executed form.

16. DONOR, their assigns and successors in interest, shall be bound by all the terms and conditions contained in this Agreement, and all the parties thereto shall be jointly and severally liable thereunder.

17. This Agreement is not binding until executed by the Executive Director of the RECIPIENT.

18. Notwithstanding any other provision of this Agreement or any other agreement between any of the Parties hereto, once the Property is conveyed to and accepted by the RECIPIENT, the RECIPIENT shall have no obligation to return the Property to the DONOR under any circumstances, except in the sole and exclusive discretion of the RECIPIENT.

19. RECIPIENT agrees to cooperate with DONOR to acknowledge receipt of the donation of the Property by signing Internal Revenue Form 8283 (Non-Cash Charitable Contributions) before the Recordation Date and any other tax-related forms or documents reasonably requested by DONOR and to return any such forms to DONOR within thirty business (30) days after RECIPIENT's receipt of such forms from DONOR. Notwithstanding the foregoing, RECIPIENT makes no representation or warranty to DONOR regarding the tax attributes of this transaction, nor shall RECIPIENT endorse or otherwise acknowledge any valuation of the Property for tax purposes, it being understood that the DONOR has obtained its own appraisals and tax advice for such purposes.

20. This Agreement may be executed in one or more counterparts. Each shall be deemed an original and all, taken together, shall constitute one and the same instrument.

[signature page follows]

**SIGNATURE PAGE FOR THE DONATION AGREEMENT BETWEEN** The Roman Catholic Archbishop of San Francisco, a corporation sole, The Archdiocese of San Francisco Parish and School Juridic Persons Real Property Support Corporation, Holy Cross Cemetery **AND** The Town of Colma in San Mateo County, California.

IN THE WITNESS THEREOF, the Parties have caused this Agreement to be executed by their duly-authorized representatives on the date and year set forth below.

**DONOR:**

**RECIPIENT:**

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By:

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

By:



**EXHIBIT “A”**

**LEGAL DESCRIPTION OF PROPERTY**

## **EXHIBIT "A"**

### **LEGAL DESCRIPTION FOR RIGHT OF WAY DEDICATION**

CERTAIN REAL PROPERTY SITUATE IN THE TOWN OF COLMA, COUNTY OF SAN MATEO, STATE OF CALIFORNIA, BEING PORTIONS OF THE LANDS DESCRIBED AS THE THIRTEENTH PARCEL IN THE DEED FROM PATRICK W. RIORDAN TO THE ROMAN CATHOLIC ARCHBISHOP OF SAN FRANCISCO, DATED SEPTEMBER 22, 1896 AND RECORDED NOVEMBER 22, 1897 IN BOOK 76 OF DEEDS AT PAGE 431, OFFICIAL RECORDS OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

#### **AREA 1**

COMMENCING AT THE MOST WESTERLY CORNER OF THE LANDS OF THE ROMAN CATHOLIC ARCHBISHOP OF SAN FRANCISCO AS SHOWN ON THE RECORD OF SURVEY FOR HOLY CROSS CEMETERY RECORDED ON MAY 18, 2001 IN BOOK 22 OF LICENSED LAND SURVEYING MAPS AT PAGES 9 THROUGH 12, SAN MATEO COUNTY RECORDS; THENCE ALONG THE SOUTHWESTERLY LINE OF SAID LANDS, BEING ALSO THE NORTHEASTERLY RIGHT OF WAY LINE OF MISSION ROAD (66 FEET WIDE) AS SHOWN ON SAID RECORD OF SURVEY, SOUTH 42°16'47" EAST 1,323.90 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE LEAVING SAID NORTHEASTERLY RIGHT OF WAY LINE OF MISSION ROAD, ACROSS THE LANDS OF THE ROMAN CATHOLIC ARCHBISHOP OF SAN FRANCISCO THE FOLLOWING FOUR (4) COURSES:

1. NORTH 47°43'13" EAST 0.58 FEET;
2. SOUTH 43°11'10" EAST 32.74 FEET;
3. SOUTH 45°56'55" EAST 185.16 FEET;
4. SOUTH 47°43'13" WEST 12.95 FEET TO SAID NORTHEASTERLY RIGHT OF WAY LINE;

THENCE ALONG SAID NORTHEASTERLY LINE NORTH 42°16'47" WEST 217.51 FEET TO THE **TRUE POINT OF BEGINNING**;

AREA 1 CONTAINING 1,325 SQUARE FEET, MORE OR LESS.

#### **AREA 2**

COMMENCING AT THE MOST WESTERLY CORNER OF THE LANDS OF THE ROMAN CATHOLIC ARCHBISHOP OF SAN FRANCISCO AS SHOWN ON THE RECORD OF SURVEY FOR HOLY CROSS CEMETERY RECORDED ON MAY 18, 2001 IN BOOK 22 OF LICENSED LAND SURVEYING MAPS AT PAGES 9 THROUGH 12, SAN MATEO COUNTY RECORDS; THENCE ALONG THE SOUTHWESTERLY LINE OF SAID LANDS, BEING ALSO THE NORTHEASTERLY RIGHT OF WAY LINE OF MISSION ROAD (66 FEET WIDE) AS SHOWN ON SAID RECORD OF SURVEY, SOUTH 42°16'47" EAST 1,674.24 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE LEAVING SAID NORTHEASTERLY RIGHT OF WAY LINE OF MISSION ROAD, ACROSS THE LANDS OF THE ROMAN CATHOLIC ARCHBISHOP OF SAN FRANCISCO THE FOLLOWING THREE (3) COURSES:

1. NORTH 47°43'13" EAST 5.14 FEET;
2. SOUTH 40°54'05" EAST 172.21 FEET;

SHEET 1 OF 4

3. SOUTH 47°43'13" WEST 1.00 FEET TO SAID NORTHEASTERLY RIGHT OF WAY LINE;

THENCE ALONG SAID NORTHEASTERLY LINE NORTH 42°16'47" WEST 172.16 FEET TO THE **TRUE POINT OF BEGINNING**;

AREA 2 CONTAINING 529 SQUARE FEET, MORE OR LESS.

**AREA 3**

COMMENCING AT THE MOST WESTERLY CORNER OF THE LANDS OF THE ROMAN CATHOLIC ARCHBISHOP OF SAN FRANCISCO AS SHOWN ON THE RECORD OF SURVEY FOR HOLY CROSS CEMETERY RECORDED ON MAY 18, 2001 IN BOOK 22 OF LICENSED LAND SURVEYING MAPS AT PAGES 9 THROUGH 12, SAN MATEO COUNTY RECORDS; THENCE ALONG THE SOUTHWESTERLY LINE OF SAID LANDS, BEING ALSO THE NORTHEASTERLY RIGHT OF WAY LINE OF MISSION ROAD (66 FEET WIDE) AS SHOWN ON SAID RECORD OF SURVEY, SOUTH 42°16'47" EAST 2,263.78 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE LEAVING SAID NORTHEASTERLY RIGHT OF WAY LINE OF MISSION ROAD, ACROSS THE LANDS OF THE ROMAN CATHOLIC ARCHBISHOP OF SAN FRANCISCO THE FOLLOWING THREE (3) COURSES:

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2. SOUTH 48°46'32" EAST 309.98 FEET;
3. SOUTH 41°18'00" WEST 4.43 FEET TO SAID RIGHT OF WAY NORTHEASTERLY LINE;

THENCE ALONG SAID NORTHEASTERLY LINE THE FOLLOWING TWO (2) COURSES:

1. NORTH 48°42'00" WEST 283.13 FEET;
2. NORTH 42°16'47" WEST 27.12 FEET TO THE **TRUE POINT OF BEGINNING**;

AREA 3 CONTAINING 1,271 SQUARE FEET, MORE OR LESS.

THE BEARING NORTH 42°16'47" WEST ALONG SOUTHWESTERLY LINE OF HOLY CROSS CEMETERY AS SHOWN ON THE RECORD OF SURVEY RECORDED ON MAY 18, 2001 IN BOOK 22 OF L.L.S. MAPS AT PAGES 9-12, SAN MATEO COUNTY RECORDS, WAS TAKEN AS THE BASIS OF BEARINGS FOR THIS DESCRIPTION.

A PLAT, EXHIBIT "B", IS ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

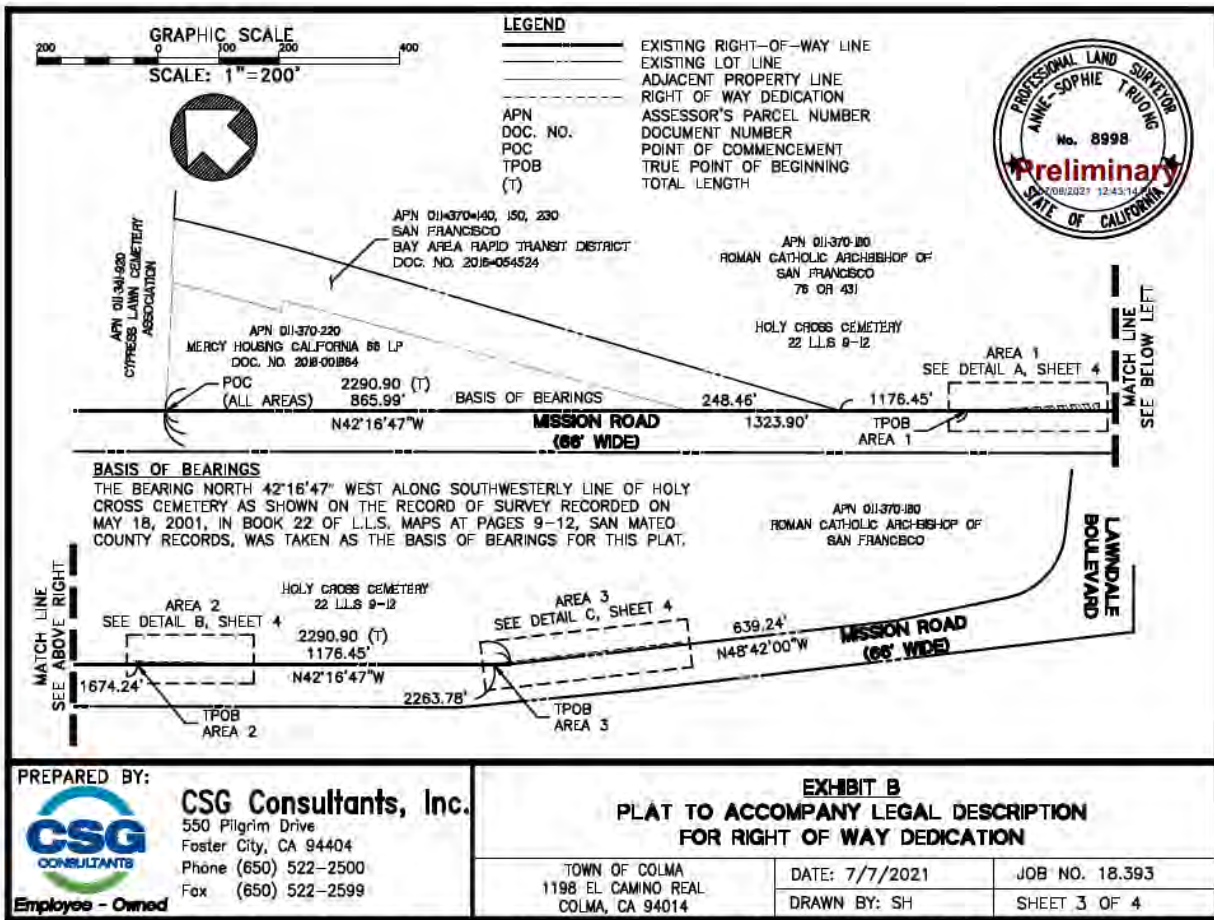
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\_\_\_\_\_  
ANNE – SOPHIE TRUONG, PLS 8998

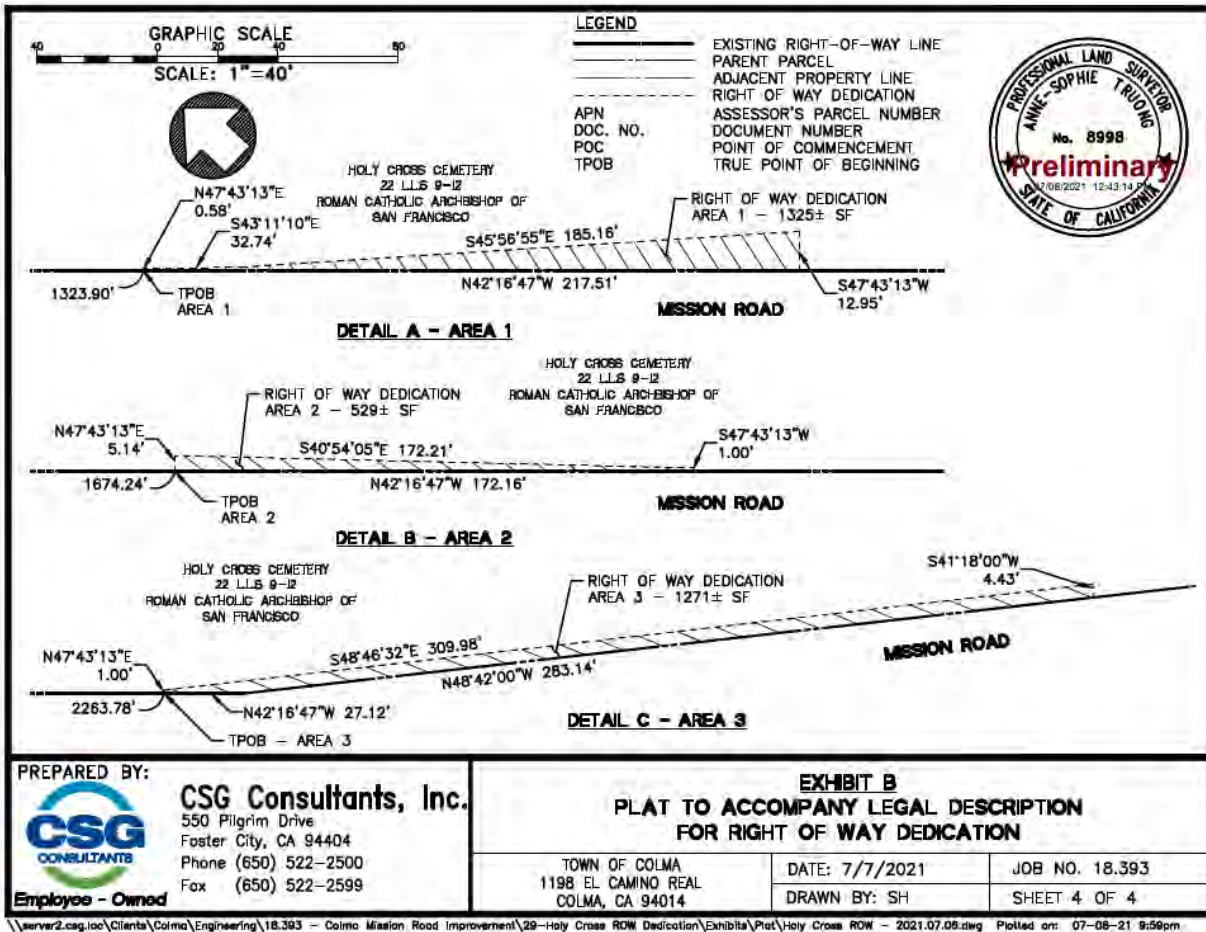


SHEET 2 OF 4





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**EXHIBIT "B"**  
**FORM OF GRANT DEED**

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO**

Town of Colma  
1198 El Camino Real  
Colma, CA 94014  
Attn: Town Clerk

EXEMPT FROM RECORDING FEES PURSUANT  
TO GOVERNMENT CODE SECTION 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APNs: \_\_\_\_\_

## Grant Deed

The undersigned Grantor(s) declare(s): \_\_\_\_\_ is exempt from property taxes.  
(Rev & Tax Code 11922)

Documentary transfer tax is \$ \_\_\_\_-0-\_\_\_\_.

- ☐ Computed on full value of property conveyed, or  
☐ Computed on full value less value of liens and encumbrances remaining at time of sale.  
☐ Unincorporated area ☒ City of \_\_\_\_\_, and

**FOR A VALUABLE CONSIDERATION**, receipt of which is hereby acknowledged,

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

hereby GRANT(S) to

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

the following described real property in the City of \_\_\_\_\_, County of \_\_\_\_\_, State of  
California:

SEE ATTACHED EXHIBIT A.

Dated: \_\_\_\_\_, 20\_\_\_\_, a \_\_\_\_\_

By: _____ _____ _____
-----------------------------

(Name)

(Title)

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public  
(insert name and title of the officer)

personally appeared \_\_\_\_\_  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)



## CERTIFICATE OF ACCEPTANCE

Pursuant to Section 27281 of the  
California Government Code

This is to certify that the interest in real property conveyed by the Grant Deed dated \_\_\_\_\_, 20\_\_\_\_, from \_\_\_\_\_, a \_\_\_\_\_, as Grantor thereunder, to \_\_\_\_\_, a \_\_\_\_\_, as Grantee thereunder, is hereby accepted by the undersigned officer on behalf of \_\_\_\_\_, pursuant to the authority conferred by Resolution No. \_\_\_\_\_, adopted by \_\_\_\_\_ on \_\_\_\_\_, 20\_\_\_\_, and the Grantee consents to recordation thereof by its duly authorized officer.

Dated: \_\_\_\_\_, 20\_\_\_\_

By \_\_\_\_\_  
\_\_\_\_\_(Name)  
\_\_\_\_\_(Title)

## ACKNOWLEDGMENT

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County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public  
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personally appeared \_\_\_\_\_  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in  
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paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

## EXHIBIT A

### LEGAL DESCRIPTION

## **EXHIBIT "A"**

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THENCE ALONG SAID NORTHEASTERLY LINE NORTH 42°16'47" WEST 217.51 FEET TO THE **TRUE POINT OF BEGINNING**;

AREA 1 CONTAINING 1,325 SQUARE FEET, MORE OR LESS.

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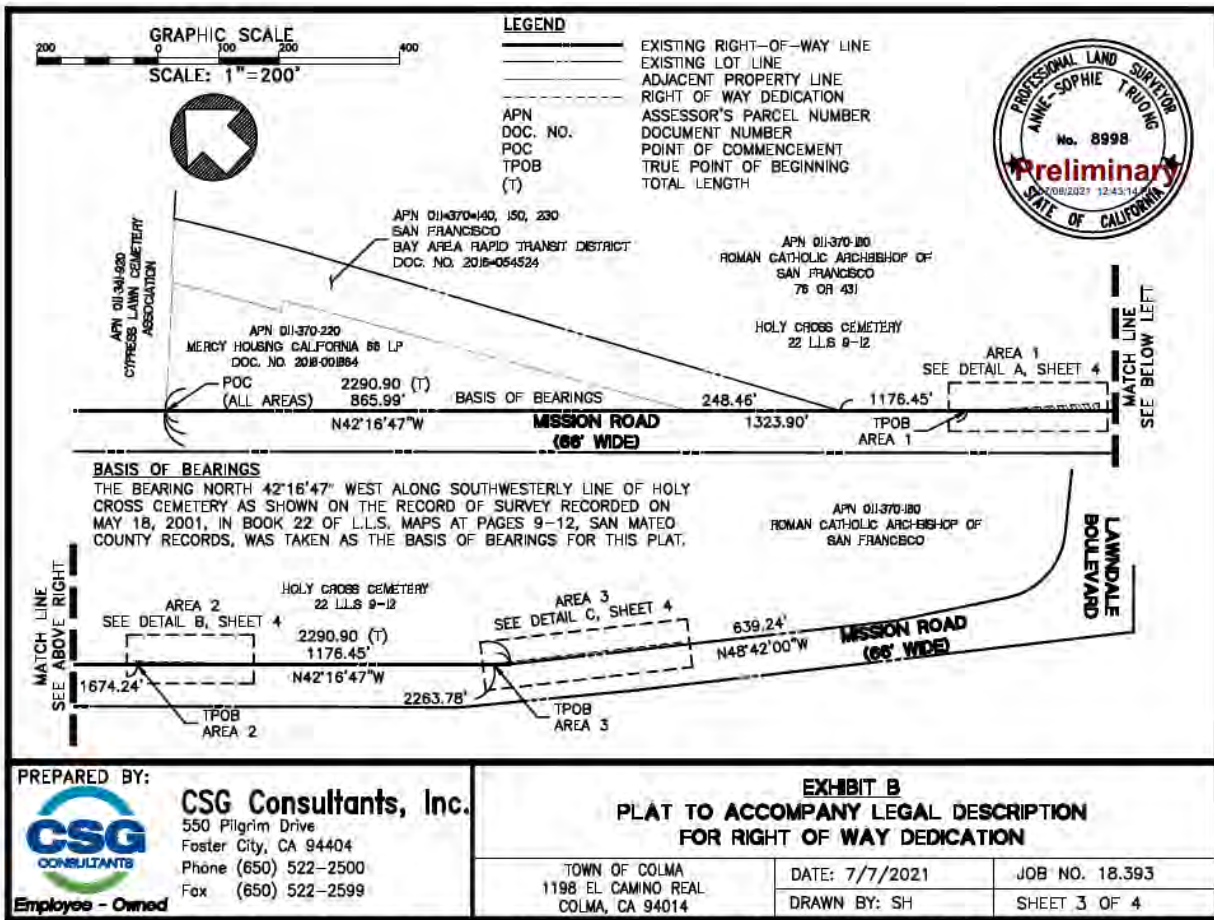
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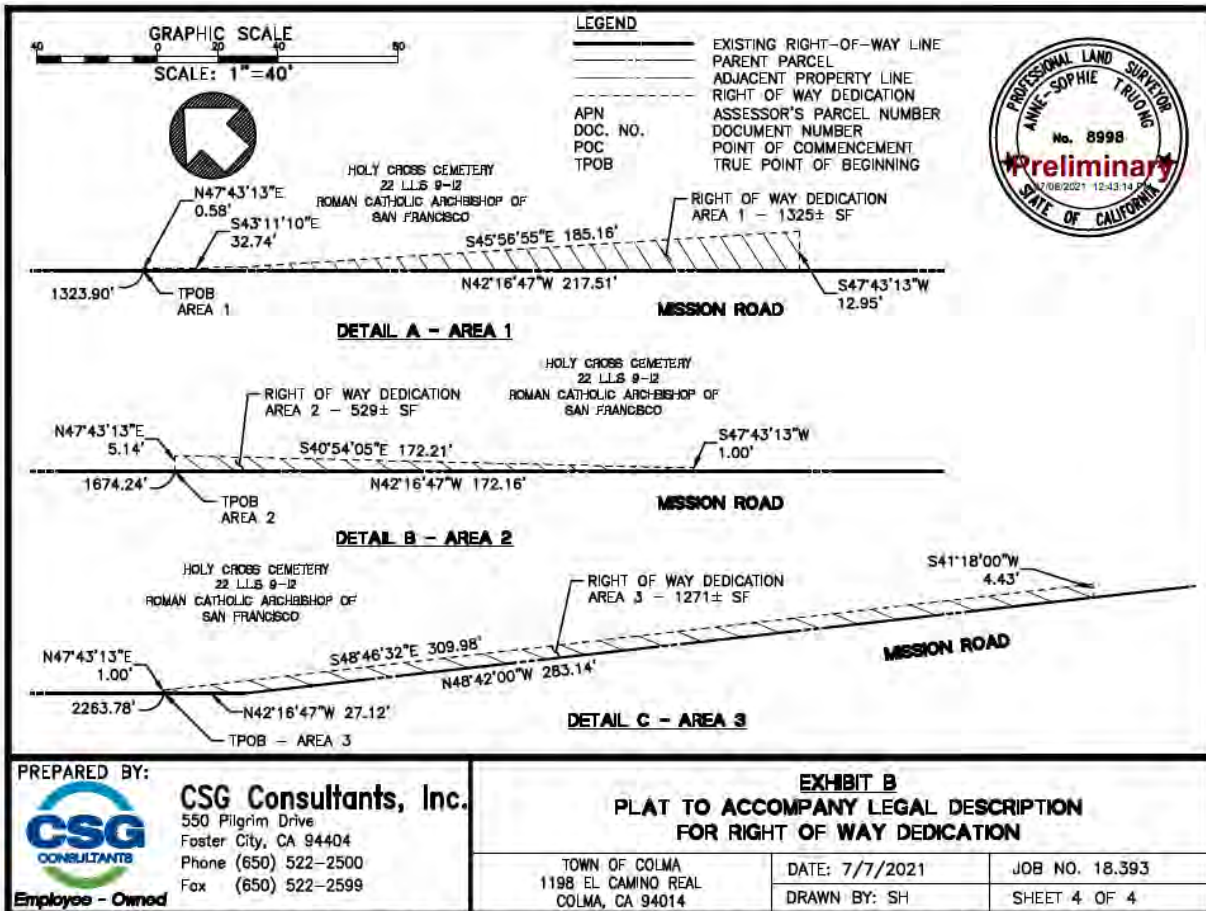
\_\_\_\_\_  
ANNE – SOPHIE TRUONG, PLS 8998







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# STAFF REPORT

TO: Mayor and Members of the City Council  
 FROM: Brad Donohue, Director of Public Works, CSG  
 Nichol Bowersox, Project Manager  
 VIA: Brian Dossey, City Manager  
 MEETING DATE: July 28, 2021  
 SUBJECT: F Street Retaining Wall Improvement Project – Bid Package Approval

---

## RECOMMENDATION

Staff recommends that the City Council adopt the following resolution:

RESOLUTION APPROVING BID DOCUMENT PACKAGE AND AUTHORIZING STAFF TO  
 ADVERTISE NOTICE INVITING BIDS FOR THE F STREET RETAINING WALL  
 IMPROVEMENT PROJECT AND AUTHORIZE THE CITY MANAGER TO APPROVE CHANGES  
 TO THE PLAN DOCUMENTS AS NEEDED OR REQUIRED

## EXECUTIVE SUMMARY

Staff has prepared project plans and bid specifications ("Bid Package") for the F Street Retaining Wall Improvement Project ("Project"). Prior to publishing and advertising the Project Bid Package, staff is requesting the City Council review, comment and approve the Project Bid Package plans and specifications. If approved, staff will proceed with advertising the notice inviting bids in accordance with the Uniform Public Construction Cost Accounting Act for the Project.

## FISCAL IMPACT

There is no fiscal impact to approve the Bid Package. Currently there is an Engineers Estimate of \$400,699 for the base bid scope of work. At the time of contract award, staff will request from City Council a CIP budget amendment incorporating all project costs (construction costs including contingencies).

## BACKGROUND

The F Street retaining wall is 18 feet high at its highest point from street level. The wall is considered to be what is called a bin-type concrete retaining wall. Bin-type walls are typically a system of adjoining closed faced sections that is then filled with earth to help gravitationally retain the slope.

Concerns have been raised by the community on the structural stability of the existing retaining wall mainly due to the visible cracks and spalling on the face of the lower wall structure. Staff was asked to evaluate the stability and condition of the retaining wall and to report findings back to the City Council.

In 2019, the Town requested the Town's Engineering staff to review the existing wall and provide a report with condition assessments and recommendations. Based on the findings of the inspection and condition assessment, staff identified several repair measures to address the wall deficiencies. Repairs consisted of chipping away all unsound concrete, preparing concrete and steel surfaces and placing an epoxy concrete patch material. Cracks will be pressure injected with epoxy to seal the crack and prevent water intrusion and corrosion of the reinforcement. Drain rock and weep holes will be added to the existing lower wall to reduce loading due to water pressure build up behind the wall.

## **ANALYSIS**

A City Council Study Session was held on July 14, 2021, to discuss the current condition of the retaining wall and to receive feedback and comments from the City Council and members of the public. It was noted in the meeting that the wall was experiencing some deterioration of the concrete structure but was still considered to be stable and safe. If left unattended, deterioration would likely worsen to the point where rehabilitation of the existing wall would no longer be an option and would require complete replacement. Because the current condition of the retaining wall is repairable, plans, specifications and an engineer's estimate have been completed for long term repairs to the deteriorated parts of the retaining wall.

The various wall repairs consist of:

- Removing the concrete spalling (areas of the wall where the concrete surfacing is chipping away), removing any unsound concrete around the exposed rebar, cleaning and preparing and patching with high pressure concrete; and
- Exposing and cleaning cracks (Any crack over 1/16 inch) and injecting epoxy seal; and
- Excavating behind wall, installing a drainage system that consists of wall and pipe drainage, weep holes to relieve hydrostatic water buildup, permeable backfill, and installing wall and drainpipe.

Other items that came from the City Council Study Session that are included in the plans and specifications are:

- Community outreach when construction will start and potential impacts; and
- Additive alternate bid items for different finishes for the wall, such as a smooth wall surface that can support a platform for community art, or a stucco finish; and
- Add alternatives for different finishes in the area between the upper and lower wall, such as landscape features or hardscape features; and

- An annual maintenance program to help preserve the wall, this action item may be established after the wall rehabilitation is complete.

Upon review and feedback from the City Council, staff will make all revisions directed by the City Council and proceed with advertising the Project bid package. Staff and the project management team will continue to update the City Council and the City Manager regarding the bidding process.

The proposed project schedule is as follows:

July 28, 2021:	Approve PS&E Package and authorize to release bid package
Early August 2021:	Advertise Project.
August 17, 2021:	Pre-Bid Meeting
August 25, 2021	Award Construction Contract
Late Sept/Early Oct.:	Start Construction
Late Dec./Early Jan.	End of Construction

## ALTERNATIVES

The City Council could choose to postpone the project to a later date. However, this option is not recommended, as additional deterioration could take place reducing the ability to repair the wall, leaving full wall replacement as the only option.

## Council Adopted Values

Adoption of the resolution is consistent with the City Council's value of being *responsible*. Repair of the wall will keep homeowners and businesses in the area of the F Street Retaining Wall safe from wall failure in the future. The City Council also will exhibit fiscal responsibility by expensing a fraction of cost to rehabilitate in lieu of replacement of the wall. City Council has taken a visionary approach and expressed an interest in providing an opportunity to the community to use portions of the retaining wall surface as a canvas for a community art program.

## CONCLUSION

Staff seeks Council's adoption of the resolution approving the Bid Package and authorizing advertisement of the noticing inviting bids for the Project and authorizing the City Manager to approve minor changes and or additions as needed or required.

## ATTACHMENTS

- A. Resolution
- B. Bid Documents - Plans
- C. Bid Documents - Specifications



**RESOLUTION NO. 2021-\_\_**  
**OF THE CITY COUNCIL OF THE TOWN OF COLMA**

**RESOLUTION APPROVING BID DOCUMENT PACKAGE AND AUTHORIZING STAFF TO  
ADVERTISE NOTICE INVITING BIDS FOR THE F STREET RETAINING WALL  
IMPROVEMENT PROJECT AND AUTHORIZE THE CITY MANAGER TO APPROVE  
CHANGES TO THE PLAN DOCUMENTS AS NEEDED OR REQUIRED**

The City Council of the Town of Colma does resolve as follows:

**1. Background**

- (a) The City Council of the Town of Colma has reviewed plans and specifications for the F Street Retaining Wall Project (the "project"); and
- (b) Staff has recommended approval of said plans and specifications; and
- (c) The proposed project is a public works project requiring competitive bidding.

**2. Findings**

- (a) The City Council finds that the design set forth in the plans and specifications is reasonable.
- (b) Currently there is an Engineers Estimate of \$400,699 for the base bid scope of work. At the time of contract award, staff will request from City Council a CIP budget amendment incorporating all project costs (construction costs including contingencies).

**3. Approval and Authorization**

- (a) The plans and specifications for the F Street Retaining Wall Project, a copy of which is on file at Town Hall, are hereby approved.
- (b) Staff is hereby authorized to advertise the notice inviting bids for the project.
- (c) The City Manager is hereby authorized to make minor changes to the project documents as needed or legally required.

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### Certification of Adoption

I certify that the foregoing Resolution 2021-\_\_ was duly adopted at a regular meeting of said City Council held on July 28, 2021 by the following vote:

Name	Voting		Present, Not Voting		Absent
	Aye	No	Abstain	Not Participating	
Diana Colvin, Mayor					
Helen Fisicaro					
Raquel "Rae" Gonzalez					
Joanne F. del Rosario					
John Irish Goodwin					
<i>Voting Tally</i>					

Dated \_\_\_\_\_

\_\_\_\_\_  
Diana Colvin, Mayor

Attest: \_\_\_\_\_  
Caitlin Corley, City Clerk





TOWN OF COLMA  
PUBLIC WORKS & ENGINEERING DEPARTMENT  
PLANS FOR  
PROJECT NO. \_\_\_\_\_  
F STREET RETAINING WALL REPAIR PROJECT

TO BE SUPPLEMENTED BY TOWN OF COLMA STANDARD SPECIFICATIONS AND STATE OF CALIFORNIA,  
DEPARTMENT OF TRANSPORTATION, STANDARD PLANS AND STANDARD SPECIFICATIONS DATED 2018

SHEET INDEX

- 1. TITLE SHEET
- 2. RETAINING WALL PLAN & PROFILE
- 3. WALL REPAIR DETAILS

GENERAL NOTES

**PROJECT DESCRIPTION:**  
THE WORK SHALL CONSIST IN GENERAL OF PROVIDING ALL MATERIALS, LABOR, AND EQUIPMENT NECESSARY TO COMPLETE RETAINING WALL REPAIRS TO THE F STREET RETAINING WALL LOCATED IN THE TOWN OF COLMA, CALIFORNIA. WORK SHALL INCLUDE, BUT NOT BE LIMITED TO, TRAFFIC CONTROL, REPAIRING SPALLED CONCRETE, CORING CONCRETE HOLES AND INSTALLING RETAINING WALL DRAINAGE MATERIALS.

**NOTES:**  
1. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE 2018 CALTRANS STANDARD SPECIFICATIONS AND PLANS, AND TOWN OF COLMA STANDARDS.

2. CONTRACTOR SHALL BE RESPONSIBLE FOR THE VERIFICATION OF LOCATIONS OF EXISTING UTILITIES, BEFORE BEGINNING CONSTRUCTION. LOCATIONS SHOWN ON THE PLANS ARE APPROXIMATE AND FOR GENERAL INFORMATION ONLY. UTILITY COMPANIES AND USA SHALL BE NOTIFIED 48 HOURS PRIOR TO EXCAVATION WITHIN PROJECT AREA. (CALL 811 BEFORE YOU DIG).

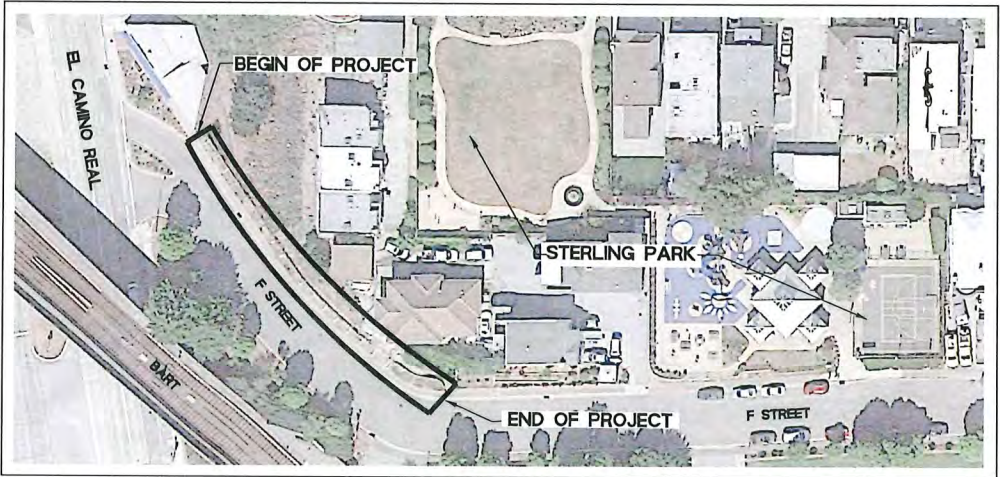
3. CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTION OF EXISTING UTILITIES, DRAINAGE SYSTEMS, AND ALL EXISTING FACILITIES EXCEPT AS SHOWN ON THESE PLANS.

4. EXISTING CONDITIONS AS SHOWN ON THESE PLANS ARE FOR REFERENCE ONLY. CONTRACTOR IS REQUIRED TO FIELD VERIFY ALL EXISTING FIELD CONDITIONS BEFORE ORDERING OR FABRICATING ANY MATERIAL AND PRIOR TO CONSTRUCTION. CONTRACTOR SHALL REPORT ALL CONDITIONS THAT CONFLICT WITH THE CONTRACT DOCUMENTS TO THE TOWN REPRESENTATIVE. NO DEVIATIONS FROM THE CONTRACT DOCUMENTS ARE ALLOWED WITHOUT WRITTEN DIRECTION FROM THE TOWN. DO NOT SCALE DRAWINGS.

5 THE CONTRACTOR IS TO NOTE THAT WORK ON THIS PROJECT INVOLVES WORKING WITH AN EXISTING STRUCTURE. EVERY EFFORT HAS BEEN MADE TO IDENTIFY DISCREPANCIES AND ENSURE THAT THE DETAILS ARE DEPICTED CORRECTLY. THESE DRAWINGS HAVE BEEN PREPARED BASED ON INFORMATION AVAILABLE. THE CONTRACTOR CAN EXPECT AND SHOULD PLAN ON ENCOUNTERING VARIANCES AND DEVIATIONS BETWEEN THE INFORMATION IN THESE PLANS AND THE EXISTING SITE CONDITIONS. ACTUAL FIELD CONDITIONS MAY REQUIRE MODIFICATIONS IN CONSTRUCTION DETAILS AND QUANTITIES.

6. THE CONTRACTOR SHALL NOTIFY THE ENGINEER IF ADDITIONAL ELEMENTS REQUIRE REPAIR. NO ADDITIONAL REPAIR WORK SHALL BE PERFORMED BEFORE PRIOR APPROVAL OF THE ENGINEER.

7. PROJECT SITE VISITATION PRIOR TO BID IS REQUIRED.



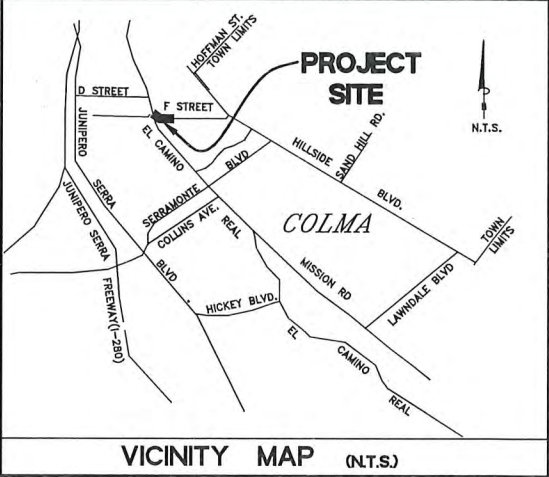
LOCATION MAP  
No scale

ABBREVIATIONS

Approx	APPROXIMATELY	(N)	NEW
Arch	ARCHITECTURAL	OC	ON CENTER
CBC	CALIFORNIA BUILDING CODE	Reinf	STEEL REINFORCEMENT
CLR	CLEAR	Req'd	REQUIRED
Conc	CONCRETE	Trans	TRANSVERSE
Const	CONSTRUCTION	Typ	TYPICAL
Exist	EXISTING	UNO	UNLESS NOTED OTHERWISE
MAX	MAXIMUM	Vert	VERTICAL
MFR	MANUFACTURER		
MIN	MINIMUM		

APPLICABLE 2018 CALTRANS STANDARD PLANS

A3A	ABBREVIATIONS (SHEET 1 OF 3)
A3B	ABBREVIATIONS (SHEET 2 OF 3)
A3C	ABBREVIATIONS (SHEET 3 OF 3)
B0-3	BRIDGE DETAILS



VICINITY MAP (N.T.S.)

TOWN OF COLMA

DATE: XX/XX/21

BRAD DONOHOE,  
DIRECTOR OF PUBLIC WORKS

PREPARED UNDER MY SUPERVISION

DATE: 6/\_\_\_/21

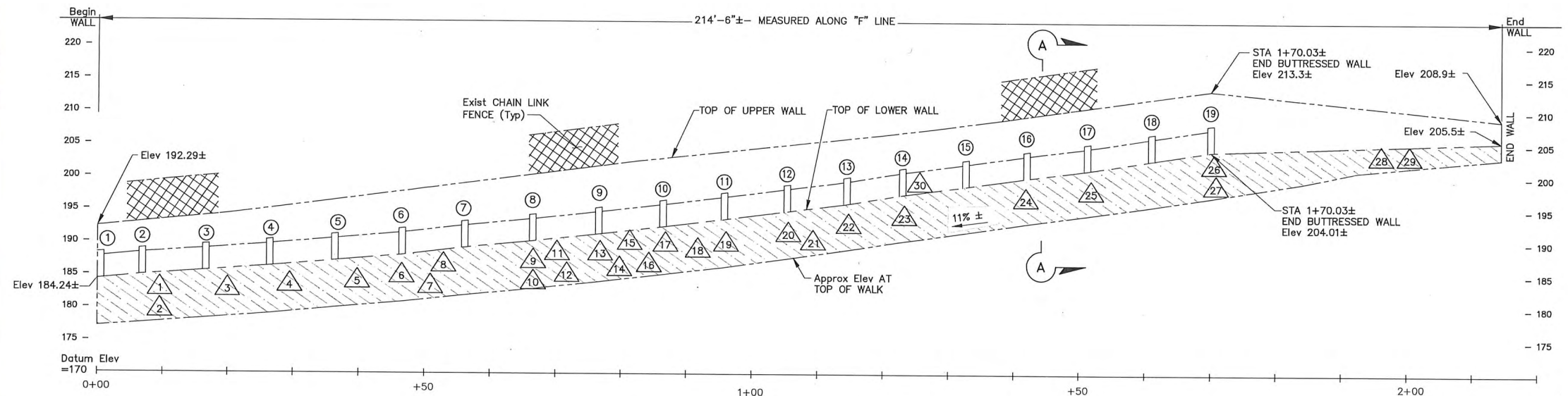
TOM WALKER PE LIC. C56247, EXPIRES 12/31/22

Draft 100% Submittal  
7-22-21  
NOT FOR CONSTRUCTION

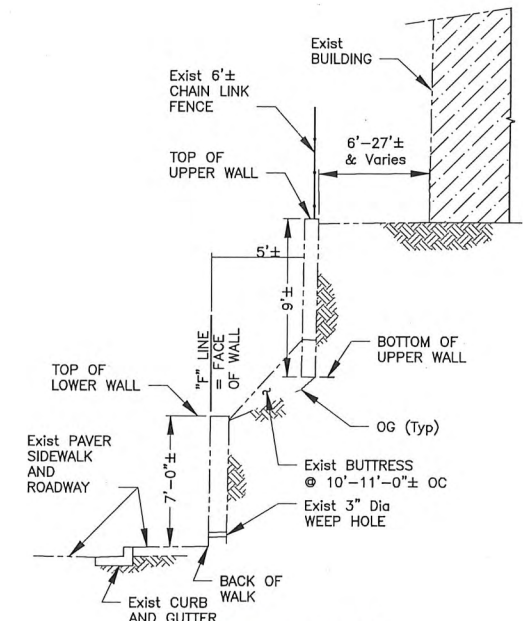
DATE	REVISIONS	NO.	SCALE: AS SHOWN	DRAWN:	DESIGNED:	APPROVED:
PREPARED BY: <b>CSG CONSULTANTS, INC.</b> 550 PILGRIM DRIVE FOSTER CITY, CA 94404 PHONE: (650) 922-2500 FAX: (650) 922-2599  EMPLOYEE-OWNED						
PREPARED FOR: TOWN OF COLMA PUBLIC WORKS & ENGINEERING DEPARTMENT 1198 EL CAMINO REAL, COLMA, CA 94014 PHONE: (650) 757-8888 FAX: (650) 757-8890						
TITLE: <b>TITLE SHEET &amp; GENERAL NOTES</b> <b>F STREET RETAINING WALL REPAIR PROJECT</b>						
SHEET 1 OF 3						
DATE : JOB#: 21.356-1						
60% SUBMITTAL						



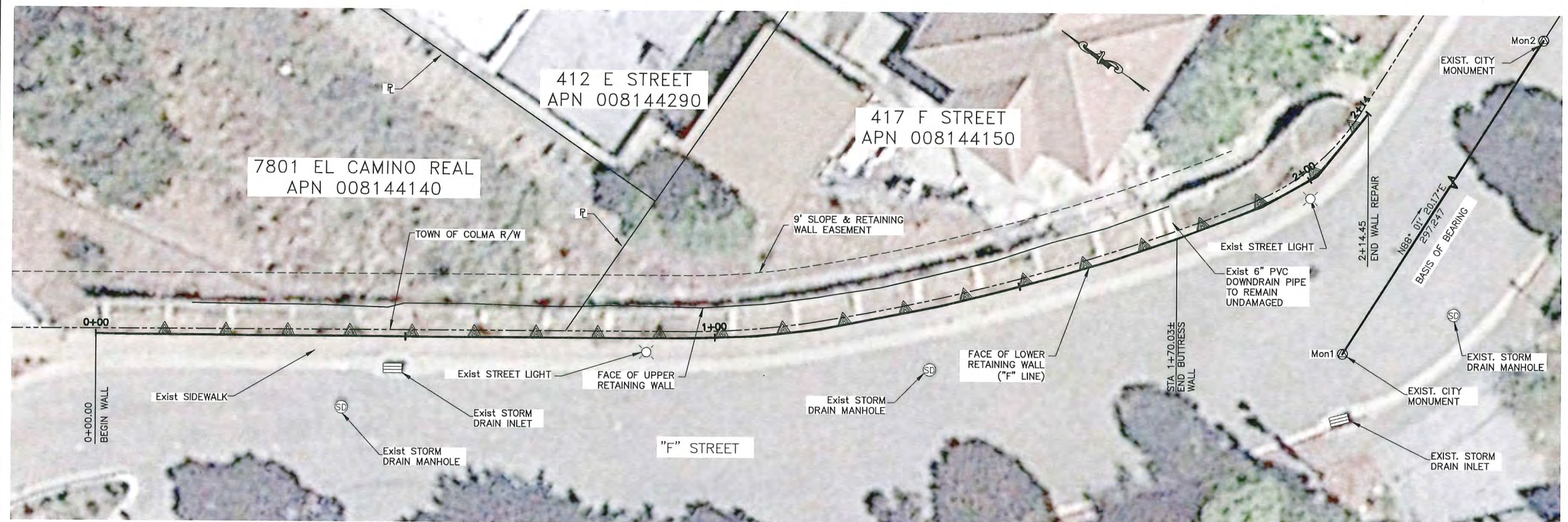




**ELEVATION - EXISTING RETAINING WALL**  
SCALE: 1"=10'



**SECTION (A-A)**  
**TYPICAL AT EXISTING RETAINING WALL**  
SCALE: 1"=5'

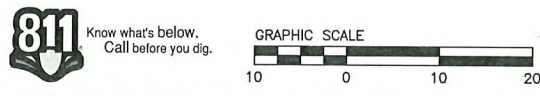


**PLAN - EXISTING RETAINING WALL**  
SCALE: 1"=10'

**LEGEND**

- INDICATES BALLUSTER NUMBER
- INDICATES REPAIR LOCATION No.
- EXIST STREET LIGHT
- EXIST STORM DRAIN MANHOLE
- EXIST DRAINAGE INLET
- EXIST CITY MONUMENT
- LIMITS OF PAINTED FACE OF LOWER WALL

F STREET WALL REPAIR SCHEDULE			
LOCATION	REPAIR TYPE	AREA OF SPALL (SQFT) or CRACK LENGTH (Ft)	DETAIL
1	WALL SPALL	4.0	1
2	WALL SPALL	3.0	1
3	WALL CRACK	7.0	2
4	WALL CRACK	7.0	2
5	WALL CRACK	7.0	2
6	WALL SPALL	8.0	1
7	WALL CRACK	7.0	2
8	WALL CRACK	7.0	2
9	WALL SPALL	6.0	1
10	WALL CRACK	7.0	2
11	WALL CRACK	7.0	2
12	WALL CRACK	7.0	2
13	WALL SPALL	4.0	1
14	WALL CRACK	7.0	2
15	WALL CRACK	7.0	2
16	WALL CRACK	7.0	2
17	WALL SPALL	12.0	1
18	WALL CRACK	7.0	2
19	WALL SPALL	4.0	1
20	WALL SPALL	4.5	1
21	WALL CRACK	7.0	2
22	WALL SPALL	8.0	1
23	WALL SPALL	10.5	1
24	WALL SPALL	4.5	1
25	WALL CRACK	4.0	2
26	WALL SPALL	9.0	1
27	WALL SPALL	12.0	1
28	WALL SPALL	1.5	1
29	WALL SPALL	1.0	1
30	BUTTRESS SPALL	5.0	3



J:\DESIGN\21-356-1 Colma Wall F Street\CAD\60%PLANS\356-02\_Plan & Profile.dwg 05/22/17 PM

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DATE			
REVISIONS			
NO.			
SCALE: AS SHOWN			
DRAWN:			
DESIGNED:			
APPROVED:			

PREPARED BY: **CSG CONSULTANTS, INC.**  
 550 PILGRIM DRIVE  
 FOSTER CITY, CA 94404  
 PHONE: (650) 522-2500  
 FAX: (650) 522-2599  
 EMPLOYEE-OWNED

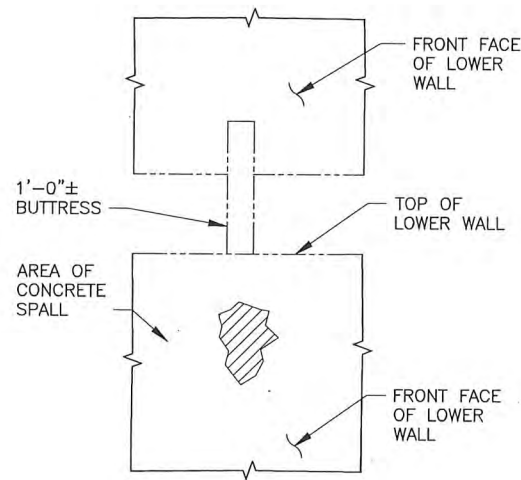
PREPARED FOR:  
**TOWN OF COLMA**  
 PUBLIC WORKS & ENGINEERING DEPARTMENT  
 1198 EL CAMINO REAL, COLMA, CA 94014  
 PHONE: (650) 757-8888  
 FAX: (650) 757-8890

TITLE:  
**RETAINING WALL PLAN & PROFILE**  
**F STREET RETAINING WALL**  
**REPAIR PROJECT**

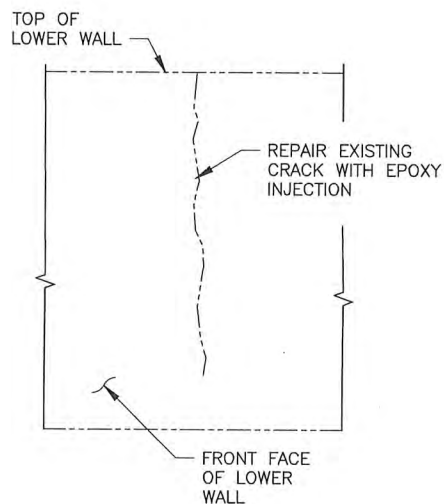
**SHEET**  
**2 OF 3**

DATE: \_\_\_\_\_  
 JOB#: 21.356-1  
 60% SUBMITTAL

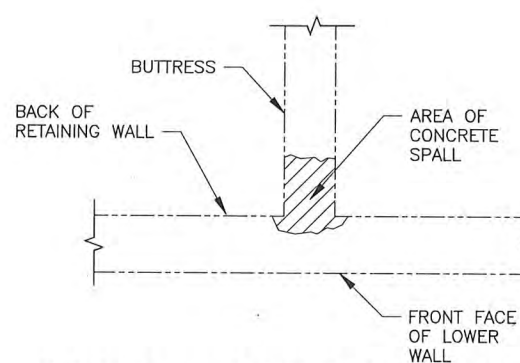




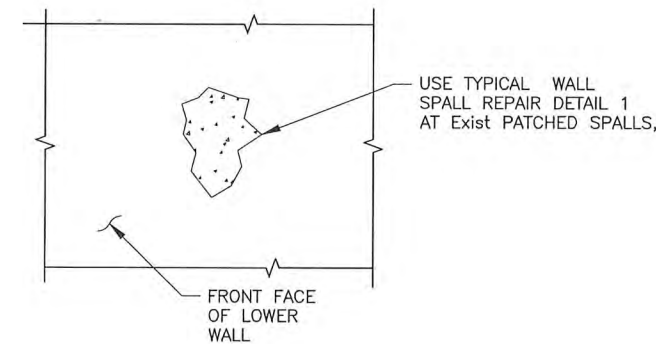
1 WALL SPALL REPAIR  
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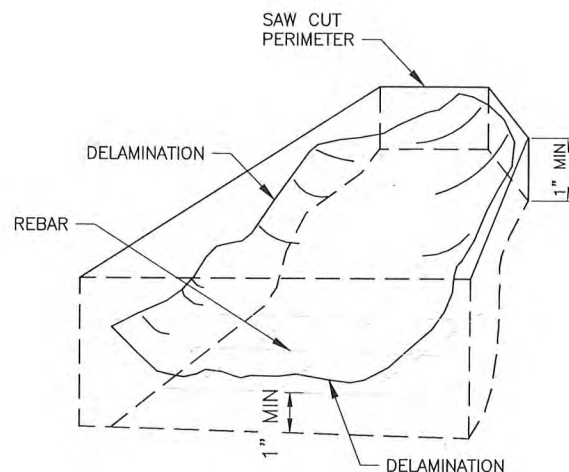
2 WALL CRACK REPAIR  
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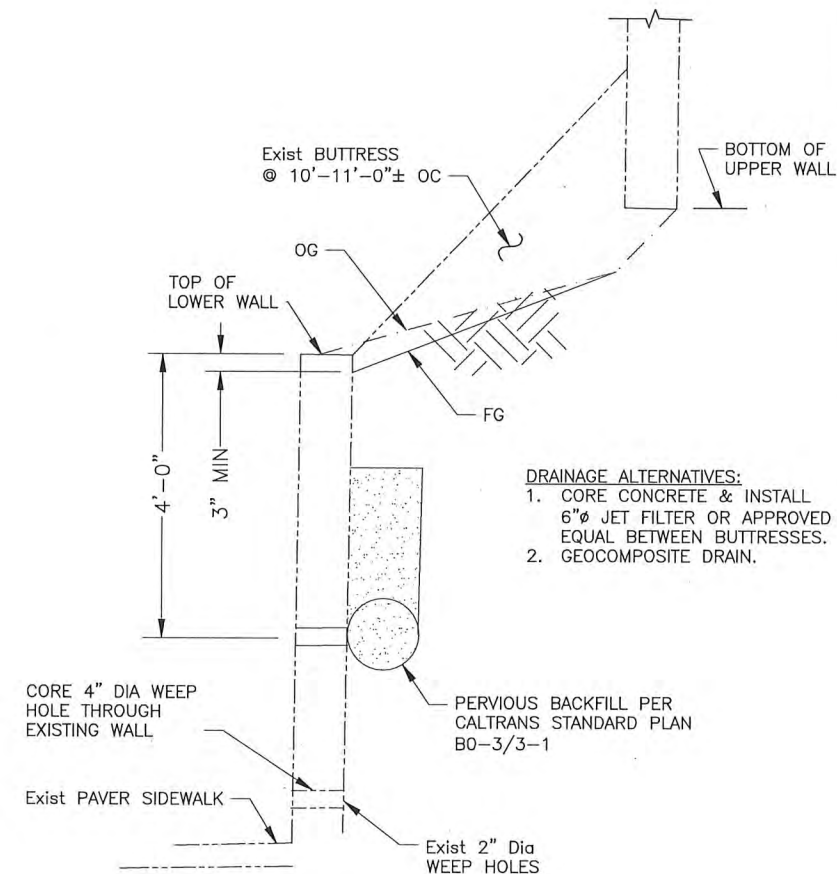
3 PLAN - BUTTRESS/WALL SPALL REPAIR  
No scale



4 CONCRETE PATCH REPAIR  
No scale



6 SCHEMATIC OF CONCRETE SPALL REPAIR PREPARATION  
No scale



5 DETAIL - WEEP HOLE AND PERVIOUS BACKFILL  
3/4"=1'-0"

### NOTES

1. THE CONTRACTOR IS SOLELY RESPONSIBLE FOR EXCAVATION PROCEDURES INCLUDING TEMPORARY SHORING, BRACING AND PROTECTION OF EXISTING STRUCTURES.

### LEGEND

- EXISTING CONCRETE
- PROPOSED CONSTRUCTION
- /// AREA OF CONCRETE REPAIR

## CONCRETE CRACK AND SPALL REPAIR NOTES

1. REMOVE ALL UNSOUND CONCRETE. IF DURING THE REMOVAL OPERATION, REINFORCING STEEL IS EXPOSED, THEN REMOVE CONCRETE AROUND THE BAR TO PROVIDE A MINIMUM 3/4 INCH CLEAR SPACE BETWEEN THE REBAR AND SURROUNDING CONCRETE OR A CLEAR SPACE OF 1/4 INCH LARGER THAN THE MAXIMUM SIZE AGGREGATE IN THE REPAIR MATERIAL, WHICHEVER IS GREATER.
2. AFTER REMOVING LARGE LOOSE AREAS OF UNSOUND CONCRETE, A 15 LBS. MAX CHIPPING HAMMER SHOULD BE USED TO REMOVE THE CONCRETE IN THE VICINITY OF THE REINFORCEMENT. DO NOT IMPACT THE REINFORCEMENT OR OTHERWISE CAUSE DAMAGE TO ITS BOND TO CONCRETE AT THE REPAIR SURFACE BOUNDARY.
3. THE CONCRETE SURFACE SHOULD BE AT OPTIMUM MOISTURE CONDITIONING PER MANUFACTURER'S RECOMMENDATIONS.
4. THE SURFACE SHALL BE FREE OF DUST, LAITANCE OR ANY OTHER FOREIGN MATERIALS; THE SURFACE TEMPERATURE SHOULD BE WITHIN SUITABLE LIMITS TO PERMIT PROPER WETTING BY THE REPAIR MATERIALS.
5. PLACE REPAIR CONCRETE AS SOON AS POSSIBLE AFTER CONCRETE REMOVAL AND CLEANING IS COMPLETED OR PROTECT THE CLEANED AND PREPARED CONCRETE AND REINFORCEMENT SURFACES FROM CONTAMINATION.
6. IF THE CROSS-SECTION AREA OF THE EXPOSED REBAR HAS BEEN REDUCED BY CORROSION BY MORE THAN 20 PERCENT, THE ENGINEER SHALL MAKE THE DECISION ON THE ACTIONS TO BE TAKEN. ONE OF THREE OPTIONS MAY BE TAKEN:
  1. DO NOTHING
  2. ADD SUPPLEMENTAL REINFORCEMENT
  3. REPLACEMENT
7. REPAIR CONCRETE WALL CRACKS WITH SIMPSON CRACK-PAC® INJECTION EPOXY AND PORTS OR APPROVED EQUAL. REPAIR CRACK LOCATIONS ARE AS SHOWN ON THE PLANS AND AT THE DIRECTION OF THE ENGINEER.

8. ALL PHASES OF WORK PERTAINING TO THE CONCRETE CONSTRUCTION SHALL CONFORM TO THE LATEST EDITION OF ACI 318 "BUILDING CODE REQUIREMENTS FOR REINFORCED CONCRETE", AND THE LATEST EDITION OF ACI 117 "SPECIFICATIONS FOR TOLERANCES FOR CONCRETE CONSTRUCTION AND MATERIALS".

9. PROPOSED LIMITS OF EACH REPAIR TO BE DETERMINED BY THE ENGINEER.

10. REMOVE ALL UNSOUND CONCRETE FROM AREA OF REPAIR. NO UNSOUND OR DETERIORATED CONCRETE CAN REMAIN.

11. THE CONCRETE AT EXPOSED REINFORCING MUST BE COMPLETELY REMOVED FROM AROUND ALL EXPOSED SURFACE OF THE BARS, PROVIDING AND AT LEAST 1/4-INCH CLEARANCE ON ALL SIDES.

a) CLEANED EXPOSED REINFORCEMENT TO REMOVE ANY LOOSE CORROSION (RUST).

b) IF THE CROSS SECTION OF THE EXISTING REINFORCING STEEL HAS BEEN REDUCED SIGNIFICANTLY, NEW STEEL MAY BE TIED TO THE EXISTING STEEL PRIOR TO PLACING THE CONCRETE PATCH.

12. THE EDGES OF THE REPAIRED AREAS SHOULD BE SAWCUT AT 90-DEGREE ANGLES. FEATHER EDGES SHOULD BE AVOIDED AT ALL COSTS. THE CONFIGURATION OF THE AREA TO BE REPAIRED SHOULD BE KEPT AS SIMPLE AS POSSIBLE, AND PREFERABLY SQUARE.

13. ALL REPAIRS MUST FOLLOW THE TECHNIQUE IN ICRI'S GUIDE FOR SURFACE PREPARATION FOR THE REPAIR OF DETERIORATED CONCRETE RESULTING FROM REINFORCING STEEL CORROSION, GUIDELINE NO. 03730.

14. ALL CONCRETE SHALL BE PREPARED WITH TYPE II/V PORTLAND CEMENT CONFORMING TO ASTM C150 AND HAVE A MINIMUM COMPRESSIVE STRENGTH AT 28 DAYS AND A MAX WATER CEMENT RATIO, W/C, AS FOLLOWS UNO:

STRENGTH	W/C	TYPE OF CONCRETE
5,000 PSI	0.50	NORMAL WEIGHT

15. ALL CONCRETE MIXES SHALL BE DESIGNED BY AN APPROVED LABORATORY AND SHALL BE STAMPED AND SIGNED BY A CIVIL ENGINEER LICENSED IN CALIFORNIA.

## STEEL REINFORCING

1. ALL REINFORCING BARS SHALL CONFORM TO ASTM A-615, GRADE 60.
2. CONCRETE SHOULD BE REMOVED ALONG THE REBAR LENGTH UNTIL THE BAR IS FREE OF CORROSION PRODUCTS.
3. ALL RUST MUST BE REMOVED FROM THE STEEL BY SCRUBBING, GRINDING ETC. WITH AN APPROPRIATE TOOL (WIRE BRUSH, SAND BLASTER, ETC.), DEPENDING ON THE EXTENT AND LEVEL OF CORROSION.
4. APPLY REBAR COATING & BONDING AGENT, ANTI-CORROSIVE EPOXY PRIMER OR FERROSEAL CEMENT-BASED ANTI-CORROSIVE COATING APPLIED TO THE REBARS.
5. REINFORCING STEEL SHALL HAVE MINIMUM 1" CONCRETE COVER OR MATCH EXISTING COVER, WHICHEVER IS GREATER.
6. NO WELDING OF REINFORCEMENT IS ALLOWED.



DATE	1	1	1
REVISIONS			
NO.	1	1	1
SCALE: AS SHOWN	1	1	1
DRAWN:	1	1	1
DESIGNED:	1	1	1
APPROVED:	1	1	1
PREPARED BY: CSG CONSULTANTS, INC. 550 PILGRIM DRIVE FOSTER CITY, CA 94404 PHONE: (650) 522-2500 FAX: (650) 522-2599 EMPLOYEE-OWNED			
PREPARED FOR: TOWN OF COLMA PUBLIC WORKS & ENGINEERING DEPARTMENT 1198 EL CAMINO REAL, COLMA, CA 94014 PHONE: (650) 757-8888 FAX: (650) 757-8890			
TITLE: WALL REPAIR DETAILS F STREET RETAINING WALL REPAIR PROJECT			
SHEET 3 OF 3			
DATE: 06/14/21			
JOB#: 21.356-1			
60% SUBMITTAL			



**TOWN OF COLMA**  
**COLMA, CALIFORNIA**

**CONTRACT DOCUMENTS AND SPECIFICATIONS FOR**  
**F STREET RETAINING WALL REPAIR PROJECT**

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## 00 11 16 – NOTICE INVITING BIDS

NOTICE IS HEREBY GIVEN that the Town of Colma ("Town") invites and will receive sealed Bids up to but not later than **2:00 p.m. on Thursday, August 19, 2021** at the office of the Public Works Department, located at 1198 El Camino Real, Colma, CA 94014, for the furnishing to Town of all labor, equipment, materials, tools, services, transportation, permits, utilities, and all other items necessary for F Street Retaining Wall Repair Project (the "Project"). At said time, Bids will be publicly opened and read aloud at the Colma Town Hall Lobby. Bids received after said time shall be returned unopened. Bids shall be valid for a period of 90 calendar days after the Bid opening date.

The various wall repairs consist of:

- Removing the concrete spalling (areas of the wall where the concrete surfacing is chipping away), removing any unsound concrete around the exposed rebar, cleaning and preparing and patching with high pressure concrete; and
- Exposing and cleaning cracks (Any crack over 1/16 inch) and injecting epoxy seal; and
- Excavating behind wall, installing a drainage system that consists of wall and pipe drainage, weep holes to relieve hydrostatic water buildup, permeable backfill, and installing wall and drainpipe.

Bids must be submitted on the Town's Bid Forms. Bidders may obtain a copy of the Contract Documents from <https://www.colma.ca.gov/rfp-and-bids/>. To the extent required by section 20103.7 of the Public Contract Code, upon request from a contractor plan room service, the Town shall provide an electronic copy of the Contract Documents at no charge to the contractor plan room.

It is the responsibility of each prospective bidder to download and print all Bid Documents for review and to verify the completeness of Bid Documents before submitting a bid. Any Addenda will be posted on <https://www.colma.ca.gov/rfp-and-bids/>. It is the responsibility of each prospective bidder to check <https://www.colma.ca.gov/rfp-and-bids/> on a daily basis through the close of bids for any applicable addenda or updates. The Town does not assume any liability or responsibility based on any defective or incomplete copying, excerpting, scanning, faxing, downloading or printing of the Bid Documents. Information on <https://www.colma.ca.gov/rfp-and-bids/> may change without notice to prospective bidders. The Contract Documents shall supersede any information posted or transmitted by <https://www.colma.ca.gov/rfp-and-bids/>.

Each Bid shall be accompanied by cash, a certified or cashier's check, or Bid Bond secured from a surety company satisfactory to the Town, the amount of which shall not be less than ten percent (10%) of the submitted Total Bid Price, made payable to Town of Colma as bid security. The bid security shall be provided as a guarantee that within ten (10) working days after the Town provides the successful bidder the Notice of Award, the successful Bidder will enter into a contract and provide the necessary bonds and certificates of insurance. The bid security will be declared forfeited if the successful Bidder fails to comply within said time. No interest will be paid on funds deposited with Town.

A MANDATORY Pre-Bid Conference is scheduled for August 17, 2021 at 10:00 a.m. to review the Project's existing conditions at the intersection of F Street and El Camino Real. Representatives of the Town and consulting engineers, if any, will be present. Questions asked



by Bidders at the Pre-Bid Conference not specifically addressed within the Contract Documents shall be answered in writing, and shall be sent to all Bidders present at the Pre-Bid Conference. Bids will not be accepted from any bidder who did not attend the mandatory Pre-Bid Conference.

The successful Bidder will be required to furnish a Faithful Performance Bond and a Labor and Material Payment Bond each in an amount equal to one hundred percent (100%) of the Contract Price. Each bond shall be in the forms set forth herein, shall be secured from a surety company that meets all State of California bonding requirements, as defined in California Code of Civil Procedure Section 995.120, and that is a California admitted surety insurer.

Pursuant to Section 22300 of the Public Contract Code of the State of California, the successful Bidder may substitute certain securities for funds withheld by Town to ensure its performance under the contract.

Pursuant to Labor Code Section 1773, Town has obtained the prevailing rate of per diem wages and the prevailing wage rate for holiday and overtime work applicable in San Mateo County from the Director of the Department of Industrial Relations for each craft, classification, or type of worker needed to execute this contract. A copy of these prevailing wage rates may be obtained via the internet at: [www.dir.ca.gov/dlsr/](http://www.dir.ca.gov/dlsr/)

In addition, a copy of the prevailing rate of per diem wages is available at the Town's Public Works Department and shall be made available to interested parties upon request. The successful bidder shall post a copy of the prevailing wage rates at each job site. It shall be mandatory upon the Bidder to whom the Contract is awarded, and upon any subcontractors, to comply with all Labor Code provisions, which include but are not limited to the payment of not less than the said specified prevailing wage rates to all workers employed by them in the execution of the Contract, employment of apprentices, hours of labor and debarment of contractors and subcontractors.

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. No Bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work. If awarded a contract, the Bidder and its subcontractors, of any tier, shall maintain active registration with the Department of Industrial Relations for the duration of the Project. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. In bidding on this Project, it shall be the Bidder's sole responsibility to evaluate and include the cost of complying with all labor compliance requirements under this contract and applicable law in its Bid.

Unless otherwise provided in the Instructions for Bidders, each Bidder shall be a licensed contractor pursuant to sections 7000 et seq. of the Business and Professions Code in the following classification(s) throughout the time it submits its Bid and for the duration of the contract: Class A License.

Substitution requests shall be made within 35 calendar days after the award of the contract. Pursuant to Public Contract Code Section 3400(b), the Town may make findings designating that certain additional materials, methods or services by specific brand or trade name other than those listed in the Standard Specifications be used for the Project. Such findings, if any, as well as the materials, methods or services and their specific brand or trade names that must be used for the Project may be found in the Special Conditions.

Town shall award the contract for the Project to the lowest responsive, responsible Bidder as determined by the Town from the BASE BID. Town reserves the right to reject any or all bids or to waive any irregularities or informalities in any bids or in the bidding process.

For further information, contact Nichol Bowersox, Senior Engineer/Project Manager, at [nicholb@csgengr.com](mailto:nicholb@csgengr.com).

**END OF NOTICE INVITING BIDS**

## **00 21 13 – INSTRUCTIONS TO BIDDERS**

### **ARTICLE 1. SECURING DOCUMENTS**

Bids must be submitted to the Town on the Bid Forms which are a part of the Bid Package for the Project. Bid and Contract Documents may be obtained from <https://www.colma.ca.gov/rfp-and-bids/> in the Notice Inviting Bids. Prospective bidders are encouraged to telephone in advance to determine the availability of Contract Documents. Any charge for the Contract Documents is stated in the Notice Inviting Bids.

The Town may also make the Contract Documents available for review at one or more plan rooms, as indicated in the Notice Inviting Bids. Please Note: Prospective Bidders who choose to review the Contract Documents at a plan room must contact the Town to obtain the required Contract Documents if they decide to submit a bid for the Project.

Any Addenda will be posted on <https://www.colma.ca.gov/rfp-and-bids/>. Failure to acknowledge addenda may make a bid nonresponsive and not eligible for award of the contract.

### **ARTICLE 2. EXAMINATION OF SITE AND CONTRACT DOCUMENTS**

At its own expense and prior to submitting its Bid, each Bidder shall visit the site of the proposed work and fully acquaint itself with the conditions relating to the construction and labor required so that the Bidder may fully understand the work, including but not limited to difficulties and restrictions attending the execution of the work under the contract. Each Bidder shall carefully examine the Drawings, and shall read the Specifications, Contract, and all other documents referenced herein. Each Bidder shall also determine the local conditions which may in any way affect the performance of the work, including local tax structure, contractors' licensing requirements, availability of required insurance, the prevailing wages and other relevant cost factors, shall familiarize itself with all federal, state and local laws, ordinances, rules, regulations and codes affecting the performance of the work, including the cost of permits and licenses required for the work, and shall make such surveys and investigations, including investigations of subsurface or latent physical conditions at the site or where work is to be performed as may be required. Bidders are responsible for consulting the standards referenced in the Contract. The failure or omission of any Bidder to receive or examine any contract documents, forms, instruments, addenda, or other documents, or to visit the site and acquaint itself with conditions there existing shall in no way relieve any Bidder from any obligation with respect to its Bid or to the contract and no relief for error or omission will be given except as required under State law. The submission of a Bid shall be taken as conclusive evidence of compliance with this Article.

### **ARTICLE 3. INTERPRETATION OF DRAWINGS AND DOCUMENTS**

Prospective Bidders unclear as to the true meaning of any part of the Drawings, Specifications or other proposed contract documents may submit to the Engineer of the Town a written request for interpretation. The prospective Bidder submitting the request is responsible for prompt delivery. Interpretation of the Drawings, Specifications or other proposed contract documents will be made only by a written addendum duly issued and a copy of such addenda will be mailed or delivered to each prospective Bidder who has purchased a set of Drawings and Specifications. The Town will not be responsible for any other explanation or interpretations of the proposed documents. If a Prospective Bidders becomes aware of any errors or omissions in any part of the Contract Documents, it is the obligation of the Prospective Bidder to promptly bring it to the attention of the Town.

#### **ARTICLE 4. PRE-BID CONFERENCE**

A mandatory Pre-Bid Conference is scheduled for August 17, 2021 at 10:00 a.m. to review the Project's existing conditions at the intersection of F Street and El Camino Real. Representatives of the Town and consulting engineers, if any, will be present. Questions asked by Bidders at the Pre-Bid Conference not specifically addressed within the Contract Documents shall be answered in writing, and shall be sent to all Bidders present at the Pre-Bid Conference. Bids will not be accepted from any bidder who did not attend the mandatory Pre-Bid Conference.

#### **ARTICLE 5. ADDENDA**

The Town reserves the right to revise the Contract Documents prior to the Bid opening date. Revisions, if any, shall be made by written Addenda. All Addenda issued by the Town shall be included in the Bid and made part of the Contract Documents. Pursuant to Public Contract Code Section 4104.5, if the Town issues an Addendum which includes material changes to the Project less than 72 hours prior to the deadline for submission of Bids, the Town will extend the deadline for submission of Bids. The Town may determine, in its sole discretion, whether an Addendum warrants postponement of the Bid submission date. Each prospective Bidder shall provide Town a name, address, email address, and facsimile number to which Addenda may be sent, as well as a telephone number by which the Town can contact the Bidder. Copies of Addenda will be furnished by email, facsimile, first class mail, express mail or other proper means of delivery without charge to all parties who have obtained a copy of the Contract Documents and provided such current information. Please Note: Bidders are responsible for ensuring that they have received any and all Addenda. To this end, each Bidder should contact the Public Works Department to verify that it has received all Addenda issued, if any, prior to the Bid opening. The Bidder shall indicate the Addenda received prior to bidding in the space provided in the Bid Form. Failure to indicate all Addenda may be sufficient cause for rejecting the Bid.

#### **ARTICLE 6. ALTERNATE BIDS**

If alternate bid items are called for in the Contract Documents, the time required for completion of the alternate bid items has already been factored into the Contract duration and no additional Contract time will be awarded for any of the alternate bid items. The Town may elect to include one or more of the alternate bid items, or to otherwise remove certain work from the Project scope of work. Accordingly, each bidder must ensure that each bid item contains a proportionate share of profit, overhead, and other costs or expenses which will be incurred by the bidder.

#### **ARTICLE 7. COMPLETION OF BID FORMS**

Bids shall only be prepared using copies of the Bid Forms which are included in the Contract Documents. The use of substitute Bid Forms other than clear and correct photocopies of those provided by the Town will not be permitted. Bids shall be executed by an authorized signatory as described in these Instructions to Bidders. In addition, Bidders shall fill in all blank spaces (including inserting "N/A" where applicable), and initial all interlineations, alterations, or erasures to the Bid Forms. Bidders shall neither delete, modify, nor supplement the printed matter on the Bid Forms nor make substitutions thereon. **USE OF BLACK OR BLUE INK, INDELIBLE PENCIL, OR A TYPEWRITER IS REQUIRED.** Deviations in the Bid Forms may result in the Bid being deemed non-responsive.

## **ARTICLE 8. MODIFICATIONS OF BIDS**

Each Bidder shall submit its Bid in strict conformity with the requirements of the Contract Documents. Unauthorized additions, modifications, revisions, conditions, limitations, exclusions or provisions attached to a Bid may render it non-responsive and may cause its rejection. Bidders shall not delete, modify, or supplement the printed matter on the Bid Forms, or make substitutions thereon. Oral, telephonic and electronic modifications will not be considered.

## **ARTICLE 9. SUBCONTRACTORS**

Bidder shall set forth the name, address of the place of business, and contractor license number of each subcontractor who will perform work, labor, furnish materials or render services to the bidder on said contract and each subcontractor licensed by the State of California who, under subcontract to bidder, specially fabricates and installs a portion of the Work described in the Drawings and Specifications in an amount in excess of one half of one percent (0.5%) of the total bid price, and shall indicate the portion of the work to be done by such subcontractor in accordance with Public Contract Code Section 4104.

## **ARTICLE 10. LICENSING REQUIREMENTS**

Pursuant to Business and Professions Code Section 7028.15 and Public Contract Code Section 3300, all bidders must possess proper licenses for performance of this Contract. Subcontractors must possess the appropriate licenses for each specialty subcontracted. Pursuant to Business and Professions Code Section 7028.5, the Town shall consider any bid submitted by a contractor not currently licensed in accordance with state law and pursuant to the requirements found in the Contract Documents to be nonresponsive, and the Town shall reject the Bid. The Town shall have the right to request, and Bidders shall provide within ten (10) calendar days, evidence satisfactory to the Town of all valid license(s) currently held by that Bidder and each of the Bidder's subcontractors, before awarding the Contract.

Notwithstanding anything contained herein, if the Work involves federal funds, the Contractor shall be properly licensed by the time the Contract is awarded, pursuant to the provisions of Public Contract Code section 20103.5.

## **ARTICLE 11. BID GUARANTEE (BOND)**

Each bid shall be accompanied by: (a) cash; (b) a certified or cashier's check made payable to Town of Colma; or (c) a Bid Bond secured from a surety company satisfactory to the Town, the amount of which shall not be less than ten percent (10%) of the Total Bid Price, made payable to Town of Colma as bid security. Personal sureties and unregistered surety companies are unacceptable. The surety insurer shall be California admitted surety insurer, as defined in Code of Civil Procedure Section 995.120. The bid security shall be provided as a guarantee that within ten (10) working days after the Town provides the successful bidder the Notice of Award, the successful bidder will enter into a contract and provide the necessary bonds and certificates of insurance. The bid security will be declared forfeited if the successful bidder fails to comply within said time, and Town may enter into a contract with the next lowest responsive responsible bidder, or may call for new bids. No interest shall be paid on funds deposited with the Town. Town will return the security accompanying the bids of all unsuccessful bidders no later than 60 calendar days after award of the contract.

## **ARTICLE 12. IRAN CONTRACTING ACT OF 2010**

In accordance with Public Contract Code Section 2200 *et seq.*, the Town requires that any person that submits a bid or proposal or otherwise proposes to enter into or renew a contract with the Town with respect to goods or services of one million dollars (\$1,000,000) or more, certify at the time the bid is submitted or the contract is renewed, that the person is not identified on a list created pursuant to subdivision (b) of Public Contract Code Section 2203 as a person engaging in investment activities in Iran described in subdivision (a) of Public Contract Code Section 2202.5, or as a person described in subdivision (b) of Public Contract Code Section 2202.5, as applicable.

The form of such Iran Contracting Certificate is included with the bid package and must be signed and dated under penalty of perjury.

## **ARTICLE 13. NONCOLLUSION DECLARATION**

Bidders on all public works contracts are required to submit a declaration of noncollusion with their bid. This form is included with the bid package and must be signed and dated under penalty of perjury.

## **ARTICLE 14. PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATION**

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work. If awarded a contract, the bidder and its subcontractors, of any tier, shall maintain active registration with the Department of Industrial Relations for the duration of the Project. To this end, Bidder shall sign and submit with its Bid the Public Works Contractor Registration Certification on the form provided, attesting to the facts contained therein. Failure to submit this form may render the bid non-responsive. In addition, each Bidder shall provide the registration number for each listed subcontractor in the space provided in the Designation of Subcontractors form.

## **ARTICLE 15. BIDDER INFORMATION AND EXPERIENCE FORM**

Each Bidder shall complete the questionnaire provided herein and shall submit the questionnaire along with its Bid. Failure to provide all information requested within the questionnaire along with the Bid may cause the bid to be rejected as non-responsive. The Town reserves the right to reject any Bid if an investigation of the information submitted does not satisfy the Engineer that the Bidder is qualified to properly carry out the terms of the contract.

## **ARTICLE 16. WORKERS' COMPENSATION CERTIFICATION**

In accordance with the provisions of Labor Code Section 3700, Contractor shall secure the payment of compensation to its employees. Contractor shall sign and file with the Town the following certificate prior to performing the work under this Contract:

I am aware of the provisions of Section 3700 of the Labor Code, which require every employer to be insured against liability for workers' compensation or to

undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

The form of such Workers' Compensation Certificate is included as part of this document.

#### **ARTICLE 17. SIGNING OF BIDS**

All Bids submitted shall be executed by the Bidder or its authorized representative. Bidders may be asked to provide evidence in the form of an authenticated resolution of its Board of Directors or a Power of Attorney evidencing the capacity of the person signing the Bid to bind the Bidder to each Bid and to any Contract arising therefrom.

If a Bidder is a joint venture or partnership, it may be asked to submit an authenticated Power of Attorney executed by each joint venturer or partner appointing and designating one of the joint venturers or partners as a management sponsor to execute the Bid on behalf of Bidder. Only that joint venturer or partner shall execute the Bid. The Power of Attorney shall also: (1) authorize that particular joint venturer or partner to act for and bind Bidder in all matters relating to the Bid; and (2) provide that each venturer or partner shall be jointly and severally liable for any and all of the duties and obligations of Bidder assumed under the Bid and under any Contract arising therefrom. The Bid shall be executed by the designated joint venturer or partner on behalf of the joint venture or partnership in its legal name.

#### **ARTICLE 18. SUBMISSION OF SEALED BIDS**

Once the Bid and supporting documents have been completed and signed as set forth herein, they shall be placed, along with the Bid Guarantee and other required materials, in a sealed envelope, addressed and delivered or mailed, postage prepaid, to the Engineering Department of the Town before the time and day set for the receipt of bids. The envelope shall bear the title of the work and the name of the bidder. No oral or telephonic bids will be considered. No forms transmitted via the internet, e-mail, facsimile, or any other electronic means will be considered unless specifically authorized by the Town as provided herein. Bids received after the time and day set for the receipt of bids shall be returned to the bidder unopened. The envelope shall also contain the following in the lower left-hand corner thereof:

**Bid of \_\_\_\_\_ (Bidder's Name)**  
**for the F Street Retaining Wall Repair Project**

Only where expressly permitted in the Notice Inviting Bids may bidders submit their bids via electronic transmission pursuant to Public Contract Code sections 1600 and 1601. Any acceptable method(s) of electronic transmission shall be stated in the Notice Inviting Bids. Town may reject any bid not strictly complying with Town's designated methods for delivery.

#### **ARTICLE 19. OPENING OF BIDS**

At the time and place set for the opening and reading of bids, or any time thereafter, each and every bid received prior to the time and day set for the receipt of bids will be publicly opened and read. The Town will leave unopened any Bid received after the specified date and time, and any such unopened Bid will be returned to the bidder. It is the bidder's sole responsibility to ensure that its Bid is received as specified. Bids may be submitted earlier than the date(s) and time(s) indicated.

The public reading of each bid will include the following information:

- A. The name and business location of the bidder.
- B. The nature and amount of the bid security furnished by bidder.
- C. The bid amount.

Bidders or their representatives and other interested persons may be present at the opening of the bids. The Town may, in its sole discretion, elect to postpone the opening of the submitted Bids. The Town reserves the right to reject any or all Bids and to waive any informality or irregularity in any Bid.

#### **ARTICLE 20. WITHDRAWAL OF BID**

Any bid may be withdrawn either personally or by written request, incurring no penalty, at any time prior to the scheduled closing time for receipt of bids. Requests to withdraw bids shall be worded so as not to reveal the amount of the original bid. Withdrawn bids may be resubmitted until the time and day set for the receipt of bids, provided that resubmitted bids are in conformance with the instructions herein.

Bids may be withdrawn after bid opening only by providing written notice to Town within five (5) working days of the bid opening and in compliance with Public Contract Code Section 5100 *et seq.*, or as otherwise may be allowed with the consent of the Town.

#### **ARTICLE 21. BIDDERS INTERESTED IN MORE THAN ONE BID**

No Bidder shall be allowed to make, file or be interested in more than one bid for the same work unless alternate bids are specifically called for. A person, firm or corporation that has submitted a sub-proposal to a Bidder, or that has quoted prices of materials to a Bidder, is not thereby disqualified from submitting a sub-proposal or quoting prices to other bidders. No person, firm, corporation, or other entity may submit a sub-proposal to a Bidder, or quote prices of materials to a Bidder, when also submitting a prime Bid on the same Project.

#### **ARTICLE 22. SUBSTITUTION OF SECURITY**

The Contract Documents call for monthly progress payments based upon the percentage of the Work completed. The Town will retain a percentage of each progress payment as provided by the Contract Documents. At the request and expense of the successful Bidder, the Town will substitute securities for the amount so retained in accordance with Public Contract Code Section 22300.

#### **ARTICLE 23. PREVAILING WAGES**

The Town has obtained from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages in the locality in which this work is to be performed for each craft or type of worker needed to execute the Contract. These rates are available at the Public Works Department of the Town or may be obtained online at <http://www.dir.ca.gov>. Bidders are advised that a copy of these rates must be posted by the successful Bidder at the job site(s).



## **ARTICLE 24. DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS**

In accordance with the provisions of the Labor Code, contractors or subcontractors may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Labor Code Sections 1777.1 or 1777.7. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid to a debarred subcontractor by the Contractor for the Project shall be returned to the Town. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

## **ARTICLE 25. INSURANCE REQUIREMENTS**

Prior to commencing work, the successful bidder shall purchase and maintain insurance as set forth in the General Conditions.

## **ARTICLE 26. PERFORMANCE BOND AND PAYMENT BOND REQUIREMENTS**

The successful bidder will be required to furnish a Labor and Material Payment Bond and a Faithful Performance Bond each in an amount equal to one hundred percent (100%) of the contract price. Each bond shall be secured from a surety company that meets all State of California bonding requirements, as defined in California Code of Civil Procedure Section 995.120 and is admitted by the State of California. Each bond shall be accompanied, upon the request of Town, with all documents required by California Code of Civil Procedure Section 995.660 to the extent required by law. All bonding and insurance requirements shall be completed and submitted to Town within ten (10) working days from the date the Town provides the successful bidder with the Notice of Award.

## **ARTICLE 27. SALES AND OTHER APPLICABLE TAXES, PERMITS, LICENSES AND FEES**

Contractor and its subcontractors performing work under this Contract will be required to pay California sales tax and other applicable taxes, and to pay for permits, licenses and fees required by the agencies with authority in the jurisdiction in which the Work will be located, unless otherwise expressly provided by the Contract Documents.

## **ARTICLE 28. PERMIT AND INSPECTION FEE ALLOWANCE**

Notwithstanding anything contained herein, the Bid Form contains an allowance for the Contractor's cost of acquiring traffic control permits and for construction inspection fees that may be charged to the Contractor by the Agency of Jurisdiction. The allowance is included within the Bid Form to eliminate the need by bidders to research or estimate the costs of traffic control permits and construction inspection fees prior to submitting a bid. The allowance is specifically intended to account for the costs of traffic control permits and construction inspection fees charged by the local Agency of Jurisdiction only. No other costs payable by Contractor to the Agency of Jurisdiction are included within the allowance.

## **ARTICLE 29. FILING OF BID PROTESTS**

Bidders may file a "protest" of a Bid with the Town's Public Works Director. In order for a Bidder's protest to be considered valid, the protest must:

- A. Be filed in writing within five (5) calendar days after the bid opening date;
- B. Clearly identify the specific irregularity or accusation;
- C. Clearly identify the specific Town staff determination or recommendation being protested;
- D. Specify in detail the grounds for protest and the facts supporting the protest; and
- E. Include all relevant, supporting documentation with the protest at time of filing.

If the protest does not comply with each of these requirements, the Town may reject the protest without further review.

If the protest is timely and complies with the above requirements, the Town's Public Works Director, or other designated Town staff member, shall review the protest, any response from the challenged Bidder(s), and all other relevant information. The Public Works Director will provide a written decision to the protestor.

The procedure and time limits set forth in this Article are mandatory and are the sole and exclusive remedy in the event of a Bid protest. Failure to comply with these procedures shall constitute a failure to exhaust administrative remedies and a waiver of any right to further pursue the Bid protest, including filing a Government Code Claim or legal proceedings.

### **ARTICLE 30. BASIS OF AWARD; BALANCED BID**

The Town shall award the Contract to the lowest responsible Bidder submitting a responsive Bid. The lowest Bid will be determined on the basis of the Base Bid and Any Alternate.

The Town may reject any Bid which, in its opinion when compared to other Bids received or to the Town's internal estimates, does not accurately reflect the cost to perform the Work. The Town may reject as non-responsive any Bid which unevenly weights or allocates costs, including but not limited to overhead and profit to one or more particular bid items.

### **ARTICLE 31. AWARD PROCESS**

Once all Bids are opened and reviewed to determine the lowest responsive and responsible Bidder, the Town may award the contract. The apparent successful Bidder should begin to prepare the following documents: (1) the Performance Bond; (2) the Payment Bond; and (3) the required insurance certificates and endorsements. Once the Town notifies the Bidder of the award, the Bidder will have ten (10) working days from the date of this notification to execute the Contract and supply the Town with all of the required documents and certifications. Regardless of whether the Bidder supplies the required documents and certifications in a timely manner, the Contract time will begin to run twenty (20) working days from the date of the notification. Once the Town receives all of the properly drafted and executed documents and certifications from the Bidder, the Town shall issue a Notice to Proceed to that Bidder.

### **ARTICLE 32. EXECUTION OF CONTRACT**

As required herein the Bidder to whom an award is made shall execute the Contract in the amount determined by the Contract Documents. The Town may require appropriate evidence

that the persons executing the Contract are duly empowered to do so. The Contract and bond forms to be executed by the successful Bidder are included within these Specifications and shall not be detached.

### **ARTICLE 33. QUESTIONS**

Questions regarding this Notice Inviting Bids may be directed to Nichol Bowersox, Senior Engineer/Project Manager, email at nicholb@csgengr.com. No other members of the Town's staff or governing body should be contacted about this procurement during the bidding process. Any and all inquiries and comments regarding this Bid must be communicated in writing, unless otherwise instructed by the Town. The Town may, in its sole discretion, disqualify any Bidder who engages in any prohibited communications.

## 00 41 43 – BID FORMS

### 1.1 Bid.

Bids will be received at the Town of Colma, 1198 El Camino Real, Colma, CA 94014, until **2:00 p.m. on Thursday, August 19, 2021.**

**NAME OF BIDDER:** \_\_\_\_\_

The undersigned hereby declare that we have carefully examined the location of the proposed Work, and have read and examined the Contract Documents, including all plans, specifications, and all addenda, if any for the following Project:

### **F STREET RETAINING WALL REPAIR PROJECT**

We hereby propose to furnish all labor, materials, equipment, tools, transportation, and services, and to discharge all duties and obligations necessary and required to perform and complete the Project, as described and in strict conformity with the Drawings, and these Specifications for TOTAL BID PRICE indicated herein.

The undersigned acknowledges receipt, understanding, and full consideration of the following addenda to the Contract Documents:

Addenda No. \_\_\_\_\_

1. Attached is the required Bid Guarantee in the amount of not less than 10% of the Total Bid Price.
2. Attached is the completed Designation of Subcontractors form.
3. Attached is the fully executed Noncollusion Declaration form.
4. Attached is the completed Iran Contracting Act Certification form.
5. Attached is the completed Public Works Contractor Registration Certification form.
6. Attached is the completed Contractor's Certificate Regarding Workers' Compensation form.
7. Attached is the completed Bidder Information and Experience form.

**A. BID SCHEDULE**

<b>NO.</b>	<b>ITEM DESCRIPTION</b>	<b>UNIT OF MEASURE</b>	<b>EST. QTY.</b>	<b>UNIT PRICE (\$)</b>	<b>ITEM COST</b>
1.	Mobilization and Contract Processing Costs	LS	1	10%	
2.	Diversion of Recyclable Waste Materials	LS	1	5,000	
3.	Sheeting, Shoring, and Bracing or Equivalent Method	LS	1	10,000	
4.	Lead Compliance Plan	LS	1	7,500.00	
5.	Develop Construction Water Supply	LS	1	5,000.00	
6.	Construction Area Signs	LS	1	5,000.00	
7.	Traffic Control System	LS	1	5,000.00	
8.	Temporary Railing (Type K)	LF	200	50.00	
9.	Temporary Drainage Inlet Protection	EA	1	250.00	
10.	Temporary Silt Fence	LF	200	5.00	
11.	Street Sweeping	LS	1	10,000.00	
12.	Temporary Concrete Washout	EA		3,000.00	
13.	Repair Concrete Spall	SQFT	100	850.00	
14.	Clearing And Grubbing	LS	1	10,000.00	
15.	Structure Excavation (Bridge)	CY	30	400.00	
16.	Structure Backfill (Bridge)	CY	10	150.00	
17.	Pervious Backfill Material	CY	20	100.00	
18.	Rolled Erosion Control Product (Netting)	SF	1100	2.00	
19.	Fiber Rolls	LF	230	7.00	
20.	Bar Reinforcing Steel (Retaining Wall)	LB	100	2.50	
21.	Core Concrete Hole (4" Dia)	LF	36	600.00	
22.	Minor Concrete (Miscellaneous Construction)	LB	100	2.50	
23.	Clean And Prepare Concete	SQFT	1505	80.00	

	Surface (Revocable)				
	TOTAL BID ITEMS				

The costs for any Work shown or required in the Contract Documents, but not specifically identified as a line item are to be included in the related line items and no additional compensation shall be due to Contractor for the performance of the Work.

In case of discrepancy between the Unit Price and the Item Cost set forth for a unit basis item, the unit price shall prevail and shall be utilized as the basis for determining the lowest responsive, responsible Bidder. However, if the amount set forth as a unit price is ambiguous, unintelligible or uncertain for any cause, or is omitted, or is the same amount as the entry in the "Item Cost" column, then the amount set forth in the "Item Cost" column for the item shall prevail and shall be divided by the estimated quantity for the item and the price thus obtained shall be the Unit Price.

For purposes of evaluating Bids, the Town will correct any apparent errors in the extension of unit prices and any apparent errors in the addition of lump sum and extended prices.

The estimated quantities for Unit Price items are for purposes of comparing Bids only and the Town makes no representation that the actual quantities of work performed will not vary from the estimates. Final payment shall be determined by the Engineer from measured quantities of work performed based upon the Unit Price.

**B. TOTAL BID PRICE:**

<b>TOTAL BID PRICE BASED ON BID SCHEDULE TOTAL OF UNIT PRICES FOR F STREET RETAINING WALL REPAIR PROJECT</b>	
\$	<div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div> <div style="text-align: center; padding-top: 5px;">Total Bid Price in Numbers</div>
\$	<div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div> <div style="text-align: center; padding-top: 5px;">Total Bid Price in Written Form</div>
<p>In case of discrepancy between the written price and the numerical price, the written price shall prevail.</p>	

The undersigned agrees that this Bid Form constitutes a firm offer to the Town which cannot be withdrawn for the number of calendar days indicated in the Notice Inviting Bids from and after the Bid opening, or until a Contract for the Work is fully executed by the Town and a third party, whichever is earlier.

If the Contract Documents specify Alternate Bid items, the following Alternate Bid amounts shall be added to or deducted from the Total Bid Price entered above (please check the appropriate box), in the Town's sole discretion. The Town can choose to include any, all, or none of the Alternate Bid items in the Work. If the Town selects any of the Alternate Bid items, the corresponding Alternate Bid prices shall be added to or deducted from Base Bid Price for the Work. The Town can award/select Alternate Bid items at any time(s).

<b>ALTERNATE BIDS</b>	<b>BID PRICE (IN WRITTEN FORM)</b>	<b>BID PRICE (IN NUMBERS)</b>
<b>ALTERNATE #1</b> <input type="checkbox"/> Add <input type="checkbox"/> Deduct		
<b>ALTERNATE #2</b> <input type="checkbox"/> Add <input type="checkbox"/> Deduct		
<b>ALTERNATE #3</b> <input type="checkbox"/> Add <input type="checkbox"/> Deduct		
<b>ALTERNATE #4</b> <input type="checkbox"/> Add <input type="checkbox"/> Deduct		
<b>ALTERNATE #5</b> <input type="checkbox"/> Add <input type="checkbox"/> Deduct		
<b>ALTERNATE #6</b> <input type="checkbox"/> Add <input type="checkbox"/> Deduct		

The successful bidder hereby agrees to sign the contract and furnish the necessary bonds and certificates of insurance within ten (10) working days after the Town provides the successful bidder with the Notice of Award.

Upon receipt of the signed contract and other required documents, the contract will be executed by the Town, after which the Town will prepare a letter giving Contractor Notice to Proceed. The official starting date shall be the date of the Notice to Proceed, unless otherwise specified. The undersigned agrees to begin the Work within ten (10) working days of the date of the Notice to Proceed, unless otherwise specified.

The undersigned has examined the location of the proposed work and is familiar with the Drawings and Specifications and the local conditions at the place where work is to be done.

If awarded the contract, the undersigned agrees that there shall be paid by the undersigned and by all subcontractors to all laborers, workers and mechanics employed in the execution of such contract no less than the prevailing wage rate within San Mateo County for each craft, classification, or type of worker needed to complete the Work contemplated by this contract as established by the Director of the Department of Industrial Relations. A copy of the prevailing

rate of per diem wages are on file at the Town's Administration Office and shall be made available to interested parties upon request.

Enclosed find cash, bidder's bond, or cashier's or certified check No. \_\_\_\_\_ from the \_\_\_\_\_ Bank in the amount of \_\_\_\_\_, which is not less than ten percent (10%) of this bid, payable to Town of Colma as bid security and which is given as a guarantee that the undersigned will enter into a contract and provide the necessary bonds and certificates of insurance if awarded the Work.

The bidder furthermore agrees that in case of bidder's default in executing said contract and furnishing required bonds and certificates of insurance, the cash, bidder's bond, or cashier's or certified check accompanying this proposal and the money payable thereon shall become and shall remain the property of the Town of Colma.

Bidder is an individual \_\_\_\_\_, or corporation \_\_\_\_\_, or partnership \_\_\_\_\_, organized under the laws of the State of \_\_\_\_\_.

Bidder confirms license(s) required by California State Contractor's License Law for the performance of the subject project are in full effect and proper order. The following are the Bidder's applicable license number(s), with their expiration date(s) and class of license(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If the Bidder is a joint venture, each member of the joint venture must include the required licensing information.

Sureties that will furnish the Faithful Performance Bond and the Labor and Material Payment Bond, in the form specified herein, in an amount equal to one hundred percent (100%) of the contract price within ten (10) working days from the date the Town provides the successful bidder the Notice of Award. Sureties must meet all of the State of California bonding requirements, as defined in California Code of Civil Procedure Section 995.120 and must be authorized by the State of California.

The insurance company or companies to provide the insurance required in the contract documents must have a Financial Strength Rating of not less than "A-" and a Financial Size Category of not less than "Class VII" according to the latest Best Key Rating Guide. At the sole discretion of the Town, the Town may waive the Financial Strength Rating and the Financial Size Category classifications for Workers' Compensation insurance.

(signatures continued on next page)



I hereby certify under penalty of perjury under the laws of the State of California that all of the information submitted in connection with this Bid and all of the representations made herein are true and correct.

Executed at \_\_\_\_\_, on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

(Bidders Name – Print or Type)

\_\_\_\_\_  
(Name and Title)

(Corporate Seal)

\_\_\_\_\_  
(Signature)

Names of individual members of firm or names and titles of all officers of corporation and their addresses are listed below:

Name \_\_\_\_\_ Title \_\_\_\_\_

Complete Address \_\_\_\_\_

Phone \_\_\_\_\_ FAX \_\_\_\_\_

Name \_\_\_\_\_ Title \_\_\_\_\_

Complete Address \_\_\_\_\_

Phone \_\_\_\_\_ FAX \_\_\_\_\_

Name \_\_\_\_\_ Title \_\_\_\_\_

Complete Address \_\_\_\_\_

Phone \_\_\_\_\_ FAX \_\_\_\_\_

Name \_\_\_\_\_ Title \_\_\_\_\_

Complete Address \_\_\_\_\_

Phone \_\_\_\_\_ FAX \_\_\_\_\_

1.2 Bid Bond

**[Note: Not required when other form of Bidder's Security, e.g. cash, certified check or cashier's check, accompanies bid.]**

The makers of this bond are, \_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety and are held and firmly bound unto the Town of Colma, hereinafter called the Town, in the penal sum of TEN PERCENT (10%) OF THE TOTAL BID PRICE of the Principal submitted to Town for the work described below, for the payment of which sum in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal has submitted the accompanying bid dated \_\_\_\_\_, 20 \_\_\_\_, for F Street Retaining Wall Repair Project.

If the Principal does not withdraw its Bid within the time specified in the Contract Documents; and if the Principal is awarded the Contract and provides all documents to the Town as required by the Contract Documents; then this obligation shall be null and void. Otherwise, this bond will remain in full force and effect.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents shall in affect its obligation under this bond, and Surety does hereby waive notice of any such changes.

In the event a lawsuit is brought upon this bond by the Town and judgment is recovered, the Surety shall pay all litigation expenses incurred by the Town in such suit, including reasonable attorneys' fees, court costs, expert witness fees and expenses.

By their signatures hereunder, Surety and Principal hereby confirm under penalty of perjury that surety is an admitted surety insurer authorized to do business in the State of California.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their several seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the name and corporate seal of each corporation.

(Corporate Seal)

\_\_\_\_\_  
Contractor/ Principal

By \_\_\_\_\_

Title \_\_\_\_\_

(Corporate Seal)

\_\_\_\_\_  
Surety

By \_\_\_\_\_

Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title \_\_\_\_\_

## Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally  
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")  
appeared \_\_\_\_\_, who proved to me on the basis of satisfactory  
Name(s) of Signer(s)

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature of Notary Public

### OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

#### CAPACITY CLAIMED BY SIGNER

#### DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual  
☐ Corporate Officer

\_\_\_\_\_  
Title(s)

- ☐ Partner(s) ☐ Limited  
☐ General

- ☐ Attorney-In-Fact  
☐ Trustee(s)  
☐ Guardian/Conservator  
☐ Other:

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Title or Type of Document

\_\_\_\_\_  
Number of Pages

\_\_\_\_\_  
Date of Document

\_\_\_\_\_  
Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Contractor/Principal.

## Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally  
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

appeared \_\_\_\_\_, who proved to me on the basis of satisfactory  
Name(s) of Signer(s)  
evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

\_\_\_\_\_  
Signature of Notary Public

### OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

#### CAPACITY CLAIMED BY SIGNER

#### DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual  
☐ Corporate Officer

\_\_\_\_\_  
Title(s)

- ☐ Partner(s) ☐ Limited  
☐ General

- ☐ Attorney-In-Fact  
☐ Trustee(s)  
☐ Guardian/Conservator  
☐ Other:

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Title or Type of Document

\_\_\_\_\_  
Number of Pages

\_\_\_\_\_  
Date of Document

\_\_\_\_\_  
Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for the Attorney-in-Fact. The Power-of-Attorney to local representatives of the bonding company must also be attached.

END OF BID BOND

### 1.3 List of Subcontractors

In compliance with the Subletting and Subcontracting Fair Practices Act Chapter 4 (commencing at Section 4100), Part 1, Division 2 of the Public Contract Code of the State of California and any amendments thereof, Bidder shall set forth below: (a) the name and the location of the place of business, (b) the California contractor license number, (c) the DIR public works contractor registration number unless exempt pursuant to Labor Code Sections 1725.5 and 1771.1, and (d) the portion of the work which will be done by each subcontractor who will perform work or labor or render service to the Bidder in or about the construction of the work or improvement to be performed under this Contract in an amount in excess of one-half of one percent (0.5%) of the Bidder's Total Bid Price. Notwithstanding the foregoing, if the work involves the construction of streets and highways, then the Bidder shall list each subcontractor who will perform work or labor or render service to the Bidder in or about the work in an amount in excess of one-half of one percent (0.5%) of the Bidder's Total Bid Price or \$10,000, whichever is greater. No additional time shall be granted to provide the below requested information.

If a Bidder fails to specify a subcontractor or if a contractor specifies more than one subcontractor for the same portion of work, then the Bidder shall be deemed to have agreed that it is fully qualified to perform that portion of work and that it shall perform that portion itself.

<b>Work to be done by Subcontractor</b>	<b>Name of Subcontractor</b>	<b>Location of Business</b>	<b>CSLB Contractor License No.</b>	<b>DIR Registration Number</b>	<b>% of Work</b>

<b>Work to be done by Subcontractor</b>	<b>Name of Subcontractor</b>	<b>Location of Business</b>	<b>CSLB Contractor License No.</b>	<b>DIR Registration Number</b>	<b>% of Work</b>

(Attach additional sheets if necessary)

Name of Bidder \_\_\_\_\_

Signature \_\_\_\_\_

Name and Title \_\_\_\_\_

Dated \_\_\_\_\_

1.4 Bidder Information and Experience Form

**ARTICLE 1. INFORMATION ABOUT BIDDER**

(Indicate not applicable ("N/A") where appropriate.)

**NOTE:** Where Bidder is a joint venture, pages shall be duplicated and information provided for all parties to the joint venture.

1.0 Name of Bidder: \_\_\_\_\_

2.0 Type, if Entity: \_\_\_\_\_

3.0 Bidder Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

4.0 How many years has Bidder's organization been in business as a Contractor?

\_\_\_\_\_

5.0 How many years has Bidder's organization been in business under its present name? \_\_\_\_\_

5.1 Under what other or former names has Bidder's organization operated? \_\_\_\_\_

6.0 If Bidder's organization is a corporation, answer the following:

6.1 Date of Incorporation: \_\_\_\_\_

6.2 State of Incorporation: \_\_\_\_\_

6.3 President's Name: \_\_\_\_\_

6.4 Vice-President's Name(s): \_\_\_\_\_

\_\_\_\_\_

6.5 Secretary's Name: \_\_\_\_\_

6.6 Treasurer's Name: \_\_\_\_\_

7.0 If an individual or a partnership, answer the following:

7.1 Date of Organization: \_\_\_\_\_

7.2 Name and address of all partners (state whether general or limited partnership):

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8.0 If other than a corporation or partnership, describe organization and name principals:

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9.0 List other states in which Bidder's organization is legally qualified to do business.

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10.0 What type of work does the Bidder normally perform with its own forces?

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11.0 Has Bidder ever failed to complete any work awarded to it? If so, note when, where, and why:

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12.0 Within the last five years, has any officer or partner of Bidder's organization ever been an officer or partner of another organization when it failed to complete a contract? If so, attach a separate sheet of explanation:

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13.0 List Trade References:

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14.0 List Bank References (Bank and Branch Address):

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15.0 Name of Bonding Company and Name and Address of Agent:

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**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

## ARTICLE 2. LIST OF CURRENT PROJECTS (BACKLOG)

[\*\*Duplicate Page if needed for listing additional current projects.\*\*]

Project	Description of Bidder's Work	Completion Date	Cost of Bidder's Work

### ARTICLE 3. LIST OF COMPLETED PROJECTS – LAST THREE YEARS

[\*\*Duplicate Page if needed for listing additional completed projects.\*\*]

Please include only those projects which are similar enough to demonstrate Bidder's ability to perform the required Work.

Project	Description of Bidder's Work	Completion Date	Cost of Bidder's Work

## ARTICLE 4. EXPERIENCE AND TECHNICAL QUALIFICATIONS QUESTIONNAIRE

### ***Personnel:***

The Bidder shall identify the key personnel to be assigned to this project in a management, construction supervision or engineering capacity.

1. List each person's job title, name and percent of time to be allocated to this project:

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2. Summarize each person's specialized education:

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3. List each person's years of construction experience relevant to the project:

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4. Summarize such experience:

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Bidder agrees that personnel named in this Bid will remain on this Project until completion of all relevant Work, unless substituted by personnel of equivalent experience and qualifications approved in advance by the Town.

### ***Changes Occuring Since Prequalification***

If any substantive changes have occurred since Bidder submitted its prequalification package for this Project, Bidder shall list them below. If none are listed, Bidder certifies that no substantive changes have occurred.

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***Additional Bidder's Statements:***

If the Bidder feels that there is additional information which has not been included in the questionnaire above, and which would contribute to the qualification review, it may add that information in a statement here or on an attached sheet, appropriately marked:

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**ARTICLE 5. VERIFICATION AND EXECUTION**

These Bid Forms shall be executed only by a duly authorized official of the Bidder:

I declare under penalty of perjury under the laws of the State of California that the foregoing information is true and correct:

Name of Bidder\_\_\_\_\_

Signature\_\_\_\_\_

Name\_\_\_\_\_

Title\_\_\_\_\_

Date\_\_\_\_\_

1.5 Non-Collusion Declaration

The undersigned declares:

I am the \_\_\_\_\_ of \_\_\_\_\_, the party making the foregoing Bid.

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on \_\_\_\_\_ [date], at \_\_\_\_\_ [city], \_\_\_\_\_ [state].

Name of Bidder \_\_\_\_\_

Signature \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

1.6 Iran Contracting Act Certification.  
(Public Contract Code section 2200 et seq.)

As required by California Public Contract Code Section 2204, the Contractor certifies subject to penalty for perjury that the option checked below relating to the Contractor's status in regard to the Iran Contracting Act of 2010 (Public Contract Code Section 2200 *et seq.*) is true and correct:

☐ The Contractor is not:

(1) identified on the current list of person and entities engaged in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203; or

(2) a financial instruction that extends, for 45 days or more, credit in the amount of \$20,000,000 or more to any other person or entity identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203, if that person or entity uses or will use the credit to provide goods or services in the energy sector in Iran.

☐ The Town has exempted the Contractor from the requirements of the Iran Contracting Act of 2010 after making a public finding that, absent the exemption, the Town will be unable to obtain the goods and/or services to be provided pursuant to the Contract.

☐ The amount of the Contract payable to the Contractor for the Project does not exceed \$1,000,000.

Signature: \_\_\_\_\_

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

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

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

Date: \_\_\_\_\_

Note: In accordance with Public Contract Code Section 2205, false certification of this form shall be reported to the California Attorney General and may result in civil penalties equal to the greater of \$250,000 or twice the Contract amount, termination of the Contract and/or ineligibility to bid on contracts for three years.

## 1.7 Public Works Contractor Registration Certification

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. See <http://www.dir.ca.gov/Public-Works/PublicWorks.html> for additional information.

No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work.

Bidder hereby certifies that it is aware of the registration requirements set forth in Labor Code sections 1725.5 and 1771.1 and is currently registered as a contractor with the Department of Industrial Relations.<sup>1</sup>

Name of Bidder: \_\_\_\_\_

DIR Registration Number: \_\_\_\_\_

DIR Registration Expiration: \_\_\_\_\_

Small Project Exemption: \_\_\_\_\_ Yes or \_\_\_\_\_ No

Unless Bidder is exempt pursuant to the small project exemption, Bidder further acknowledges:

1. Bidder shall maintain a current DIR registration for the duration of the project.
2. Bidder shall include the requirements of Labor Code sections 1725.5 and 1771.1 in its contract with subcontractors and ensure that all subcontractors are registered at the time of bid opening and maintain registration status for the duration of the project.
3. Failure to submit this form or comply with any of the above requirements may result in a finding that the bid is non-responsive.

Name of Bidder \_\_\_\_\_

Signature \_\_\_\_\_

Name and Title \_\_\_\_\_

Dated \_\_\_\_\_

<sup>1</sup> If the Project is exempt from the contractor registration requirements pursuant to the small project exemption under Labor Code Sections 1725.5 and 1771.1, please mark "Yes" in response to "Small Project Exemption."

<Month> <Year>  
Pipeline Project XXXX



1.8 Contractor's Certificate Regarding Workers' Compensation.

I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Contract.

Name of Bidder \_\_\_\_\_

Signature \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Dated \_\_\_\_\_

## 00 52 13 – CONTRACT

This CONTRACT, No. \_\_\_\_\_ is made and entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between Town of Colma, sometimes hereinafter called "Town," and \_\_\_\_\_, sometimes hereinafter called "Contractor."

WITNESSETH: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other as follows:

a. **SCOPE OF WORK.** The Contractor shall perform all Work within the time stipulated in the Contract, and shall provide all labor, materials, equipment, tools, utility services, and transportation to complete all of the Work required in strict compliance with the Contract Documents as specified in Section (e), below, for the following Project:

### F STREET RETAINING WALL REPAIR PROJECT

The Contractor and its surety shall be liable to the Town for any damages arising as a result of the Contractor's failure to comply with this obligation.

b. **TIME FOR COMPLETION.** Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the Town's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents within 40 calendar days from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

c. **CONTRACT PRICE.** The Town shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_). Payment shall be made as set forth in the General Conditions.

d. **LIQUIDATED DAMAGES.** In accordance with Government Code section 53069.85, it is agreed that the Contractor will pay the Town the sum set forth in Section 00 73 13, Article 1.11 for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees the Town may deduct that amount from any money due or that may become due the Contractor under the Contract. This Article does not exclude recovery of other damages specified in the Contract Documents.

e. **COMPONENT PARTS OF THE CONTRACT.** The "Contract Documents" include the following:

- Notice Inviting Bids
- Instructions to Bidders
- Bid Form
- Bid Bond
- Designation of Subcontractors

Information Required of Bidders  
Non-Collusion Declaration Form  
Iran Contracting Act Certification  
Public Works Contractor Registration Certification  
Performance Bond  
Payment (Labor and Materials) Bond  
General Conditions  
Special Conditions  
Technical Specifications  
Addenda  
Plans and Drawings  
Standard Specifications for Public Works Construction "Greenbook", latest edition,  
Except Sections 1-9  
Applicable Local Agency Standards and Specifications, as last revised  
Approved and fully executed change orders  
Any other documents contained in or incorporated into the Contract

The Contractor shall complete the Work in strict accordance with all of the Contract Documents.

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. This Contract shall supersede any prior agreement of the parties.

f. **PROVISIONS REQUIRED BY LAW AND CONTRACTOR COMPLIANCE.** Each and every provision of law required to be included in these Contract Documents shall be deemed to be included in these Contract Documents. The Contractor shall comply with all requirements of applicable federal, state and local laws, rules and regulations, including, but not limited to, the provisions of the California Labor Code and California Public Contract Code which are applicable to this Work.

g. **INDEMNIFICATION.** Contractor shall provide indemnification and defense as set forth in the General Conditions.

h. **PREVAILING WAGES.** Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at the Town's Administrative Office or may be obtained online at <http://www.dir.ca.gov> and which must be posted at the job site.

**[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]**

IN WITNESS WHEREOF, this Contract has been duly executed by the above-named parties,  
on the day and year above written.

TOWN OF COLMA

[INSERT NAME OF CONTRACTOR]

By: \_\_\_\_\_  
[INSERT NAME]  
[INSERT TITLE]

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

Its: \_\_\_\_\_

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

ATTEST:

By: \_\_\_\_\_  
Town Clerk

**(CONTRACTOR'S SIGNATURE MUST BE  
NOTARIZED AND CORPORATE  
SEAL AFFIXED, IF APPLICABLE)**

**END OF CONTRACT**

# Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally  
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

appeared \_\_\_\_\_, who proved to me on the basis of satisfactory  
Name(s) of Signer(s)  
evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature of Notary Public

## OPTIONAL

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### CAPACITY CLAIMED BY SIGNER

### DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual  
☐ Corporate Officer

\_\_\_\_\_  
Title(s)

- ☐ Partner(s) ☐ Limited  
☐ General

- ☐ Attorney-In-Fact  
☐ Trustee(s)  
☐ Guardian/Conservator  
☐ Other:

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Title or Type of Document

\_\_\_\_\_  
Number of Pages

\_\_\_\_\_  
Date of Document

\_\_\_\_\_  
Signer(s) Other Than Named Above

## 00 61 13 – BOND FORMS

### 1.1 Performance Bond.

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the Town of Colma, (hereinafter referred to as "Town") has awarded to \_\_\_\_\_, (hereinafter referred to as the "Contractor") an agreement for **Contract No.** \_\_\_\_\_, (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated \_\_\_\_\_, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, \_\_\_\_\_, the undersigned Contractor and \_\_\_\_\_ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the Town in the sum of \_\_\_\_\_ DOLLARS, (\$\_\_\_\_\_), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one (1) year guarantee of all materials and workmanship; and shall indemnify and save harmless the Town, its officials, officers, employees, and authorized volunteers, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees including reasonable attorney's fees, incurred by Town in enforcing such obligation.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by Town, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the Town from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the Town's rights or the Contractor or Surety's

obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure Section 337.15.

Whenever Contractor shall be, and is declared by the Town to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the Town's option:

- i. Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or
- ii. Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the Town, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the Town under the Contract and any modification thereto, less any amount previously paid by the Town to the Contractor and any other set offs pursuant to the Contract Documents.
- iii. Permit the Town to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the Town under the Contract and any modification thereto, less any amount previously paid by the Town to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the Town may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if the Town, when declaring the Contractor in default, notifies Surety of the Town's objection to Contractor's further participation in the completion of the Project.

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

By their signatures hereunder, Surety and Contractor hereby confirm under penalty of perjury that surety is an admitted surety insurer authorized to do business in the State of California.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Corporate Seal)

\_\_\_\_\_  
Contractor/ Principal

By \_\_\_\_\_

Title \_\_\_\_\_

(Corporate Seal)

\_\_\_\_\_  
Surety

By \_\_\_\_\_  
Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title \_\_\_\_\_

The rate of premium on this bond is \_\_\_\_\_ per thousand. The total amount of premium charges is \$\_\_\_\_\_.  
(The above must be filled in by corporate attorney.)

**THIS IS A REQUIRED FORM**

Any claims under this bond may be addressed to:

(Name and Address of Surety)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Name and Address of Agent or Representative for service of process in California, if different from above)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Telephone number of Surety and Agent or Representative for service of process in California)

\_\_\_\_\_



# Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally  
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

appeared \_\_\_\_\_, who proved to me on the basis of satisfactory  
Name(s) of Signer(s)  
evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature of Notary Public

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### CAPACITY CLAIMED BY SIGNER

### DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual  
☐ Corporate Officer

\_\_\_\_\_  
Title(s)

- ☐ Partner(s) ☐ Limited  
☐ General

- ☐ Attorney-In-Fact  
☐ Trustee(s)  
☐ Guardian/Conservator  
☐ Other:

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Title or Type of Document

\_\_\_\_\_  
Number of Pages

\_\_\_\_\_  
Date of Document

\_\_\_\_\_  
Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Contractor/Principal.

## Notary Acknowledgment

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COUNTY OF \_\_\_\_\_

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Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

appeared \_\_\_\_\_, who proved to me on the basis of satisfactory  
Name(s) of Signer(s)  
evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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WITNESS my hand and official seal.

Place Notary Seal Above

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Signature of Notary Public

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☐ General

- ☐ Attorney-In-Fact  
☐ Trustee(s)  
☐ Guardian/Conservator  
☐ Other:

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Title or Type of Document

\_\_\_\_\_  
Number of Pages

\_\_\_\_\_  
Date of Document

\_\_\_\_\_  
Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for the Attorney-in-Fact. The Power-of Attorney to local representatives of the bonding company must also be attached.

**END OF PERFORMANCE BOND**

1.2 Payment Bond (Labor and Materials).

KNOW ALL MEN BY THESE PRESENTS That

WHEREAS, the Town of Colma (hereinafter designated as the "Town"), by action taken or a resolution passed \_\_\_\_\_, 20\_\_\_\_, has awarded to \_\_\_\_\_ hereinafter designated as the "Principal," a contract for the work described as follows: **Contract No.** \_\_\_\_\_ (the "Project"); and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and \_\_\_\_\_ as Surety, are held and firmly bound unto the Town in the penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Civil Code Section 9100, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Revenue and Taxation Code Section 18663, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by the Town in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Civil Code Section 9100 so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of

recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or Town and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Civil Code Section 9100, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned, including but not limited to the provisions of sections 2819 and 2845 of the California Civil Code.

By their signatures hereunder, Surety and Principal hereby confirm under penalty of perjury that surety is an admitted surety insurer authorized to do business in the State of California.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Corporate Seal)

\_\_\_\_\_  
Contractor/ Principal

By \_\_\_\_\_

Title \_\_\_\_\_

(Corporate Seal)

\_\_\_\_\_  
Surety

By \_\_\_\_\_  
Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title \_\_\_\_\_

# Notary Acknowledgment

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STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally  
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")  
appeared \_\_\_\_\_, who proved to me on the basis of satisfactory  
Name(s) of Signer(s)

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature of Notary Public

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### CAPACITY CLAIMED BY SIGNER

### DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual  
☐ Corporate Officer

\_\_\_\_\_  
Title(s)

- ☐ Partner(s) ☐ Limited  
☐ General

- ☐ Attorney-In-Fact  
☐ Trustee(s)  
☐ Guardian/Conservator  
☐ Other:

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Title or Type of Document

\_\_\_\_\_  
Number of Pages

\_\_\_\_\_  
Date of Document

\_\_\_\_\_  
Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Contractor/Principal.



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STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

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Name(s) of Signer(s)  
evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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Title(s)

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- ☐ Partner(s) ☐ Limited  
☐ General

\_\_\_\_\_  
Number of Pages

- ☐ Attorney-In-Fact  
☐ Trustee(s)  
☐ Guardian/Conservator  
☐ Other:

\_\_\_\_\_  
Date of Document

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for the Attorney-in-Fact. The Power-of-Attorney to local representatives of the bonding company must also be attached.

END OF PAYMENT BOND

## 00 72 13 – GENERAL CONDITIONS

### ARTICLE 1. DEFINED TERMS

Whenever used in the Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined below, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

- A. Act of God -- An earthquake of magnitude of 3.5 or higher on the Richter scale or a tidal wave.
- B. Addenda -- Written or graphic instruments issued prior to the submission of Bids which clarify, correct, or change the Contract Documents.
- C. Additional Work -- New or unforeseen work will be classified as “Additional Work” when the Town’s Representative determines that it is not covered by the Contract.
- D. Applicable Laws -- The laws, statutes, ordinances, rules, codes, regulations, permits, and licenses of any kind, issued by local, state or federal governmental authorities or private authorities with jurisdiction (including utilities), to the extent they apply to the Work.
- E. Bid -- The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices and other terms for the Work to be performed.
- F. Bidder -- The individual or entity who submits a Bid directly to the Town.
- G. Change Order (“CO”) -- A document that authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Contract, in accordance with the Contract Documents and in the form contained in the Contract Documents.
- H. Change Order Request (“COR”) -- A request made by the Contractor for an adjustment in the Contract Price and/or Contract Times as the result of a Contractor-claimed change to the Work. This term may also be referred to as a Change Order Proposal (“COP”), or Request for Change (“RFC”).
- I. Town -- The Town of Colma.
- J. Town’s Representative -- The individual or entity as identified in the Special Conditions to act as the Town’s Representative.
- K. Claim -- A demand or assertion by the Town or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
- L. Contract -- The entire integrated written agreement between the Town and Contractor concerning the Work. “Contract” may be used interchangeably with



“Agreement” in the Contract Documents. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral, and includes all Contract Documents.

- M. Contract Documents -- The documents listed in Section 00 52 13, Article 5. Some documents provided by the Town to the Bidders and Contractor, including but not limited to reports and drawings of subsurface and physical conditions are not Contract Documents.
- N. Contract Price -- Amount to be paid by the Town to the Contractor as full compensation for the performance of the Contract and completion of the Work, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs.
- O. Contract Times -- The number of days or the dates stated in the Contract Documents to: achieve defined Milestones, if any; and to complete the Work so that it is ready for final payment.
- P. Contractor -- The individual or entity with which the Town has contracted for performance of the Work.
- Q. Contractor's Designated On-Site Representative -- The Contractor's Designated On-Site Representative will be as identified in Section 00 72 13, Article 3 and shall not be changed without prior written consent of the Town.
- R. Daily Rate -- The Daily Rate stipulated in the Contract Documents as full compensation to the Contractor due to the Town's unreasonable delay to the Project that was not contemplated by the parties.
- S. Day -- A calendar day of 24 hours measured from midnight to the next midnight.
- T. Defective Work -- Work that is unsatisfactory, faulty, or deficient; or that does not conform to the Contract Documents; or that does not meet the requirements of any inspection, reference standard, test, or approval referenced in the Contract Documents.
- U. Demobilization -- The complete dismantling and removal by the Contractor of all of the Contractor's temporary facilities, equipment, and personnel at the Site.
- V. Drawings -- That part of the Contract Documents prepared by of the Engineer of Record which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
- W. Effective Date of the Contract -- The date indicated in the Contract on which it becomes effective, but if no such date is indicated, it means the date on which the Contract is signed and delivered by the last of the two parties to sign and deliver.
- X. Engineer, whenever not qualified, shall mean the Public Works Director of the Town, acting either directly or through properly authorized agents, such agents acting severally within the scope of the particular duties entrusted to them. On all questions

concerning the acceptance of materials, machinery, the classifications of material, the execution of work, conflicting interest of the contractors performing related work and the determination of costs, the decision of the Engineer, duly authorized by the Town, shall be binding and final upon both parties.

Y. Engineer of Record -- The individual, partnership, corporation, joint venture, or other legal entity named as such in Section 00 73 13, Article 1.1. or any succeeding entity designated by the Town.

Z. Green Book -- The current edition of the Standard Specifications for Public Works Construction.

AA. Hazardous Waste -- The term "Hazardous Waste" shall have the meaning provided in Section 104 of the Solid Waste Disposal Act (42 U.S.C. § 6903) as amended from time to time or, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a class I, class II, or class III disposal site in accordance with provisions of existing law, whichever is more restrictive.

BB. Holiday -- The Holidays occur on:

New Year's Day - January 1  
President's Day -- Third Monday in February  
Memorial Day - Last Monday in May  
Independence Day - July 4  
Labor Day - First Monday in September  
Veteran's Day - November 11  
Thanksgiving Day - Fourth Thursday in November  
Friday after Thanksgiving  
Christmas Eve -- December 24  
Christmas Day - December 25  
Day After Christmas -- December 26  
New Year's Eve -- December 31

If any Holiday listed above falls on a Saturday, Saturday and the preceding Friday are both Holidays. If the Holiday should fall on a Sunday, Sunday and the following Monday are both Holidays.

CC. Notice of Award -- The written notice by the Town to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, the Town will sign and deliver the Contract.

DD. Notice of Completion -- The form which may be executed by the Town and recorded by the county where the Project is located constituting final acceptance of the Project.

EE. Notice to Proceed -- A written notice given by the Town to Contractor fixing the date on which the Contractor may proceed with the Work and when Contract Times will commence to run.

FF. Project -- The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

- GG. Recyclable Waste Materials -- Materials removed from the Site which are required to be diverted to a recycling center rather than an area landfill. Recyclable Waste Materials include asphalt, concrete, brick, concrete block, and rock.
- HH. Schedule of Submittals -- A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to facilitate scheduled performance of related construction activities.
- II. Shop Drawings -- All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
- JJ. Specifications -- That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
- KK. Stop Payment Notice -- A written notice as defined in Civil Code section 8044.
- LL. Subcontractor -- An individual or entity other than a Contractor having a contract with any other entity than the Town for performance of any portion of the Work at the Site.
- MM. Submittal -- Written and graphic information and physical samples prepared and supplied by the Contractor demonstrating various portions of the Work.
- NN. Successful Bidder -- The Bidder submitting a responsive Bid to whom the Town makes an award.
- OO. Supplier -- A manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment used in the performance of the Work or to be incorporated in the Work.
- PP. Underground Facilities -- All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
- QQ. Unit Price Work -- Work to be paid for on the basis of unit prices as provided by the Contractor in its bid or as adjusted in accordance with the Contract Documents.
- RR. Warranty -- A written guarantee provided to the Town by the Contractor that the Work will remain free of defects and suitable for its intended use for the period required by the Contract Documents or the longest period permitted by the law of this State, whichever is longer.
- SS. Work -- The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to

produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

## **ARTICLE 2. CONTRACT DOCUMENTS**

- A. **Contract Documents.** The Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all.
- B. **Interpretations.** The Contract Documents are intended to be fully cooperative and complementary. If the Contractor observes that any documents are in conflict, the Contractor shall promptly notify the Engineer in writing. In case of conflicts between the Contract Documents, the order of precedence shall be as follows:
1. Change Orders
  2. Addenda
  3. Special Conditions
  4. Technical Specifications
  5. Plans (Contract Drawings)
  6. Contract
  7. General Conditions
  8. Instructions to Bidders
  9. Notice Inviting Bids
  10. Contractor's Bid Forms
  11. Standard Specifications for Public Works Construction (Sections 1-9 Excluded)
  12. Applicable Local Agency Standards and Specifications
  13. Standard Drawings
  14. Reference Documents

With reference to the Drawings, the order of precedence shall be as follows:

1. Figures govern over scaled dimensions
  2. Detail drawings govern over general drawings
  3. Addenda or Change Order drawings govern over Contract Drawings
  4. Contract Drawings govern over Standard Drawings
  5. Contract Drawings govern over Shop Drawings
- C. **Conflicts in Contract Documents.** Notwithstanding the orders of precedence established above, in the event of conflicts, the higher standard, higher quality, and most expensive shall always apply.
- D. **Organization of Contract Documents.** Organization of the Contract Documents into divisions, sections, and articles, and arrangement of drawings shall not control the Contractor in dividing Project Work among subcontractors or in establishing the extent of Work to be performed by any trade.

## **ARTICLE 3. PRECONSTRUCTION AND CONSTRUCTION COMMUNICATION**

Before any Work at the site is started, a conference attended by the Town, Contractor, Town's Representative, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to herein, procedures

for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

At this conference the Town and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

#### **ARTICLE 4. CONTRACT DOCUMENTS: COPIES & MAINTENANCE**

Contractor will be furnished, free of charge, **five (5)** copies of the Contract Documents. Additional copies may be obtained at cost of reproduction.

Contractor shall maintain a clean, undamaged set of Contract Documents, including submittals, at the Project site.

#### **ARTICLE 5. EXAMINATION OF DRAWINGS, SPECIFICATIONS AND SITE OF WORK**

- A. **Examination of Contract Documents.** Before commencing any portion of the Work, Contractor shall again carefully examine all applicable Contract Documents, the Project site, and other information given to Contractor as to materials and methods of construction and other Project requirements. Contractor shall immediately notify the Engineer of any potential error, inconsistency, ambiguity, conflict, or lack of detail or explanation. If Contractor performs, permits, or causes the performance of any Work which is in error, inconsistent or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all resulting costs, including, without limitation, the cost of correction. In no case shall the Contractor or any subcontractor proceed with Work if uncertain as to the applicable requirements.
- B. **Additional Instructions.** After notification of any error, inconsistency, ambiguity, conflict, or lack of detail or explanation, the Engineer will provide any required additional instructions, by means of drawings or other written direction, necessary for proper execution of Work.
- C. **Quality of Parts, Construction and Finish.** All parts of the Work shall be of the best quality of their respective kinds and the Contractor must use all diligence to inform itself fully as to the required construction and finish.
- D. **Contractor's Variation from Contract Document Requirements.** If it is found that the Contractor has varied from the requirements of the Contract Documents including the requirement to comply with all applicable laws, ordinances, rules and regulations, the Engineer may at any time, before or after completion of the Work, order the improper Work removed, remade or replaced by the Contractor at the Contractor's expense.

#### **ARTICLE 6. MOBILIZATION**

- A. When a bid item is included in the Bid Form for mobilization, the costs of Work in advance of construction operations and not directly attributable to any specific bid item will be included in the progress estimate ("Initial Mobilization"). When no bid

item is provided for "Initial Mobilization," payment for such costs will be deemed to be included in the other items of the Work.

- B. Payment for Initial Mobilization based on the lump sum provided in the Bid Form, which shall constitute full compensation for all such Work. No payment for Initial Mobilization will be made until all of the listed items have been completed to the satisfaction of the Engineer. The scope of the Work included under Initial Mobilization shall include, but shall not be limited to, the following principal items:
1. Obtaining and paying for all bonds, insurance, and permits.
  2. Moving on to the Project site of all Contractor's plant and equipment required for the first month's operations.
  3. Installing temporary construction power, wiring, and lighting facilities, as applicable.
  4. Establishing fire protection system, as applicable.
  5. Developing and installing a construction water supply, if applicable.
  6. Providing and maintaining the field office trailers for the Contractor, if necessary, and the Engineer (if specified), complete, with all specified furnishings and utility services.
  7. Providing on-site sanitary facilities and potable water facilities as specified per Cal-OSHA and these Contract Documents.
  8. Furnishing, installing, and maintaining all storage buildings or sheds required for temporary storage of products, equipment, or materials that have not yet been installed in the Work. All such storage shall meet manufacturer's specified storage requirements, and the specific provisions of the specifications, including temperature and humidity control, if recommended by the manufacturer, and for all security.
  9. Arranging for and erection of Contractor's work and storage yard.
  10. Posting all OSHA required notices and establishment of safety programs per Cal-OSHA.
  11. Full-time presence of Contractor's superintendent at the job site as required herein.
  12. Submittal of Construction Schedule as required by the Contract Documents.

## **ARTICLE 7. EXISTENCE OF UTILITIES AT THE WORK SITE**

- A. The Town has endeavored to determine the existence of utilities at the Project site from the records of the owners of known utilities in the vicinity of the Project. The positions of these utilities as derived from such records are shown on the Plans.

- B. Unless indicated otherwise on the Plans and Specifications, no excavations were made to verify the locations shown for underground utilities. The service connections to these utilities are not shown on the Plans. Water service connections may be shown on the Plans showing general locations of such connections. It shall be the responsibility of the Contractor to determine the exact location of all service connections. The Contractor shall make its own investigations, including exploratory excavations, to determine the locations and type of service connections, prior to commencing Work which could result in damage to such utilities. The Contractor shall immediately notify the Town in writing of any utility discovered in a different position than shown on the Plans or which is not shown on the Plans.
- C. If applicable, all water meters, water valves, fire hydrants, electrical utility vaults, telephone vaults, gas utility valves, and other subsurface structures shall be relocated or adjusted to final grade by the Contractor. Locations of existing utilities shown on the Plans are approximate and may not be complete. The Contractor shall be responsible for coordinating its Work with all utility companies during the construction of the Work.
- D. Notwithstanding the above, pursuant to section 4215 of the Government Code, the Town has the responsibility to identify, with reasonable accuracy, main or trunkline facilities on the plans and specifications. In the event that main or trunkline utility facilities are not identified with reasonable accuracy in the plans and specifications made a part of the invitation for Bids, the Town shall assume the responsibility for their timely removal, relocation, or protection.
- E. Contractor, except in an emergency, shall contact the appropriate regional notification center, **California Underground Service Alert** at 811 or 1-800-227-2600 or on-line at [www.digalert.org](http://www.digalert.org) at least two working days prior to commencing any excavation if the excavation will be performed in an area which is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the Town, and obtain an inquiry identification number from that notification center. No excavation shall be commenced or carried out by the Contractor unless such an inquiry identification number has been assigned to the Contractor or any subcontractor of the Contractor and the Town has been given the identification number by the Contractor.

## **ARTICLE 8. SOILS INVESTIGATIONS**

- A. Reports and Drawings. The Special Conditions identify:
  - 1. those reports known to the Town of explorations and tests of subsurface conditions at or contiguous to the site; and
  - 2. those drawings known to the Town of physical conditions relating to existing surface or subsurface structures at the site (except Underground Facilities).
- B. Limited Reliance by Contractor on Technical Data Authorized. Contractor may rely upon the accuracy of the “technical data” contained in such reports and drawings, which were expressly not created or obtained to evaluate or assist in the evaluation of constructability, and are not Contract Documents. Contractor shall make its own

interpretation of the “technical data” and shall be solely responsible for any such interpretations. Except for reliance on the accuracy of such “technical data,” Contractor may not rely upon or make any claim against the Town, Town’s Representative, or Engineer of Record, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor’s purposes, including without limitation any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions, conclusions and information contained in such reports or shown or indicated in such drawings; or
3. any Contractor interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions, or information.

#### **ARTICLE 9. CONTRACTOR’S SUPERVISION**

Contractor shall continuously keep at the Project site, a competent and experienced full-time Project superintendent acceptable to the Town. Superintendent must be able to proficiently speak, read and write in English and shall have the authority to make decisions on behalf of the Contractor. Contractor shall continuously provide efficient supervision of the Project.

#### **ARTICLE 10. WORKERS**

- A. Contractor shall at all times enforce strict discipline and good order among its employees. Contractor shall not employ on the Project any unfit person or any one not skilled in the Work assigned to him or her.
- B. Any person in the employ of the Contractor whom the Town may deem incompetent or unfit shall be dismissed from the Work and shall not be employed on this Project.

#### **ARTICLE 11. INDEPENDENT CONTRACTORS**

Contractor shall be an independent contractor for the Town and not an employee. Contractor understands and agrees that it and all of its employees shall not be considered officers, employees, or agents of Town and are not entitled to benefits of any kind normally provided employees of Town, including but not limited to, state unemployment compensation or workers’ compensation. Contractor assumes full responsibility for the acts and omissions of its employees or agents related to the Work.

#### **ARTICLE 12. SUBCONTRACTS**

- A. Contractor agrees to bind every subcontractor to the terms of the Contract Documents as far as such terms are applicable to subcontractor’s portion of the Work. Contractor shall be as fully responsible to the Town for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by its subcontractors, as Contractor is for acts and omissions of persons directly employed by Contractor. Nothing contained in these Contract Documents shall create any contractual relationship between any subcontractor and the Town.



- B. The Town reserves the right to accept all subcontractors. The Town's acceptance of any subcontractor under this Contract shall not in any way relieve Contractor of its obligations in the Contract Documents.
- C. Prior to substituting any subcontractor listed in the Bid Forms, Contractor must comply with the requirements of the Subletting and Subcontracting Fair Practices Act pursuant to California Public Contract Code section 4100 et seq.

### **ARTICLE 13. VERIFICATION OF EMPLOYMENT ELIGIBILITY**

By executing this Contract, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subcontractors, sub-subcontractors and consultants to comply with the same. Each person executing this Contract on behalf of Contractor verifies that he or she is a duly authorized officer of Contractor and that any of the following shall be grounds for the Town to terminate the Contract for cause: (1) failure of the Contractor or its subcontractors, sub-subcontractors or consultants to meet any of the requirements provided for in this Article; (2) any misrepresentation or material omission concerning compliance with such requirements; or (3) failure to immediately remove from the Work any person found not to be in compliance with such requirements.

### **ARTICLE 14. REQUESTS FOR SUBSTITUTION**

- A. For the purposes of this provision, the term "substitution" shall mean the substitution of any material, method or service substantially equal to or better in every respect to that indicated in the Standard Specifications or otherwise referenced herein.
- B. Pursuant to Public Contract Code section 3400(b), the Town may make a finding that is described in the Notice Inviting Bids that designates certain products, things, or services by specific brand or trade name.
- C. Unless specifically designated in the Special Conditions, whenever any material, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such specifications shall be deemed to be used for the purpose of facilitating the description of the material, process, or article desired and shall be deemed to be followed by the words "or equal." Contractor may, unless otherwise stated, offer for substitution any material, process, or article which may be substantially equal to or better in every respect to that so indicated or specified in the Contract Documents. However, the Town has adopted uniform standards for certain materials, processes, and articles.
- D. The Contractor shall submit substitution requests, together with substantiating data, for substitution of any "or equal" material, process, or article no later than thirty-five (35) calendar days after award of Contract. Provisions regarding submission of substitution requests shall not in any way authorize an extension of time for the performance of this Contract. If a substitution request is rejected by the Town, the Contractor shall provide the material, method or service specified herein. The Town shall not be responsible for any costs incurred by the Contractor associated with substitution requests. The burden of proof as to the equality of any material,

process, or article shall rest with the Contractor. The Engineer has the complete and sole discretion to determine if a material, process, or article is substantially equal to or better than that specified and to approve or reject all substitution requests.

- E. Substantiating data as described above shall include, at a minimum, the following information:
  - 1. A signed affidavit from the Contractor stating that the material, process, or article proposed as a substitution is substantially equal to or better than that specified in every way except as may be listed on the affidavit.
  - 2. Illustrations, specifications, catalog cut sheets, and any other relevant data required to prove that the material, process, or article is substantially equal to or better than that specified.
  - 3. A statement of the cost implications of the substitution being requested, indicating whether and why the proposed substitution will reduce or increase the amount of the contract.
  - 4. Information detailing the durability and lifecycle costs of the proposed substitution.
- F. Failure to submit all the required substantiating data detailed above in a timely manner so that the substitution request can be adequately reviewed may result in rejection of the substitution request. The Engineer is not obligated to review multiple submittals related the same substitution request resulting from the Contractor's failure to initially submit a complete package.
- G. Time limitations within this Article shall be strictly complied with and in no case will an extension of time for completion of the contract be granted because of Contractor's failure to provide substitution requests at the time and in the manner described herein.
- H. The Contractor shall bear the costs of all Town work associated with the review of substitution requests.
- I. If substitution requests approved by the Engineer require that Contractor furnish materials, methods or services more expensive than that specified, the increased costs shall be borne by Contractor.

## **ARTICLE 15. SHOP DRAWINGS**

- A. Contractor shall check and verify all field measurements and shall submit with such promptness as to provide adequate time for review and cause no delay in its own Work or in that of any other contractor, subcontractor, or worker on the Project, six (6) copies of all shop drawings, calculations, schedules, and materials list, and all other provisions required by the Contract Documents. Contractor shall sign all submittals affirming that submittals have been reviewed and approved by Contractor prior to submission to Engineer. Each signed submittal shall affirm that the submittal meets all the requirements of the Contract Documents except as specifically and clearly noted and listed on the transmittal letter of the submittal.

- B. Contractor shall make any corrections required by the Engineer, and file with the Engineer six (6) corrected copies each, and furnish such other copies as may be needed for completion of the Work. Engineer's acceptance of shop drawings shall not relieve Contractor from responsibility for deviations from the Contract Documents unless Contractor has, in writing, called Engineer's attention to such deviations at time of submission and has secured the Engineer's written acceptance. Engineer's acceptance of shop drawings shall not relieve Contractor from responsibility for errors in shop drawings.

## **ARTICLE 16. SUBMITTALS**

- A. Contractor shall furnish to the Engineer for approval, prior to purchasing or commencing any Work, a log of all samples, material lists and certifications, mix designs, schedules, and other submittals, as required in the Contract Documents. The log shall indicate whether samples will be provided in accordance with other provisions of this Contract.
- B. Contractor will provide samples and submittals, together with catalogs and supporting data required by the Engineer, to the Engineer within a reasonable time period to provide for adequate review and avoid delays in the Work.
- C. These requirements shall not authorize any extension of time for performance of this Contract. Engineer will check and approve such samples, but only for conformance with design concept of work and for compliance with information given in the Contract Documents. Work shall be in accordance with approved samples and submittals.

## **ARTICLE 17. MATERIALS**

- A. Except as otherwise specifically stated in the Contract Documents, Contractor shall provide and pay for all materials, labor, tools, equipment, lights, power, transportation, superintendence, temporary constructions of every nature, and all other services and facilities of every nature whatsoever necessary to execute and complete this Contract within specified time.
- B. Unless otherwise specified, all materials shall be new and the best of their respective kinds and grades as noted and/or specified, and workmanship shall be of good quality.
- C. Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of the Work and shall be stored properly and protected as required by the Contract Documents. Contractor shall be entirely responsible for damage or loss by weather or other causes to materials or Work.
- D. No materials, supplies, or equipment for Work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in the Work and agrees upon completion of all work to deliver the Project, to the Town free from any claims, liens, or charges.

- E. Materials shall be stored on the Project site in such manner so as not to interfere with any operations of the Town or any independent contractor.
- F. Contractor shall verify all measurements, dimensions, elevations, and quantities before ordering any materials or performing any Work, and the Town shall not be liable for Contractor's failure to do so. No additional compensation, over and above payment for the actual quantities at the prices set out in the Bid Form, will be allowed because of differences between actual measurements, dimension, elevations and quantities and those indicated on the Plans and in the Specifications. Any difference therein shall be submitted to the Engineer for consideration before proceeding with the Work.

## **ARTICLE 18. PERMITS AND LICENSES**

- A. Town will apply and pay for the review of necessary encroachment permits for Work within the public rights-of-way. Contractor shall obtain all other necessary permits and licenses for the construction of the Project, including encroachment permits, and shall pay all fees required by law and shall comply with all laws, ordinances, rules and regulations relating to the Work and to the preservation of public health and safety. Before acceptance of the Project, the Contractor shall submit all licenses, permits, certificates of inspection and required approvals to the Town.
- B. The Bid Form contains an allowance for the Contractor's cost of acquiring traffic control permits and for construction inspection fees that may be charged to the Contractor by the Agency of Jurisdiction. The allowance is included within the Bid Form to eliminate the need by bidders to research or estimate the costs of traffic control permits and construction inspection fees prior to submitting a bid. The allowance is specifically intended to account for the costs of traffic control permits and construction inspection fees charged by the local Agency of Jurisdiction only. No other costs payable by Contractor to the Agency of Jurisdiction are included within the allowance. Payment by Town to Contractor under the Permit and Inspection Allowance Bid Item shall be made based on actual cost receipts only and in accordance with the provisions of these specifications.

## **ARTICLE 19. TRENCHES**

- A. **Trenches Five Feet or More in Depth.** Contractor shall submit to the Engineer at the preconstruction meeting, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from hazards of caving ground during the excavation of any trench or trenches five feet or more in depth. If such plan varies from shoring system standards established by the Construction Safety Orders of the California Code of Regulations, Department of Industrial Relations, the plan shall be prepared by a California registered civil or structural engineer. The plan shall not be less effective than the shoring, bracing, sloping, or other provisions of the Construction Safety Orders, as defined in the California Code of Regulations. The Contractor shall designate in writing the "competent person" as defined in Title 8, California Code of Regulations, who shall be present at the Work Site each day that trenching/excavation is in progress. The "competent person" shall prepare and provide daily trenching/excavation inspection reports to the Engineer.

Contractor shall also submit a copy of its annual California Occupational Safety and Health Administration (Cal/OSHA) trench/excavation permit.

- B. Excavations Deeper than Four Feet.** If the Work involves excavating trenches or other excavations that extend deeper than four feet below the surface, Contractor shall promptly, and before the excavation is further disturbed, notify the Town in writing of any of the following conditions:
1. Material that the Contractor believes may be material that is hazardous waste, as defined in section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
  2. Subsurface or latent physical conditions at the site differing from those indicated.
  3. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract

The Town shall promptly investigate the conditions, and if it finds that the conditions do so materially differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the Work, shall issue a change order under the procedures described in the Contract Documents.

In the event that a dispute arises between the Town and the Contractor as to whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the parties.

## **ARTICLE 20. TRAFFIC CONTROL**

- A.** Traffic control plan(s) for the Work may be required by the Agency(s) of Jurisdiction. Traffic control plans, if required, shall be prepared at Contractor's expense, and traffic control shall be performed at Contractor's expense in accordance with the requirements of the Agency(s) of Jurisdiction. The Permit and Inspection Allowance included within the Bid Form includes the cost of required traffic control permit(s) and construction inspection by the Agency(s) of Jurisdiction only. The Permit and Inspection Allowance does not include costs for preparation of any required traffic control plans, implementation of any traffic control requirements or for any traffic signal services that may be required. Costs for traffic control plans, implementation of traffic control, or traffic signal services required by the Agency(s) of Jurisdiction shall be included in the Contractor's Bid.
- B.** All warning signs and safety devices used by the Contractor to perform the Work shall conform to the requirements contained in the State of California, Department of

Transportation's current edition of "Manual of Traffic Controls for Construction and Maintenance Work Zones" or to the requirements of the local agency. The Contractor shall also be responsible for all traffic control required by the agency having jurisdiction over the project on the intersecting streets. Contractor must submit a traffic control plan to the agency having jurisdiction over the project for approval prior to starting work.

- C. The Contractor's representative on the site responsible for traffic control shall produce evidence that he/she has completed training acceptable to the California Department of Transportation for safety through construction zones. All of the streets in which the Work will occur shall remain open to traffic and one lane of traffic maintained at all times unless otherwise directed by the agency of jurisdiction. Businesses and residences adjacent to the Work shall be notified forty-eight (48) hours in advance of closing of driveways. The Contractor shall make every effort to minimize the amount of public parking temporarily eliminated due to construction in areas fronting businesses. No stockpiles of pipe or other material will be allowed in traveled right-of-ways after working hours unless otherwise approved by the Engineer.

## **ARTICLE 21. DIVERSION OF RECYCLABLE WASTE MATERIALS**

In compliance with the applicable Town's waste reduction and recycling efforts, Contractor shall divert all Recyclable Waste Materials to appropriate recycling centers as required for compliance with the local jurisdiction's waste diversion ordinances. Contractor will be required to submit weight tickets and written proof of diversion with its monthly progress payment requests. Contractor shall complete and execute any certification forms required by Town or other applicable agencies to document Contractor's compliance with these diversion requirements. All costs incurred for these waste diversion efforts shall be the responsibility of the Contractor.

## **ARTICLE 22. REMOVAL OF HAZARDOUS MATERIALS**

Should Contractor encounter material reasonably believed to be polychlorinated biphenyl (PCB) or other toxic wastes and hazardous materials which have not been rendered harmless at the Project site, the Contractor shall immediately stop work at the affected Project site and shall report the condition to the Town in writing. The Town shall contract for any services required to directly remove and/or abate PCBs and other toxic wastes and hazardous materials, if required by the Project site(s), and shall not require the Contractor to subcontract for such services. The Work in the affected area shall not thereafter be resumed except by written agreement of the Town and Contractor.

## **ARTICLE 23. SANITARY FACILITIES**

Contractor shall provide sanitary temporary toilet buildings and hand washing facilities for the use of all workers. All toilets and hand washing facilities shall comply with all applicable federal, state and local laws, codes, ordinances, and regulations. Toilets shall be kept supplied with toilet paper and shall have workable door fasteners. Toilets and hand washing facilities shall be serviced no less than once weekly and shall be present in a quantity of not less than 1 per 20 workers as required by Cal/OSHA regulations. The toilets and hand washing facilities shall be maintained in a sanitary condition at all times. Use of toilet and hand washing facilities in the

Work under construction shall not be permitted. Any other Sanitary Facilities required by Cal/OSHA shall be the responsibility of the Contractor.

#### **ARTICLE 24. AIR POLLUTION CONTROL**

Contractor shall comply with all air pollution control rules, regulations, ordinances and statutes. All containers of paint, thinner, curing compound, solvent or liquid asphalt shall be labeled to indicate that the contents fully comply with the applicable material requirements.

#### **ARTICLE 25. LAYOUT AND FIELD ENGINEERING**

All field engineering required for laying out the Work and establishing grades for earthwork operations shall be furnished by the Contractor at its expense.

#### **ARTICLE 26. TESTS AND INSPECTIONS**

- A. If the Contract Documents, the Engineer, or any instructions, laws, ordinances, or public authority requires any part of the Work to be tested or Approved, Contractor shall provide the Engineer at least two (2) working days' notice of its readiness for observation or inspection. If inspection is by a public authority other than the Town, Contractor shall promptly inform the Town of the date fixed for such inspection. Required certificates of inspection (or similar) shall be secured by Contractor. Costs for Town testing and Town inspection shall be paid by the Town. Costs of tests for Work found not to be in compliance shall be paid by the Contractor.
- B. If any Work is done or covered up without the required testing or approval, the Contractor shall uncover or deconstruct the Work, and the Work shall be redone after completion of the testing at the Contractor's cost in compliance with the Contract Documents.
- C. Where inspection and testing are to be conducted by an independent laboratory or agency, materials or samples of materials to be inspected or tested shall be selected by such laboratory or agency, or by the Town, and not by Contractor. All tests or inspections of materials shall be made in accordance with the commonly recognized standards of national organizations.
- D. In advance of manufacture of materials to be supplied by Contractor which must be tested or inspected, Contractor shall notify the Town so that the Town may arrange for testing at the source of supply. Any materials which have not satisfactorily passed such testing and inspection shall not be incorporated into the Work.
- E. If the manufacture of materials to be inspected or tested will occur in a plant or location greater than sixty (60) miles from the Town, the Contractor shall pay for any excessive or unusual costs associated with such testing or inspection, including but not limited to excessive travel time, standby time and required lodging.
- F. Reexamination of Work may be ordered by the Town. If so ordered, Work must be uncovered or deconstructed by Contractor. If Work is found to be in accordance with the Contract Documents, the Town shall pay the costs of reexamination and reconstruction. If such work is found not to be in accordance with the Contract Documents, Contractor shall pay all costs.

## **ARTICLE 27. PROTECTION OF WORK AND PROPERTY**

- A. The Contractor shall be responsible for all damages to persons or property that occurs as a result of the Work. Contractor shall be responsible for the proper care and protection of all materials delivered and Work performed until completion and final Acceptance by the Town. All Work shall be solely at the Contractor's risk. Contractor shall adequately protect adjacent property from settlement or loss of lateral support as necessary. Contractor shall comply with all applicable safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the Project site where Work is being performed. Contractor shall erect and properly maintain at all times, as required by field conditions and progress of work, all necessary safeguards, signs, barriers, lights, and watchmen for protection of workers and the public, and shall post danger signs warning against hazards created in the course of construction.
- B. In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from the Engineer, is hereby permitted to act to prevent such threatened loss or injury; and Contractor shall so act, without appeal, if so authorized or instructed by the Engineer or the Town. Any compensation claimed by Contractor on account of emergency work shall be determined by and agreed upon by the Town and the Contractor.

## **ARTICLE 28. CONTRACTOR'S MEANS AND METHODS**

Contractor is solely responsible for the means and methods utilized to perform the Work. In no case shall the Contractor's means and methods deviate from commonly used industry standards.

## **ARTICLE 29. AUTHORIZED REPRESENTATIVES**

The Town shall designate representatives, who shall have the right to be present at the Project site at all times. The Town may designate an inspector who shall have the right to observe all of the Contractor's Work. The inspector shall not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. Contractor shall provide safe and proper facilities for such access.

## **ARTICLE 30. HOURS OF WORK**

- A. As provided in Article 3 (commencing at section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, Contractor stipulates that eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the Contractor or by any subcontractor on any subcontract under this Contract upon the Work or upon any part of the Work contemplated by this Contract is limited and restricted to eight (8) hours during any one calendar day and 40 hours during any one calendar week, except as hereinafter provided. Notwithstanding the provisions herein above set forth, work performed by employees of Contractor in excess of eight (8) hours per day, and 40 hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.



- B. The Contractor and every subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed in connection with the Work or any part of the Work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of the Town and to the Division of Labor Law Enforcement, Department of Industrial Relations of the State of California.
- C. The Contractor shall pay to the Town a penalty of twenty-five dollars (\$25.00) for each worker employed in the execution of this Contract by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and 40 hours in any one calendar week in violation of the provisions of Article 3 (commencing at section 1810), Chapter 1, Part 7, Division 2 of the Labor Code.
- D. Any work necessary to be performed after regular working hours, or on Saturdays and Sundays or other holidays, shall be performed without additional expense to the Town.
- E. Town will provide inspection during normal working hours from 7:00 a.m. to 3:30 p.m. Monday through Friday. Inspection before or after this time will be charged to the Contractor as reimbursable inspection time. Inspections on weekends requires two days' notice for review and approval. Upon written request and approval the 8.5 hour working day may be changed to other limits subject to city/county ordinance.
- F. It shall be unlawful for any person to operate, permit, use, or cause to operate any of the following at the Project site, other than between the hours of 7:00 a.m. to 5:00 p.m., Monday through Friday, with no Work allowed on the Town-observed holidays, unless otherwise approved by the Town:
  - 1. Powered Vehicles
  - 2. Construction Equipment
  - 3. Loading and Unloading Vehicles
  - 4. Domestic Power Tools

#### **ARTICLE 31. PAYROLL RECORDS; LABOR COMPLIANCE**

- A. Pursuant to Labor Code section 1776, Contractor and all subcontractors shall maintain weekly certified payroll records, showing the names, addresses, Social Security numbers, work classifications, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by them in connection with the Work under this Contract. Contractor shall certify under penalty of perjury that records maintained and submitted by Contractor are true and accurate. Contractor shall also require subcontractor(s) to certify weekly payroll records under penalty of perjury.
- B. In accordance with Labor Code section 1771.4, the Contractor and each subcontractor shall furnish the certified payroll records directly to the Department of

Industrial Relations ("DIR") on the specified interval and format prescribed by the DIR, which may include electronic submission. Contractor shall comply with all requirements and regulations from the DIR relating to labor compliance monitoring and enforcement. The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

- C. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor's performance of Work, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay subject to any applicable liquidated damages and shall not be compensable by the Town. Contractor shall defend, indemnify and hold the Town, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.
- D. The payroll records described herein shall be certified and submitted by the Contractor at a time designated by the Town. The Contractor shall also provide the following:
  - 1. A certified copy of the employee's payroll records shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
  - 2. A certified copy of all payroll records described herein shall be made available for inspection or furnished upon request of the DIR.
- E. Unless submitted electronically, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement ("DLSE") of the DIR or shall contain the same information as the forms provided by the DLSE.
- F. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency, the Town, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor awarded the Contract or performing the contract shall not be marked or obliterated.
- G. In the event of noncompliance with the requirements of this Article, the Contractor shall have ten (10) calendar days in which to comply subsequent to receipt of written notice specifying in what respects the Contractor must comply with this Article. Should noncompliance still be evident after such 10-day period, the Contractor shall pay a penalty of one hundred dollars (\$100.00) to the Town for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payment then due.

- H. The responsibility for compliance with this Article shall rest upon the Contractor.

## **ARTICLE 32. PREVAILING RATES OF WAGES**

- A. The Contractor is aware of the requirements of Labor Code sections 1720 *et seq.* and 1770 *et seq.*, as well as California Code of Regulations, Title 8, Section 16000 *et seq.* ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since this Project involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. The Contractor shall obtain a copy of the prevailing rates of per diem wages at the commencement of this Contract from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at [www.dir.ca.gov](http://www.dir.ca.gov). In the alternative, the Contractor may view a copy of the prevailing rate of per diem wages which are on file at the Town's Administration Office and shall be made available to interested parties upon request. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification, or type of worker needed to perform work on the Project available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the Project site. Contractor shall defend, indemnify and hold the Town, its officials, officers, employees and authorized volunteers free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or allege failure to comply with the Prevailing Wage Laws.
- B. The Contractor shall forfeit as a penalty to the Town not more than Two Hundred Dollars (\$200.00), pursuant to Labor Code section 1775, for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate as determined by the Director of the Department of Industrial Relations for such work or craft in which such worker is employed for any public work done under the Contract by it or by any subcontractor under it. The difference between such prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.
- C. Contractor shall post, at appropriate conspicuous points on the Project site, a schedule showing all determined general prevailing wage rates and all authorized deductions, if any, from unpaid wages actually earned.

## **ARTICLE 33. PUBLIC WORKS CONTRACTOR REGISTRATION**

Pursuant to Labor Code sections 1725.5 and 1771.1, the Contractor and its subcontractors must be registered with the Department of Industrial Relations prior to the execution of a contract to perform public works. By entering into this Contract, Contractor represents that it is aware of the registration requirement and is currently registered with the DIR. Contractor shall maintain a current registration for the duration of the Project. Contractor shall further include the requirements of Labor Code sections 1725.5 and 1771.1 in any subcontract and ensure that all subcontractors are registered at the time this Contract is entered into and maintain registration for the duration of the Project. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work

performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

#### **ARTICLE 34. EMPLOYMENT OF APPRENTICES**

- A. Contractor and all subcontractors shall comply with the requirements of Labor Code sections 1777.5 and 1777.6 in the employment of apprentices.
- B. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.
- C. Knowing violations of Labor Code section 1777.5 will result in forfeiture not to exceed one hundred dollars (\$100.00) for each calendar day of non-compliance pursuant to Labor Code section 1777.7.
- D. The responsibility for compliance with this Article shall rest upon the Contractor.

#### **ARTICLE 35. NONDISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY**

Pursuant to Labor Code section 1735 and other applicable provisions of law, the Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, or any other classifications protected by law on this Project. The Contractor will take affirmative action to insure that employees are treated during employment or training without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, or any other classifications protected by law.

Employment Eligibility; Contractor. By executing this Contract, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of the Contractor. Contractor also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Contract, and shall not violate any such law at any time during the term of the Contract. Contractor shall avoid any violation of any such law during the term of this Contract by participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some other legally acceptable method. Contractor shall maintain records of each such verification, and shall make them available to the Town or its representatives for inspection and copy at any time during normal business hours. The Town shall not be responsible for any costs or expenses related to Contractor's compliance with the requirements provided for or referred to herein.

Employment Eligibility; Subcontractors, Sub-subcontractors and Consultants. To the same extent and under the same conditions as Contractor, Contractor shall require all of its subcontractors, sub-subcontractors and consultants performing any part of the Work or of this Contract to make the same verifications and comply with all requirements and restrictions provided for herein.

Employment Eligibility; Failure to Comply. Each person executing this Contract on behalf of Contractor verifies that he or she is a duly authorized officer of Contractor, and understands that any of the following shall be grounds for the Town to terminate the Contract for cause: (1) failure of Contractor or its subcontractors, sub-subcontractors or consultants to meet any of the requirements provided for herein; (2) any misrepresentation or material omission concerning compliance with such requirements; or (3) failure to immediately remove from the Work any person found not to be in compliance with such requirements.

### **ARTICLE 36. DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS**

Contractors or subcontractors may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Labor Code section 1777.1 or 1777.7. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid, or may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the Town. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the project.

### **ARTICLE 37. LABOR/EMPLOYMENT SAFETY**

The Contractor shall comply with all applicable laws and regulations of the federal, state, and local government, including Cal/OSHA requirements and requirements for verification of employees' legal right to work in the United States.

The Contractor shall maintain emergency first aid treatment for his employees which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 *et seq.*), and California Code of Regulations, Title 8, Industrial Relations Division 1, Department of Industrial Relations, Chapter 4. The Contractor shall ensure the availability of emergency medical services for its employees in accordance with California Code of Regulations, Title 8, Section 1512.

The Contractor shall submit the Illness and Injury Prevention Program and a Project site specific safety program to the Town prior to beginning Work at the Project site. Contractor shall maintain a confined space program that meets or exceeds the Town Standards. Contractor shall adhere to the Town's lock out tag out program.

### **ARTICLE 38. INSURANCE**

The Contractor shall obtain, and at all times during performance of the Work of Contract, maintain all of the insurance described in this Article. Contractor shall not commence Work under this Contract until it has provided evidence satisfactory to the Town that it has secured all insurance required hereunder. Contractor shall not allow any subcontractor to commence work

on any subcontract until it has provided evidence satisfactory to the Town that the subcontractor has secured all insurance required under this Article. Failure to provide and maintain all required insurance shall be grounds for the Town to terminate this Contract for cause. Contractor shall furnish Town with original certificates of insurance and endorsements effective coverage required by this Contract on forms satisfactory to the Town. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms acceptable to the Town. All certificates and endorsements must be received and approved by the Town before Work commences.

- A. **Additional Insureds; Waiver of Subrogation.** The Town, its officials, officers, employees, agents and authorized volunteers shall be named as Additional Insureds on Contractor's All Risk policy and on Contractor's and its subcontractors' policies of Commercial General Liability and Automobile Liability insurance using, for Contractor's policy/ies of Commercial General Liability insurance, ISO CG forms 20 10 and 20 37 (or endorsements providing the exact same coverage, including completed operations), and, for subcontractors' policies of Commercial General Liability insurance, ISO CG form 20 38 (or endorsements providing the exact same coverage). Notwithstanding the minimum limits set forth in this Contract for any type of insurance coverage, all available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as Additional Insureds hereunder. Contractor and its insurance carriers shall provide a Waiver of Subrogation in favor of those parties.
- B. **Workers' Compensation Insurance.** The Contractor shall provide workers' compensation insurance for all of the employees engaged in Work under this Contract, on or at the Site, and, in case of any sublet Work, the Contractor shall require the subcontractor similarly to provide workers' compensation insurance for all the latter's employees as prescribed by State law. Any class of employee or employees not covered by a subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in work under this Contract, on or at the Site, is not protected under the Workers' Compensation Statutes, the Contractor shall provide or shall cause a subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected. The Contractor is required to secure payment of compensation to his employees in accordance with the provisions of section 3700 of the Labor Code. The Contractor shall file with the Town certificates of his insurance protecting workers. Company or companies providing insurance coverage shall be acceptable to the Town, if in the form and coverage as set forth in the Contract Documents.
- C. **Employer's Liability Insurance.** Contractor shall provide Employer's Liability Insurance, including Occupational Disease, in the amount of at least one million dollars (\$1,000,000.00) per person per accident. Contractor shall provide Town with a certificate of Employer's Liability Insurance. Such insurance shall comply with the provisions of the Contract Documents. The policy shall be endorsed, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement and contain a Waiver of Subrogation in favor of the Town.
- D. **Commercial General Liability Insurance.** Contractor shall provide "occurrence" form Commercial General Liability insurance coverage at least as broad as the most current ISO CGL Form 00 01, including but not limited to, premises liability,

contractual liability, products/completed operations, personal and advertising injury which may arise from or out of Contractor's operations, use, and management of the Site, or the performance of its obligations hereunder. The policy shall not contain any exclusion contrary to this Contract including but not limited to endorsements or provisions limiting coverage for (1) contractual liability (including but not limited to ISO CG 24 26 or 21 39); or (2) cross-liability for claims or suits against one insured against another. Policy limits shall not be less than \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Defense costs shall be paid in addition to the limits.

1. Such policy shall comply with all the requirements of this Article. The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Contractor from liability in excess of such coverage, nor shall it limit Contractor's indemnification obligations to the Town, and shall not preclude the Town from taking such other actions available to the Town under other provisions of the Contract Documents or law.
2. All general liability policies provided pursuant to the provisions of this Article shall comply with the provisions of the Contract Documents.
3. All general liability policies shall be written to apply to all bodily injury, including death, property damage, personal injury, owned and non-owned equipment, blanket contractual liability, completed operations liability, explosion, collapse, under-ground excavation, removal of lateral support, and other covered loss, however occasioned, occurring during the policy term, and shall specifically insure the performance by Contractor of that part of the indemnification contained in these General Conditions relating to liability for injury to or death of persons and damage to property.
4. If the coverage contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any aggregate limit has been paid or reserved, the Town may require additional coverage to be purchased by Contractor to restore the required limits. Contractor may combine primary, umbrella, and as broad as possible excess liability coverage to achieve the total limits indicated above. Any umbrella or excess liability policy shall include the additional insured endorsement described in the Contract Documents.
5. All policies of general liability insurance shall permit and Contractor does hereby waive any right of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss.

**E. Automobile Liability Insurance.** Contractor shall provide "occurrence" form Automobile Liability Insurance at least as broad as ISO CA 00 01 (Any Auto) in the amount of, at least, one million dollars (\$1,000,000) per accident for bodily injury and

property damage. Such insurance shall provide coverage with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by Contractor or for which Contractor is responsible, in a form and with insurance companies acceptable to the Town. All policies of automobile insurance shall permit and Contractor does hereby waive any right of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss.

**F. Builder's Risk ["All Risk"]**

1. It is the Contractor's responsibility to maintain or cause to be maintained Builder's Risk ["All Risk"] extended coverage insurance on all work, material, equipment, appliances, tools, and structures that are or will become part of the Work and subject to loss or damage by fire, and vandalism and malicious mischief, in an amount to cover 100% of the replacement cost. The Town accepts no responsibility for the Work until the Work is formally accepted by the Town. The Contractor shall provide a certificate evidencing this coverage before commencing performance of the Work.
2. The named insureds shall be Contractor, all Subcontractors of any tier (excluding those solely responsible for design work), suppliers, and Town, its elected officials, officers, employees, agents and authorized volunteers, as their interests may appear. Contractor shall not be required to maintain property insurance for any portion of the Work following acceptance by Town.
3. Policy shall be provided for replacement value on an "all risk" basis. There shall be no coinsurance penalty provision in any such policy. Policy must include: (1) coverage for any ensuing loss from faulty workmanship, nonconforming work, omission or deficiency in design or specifications; (2) coverage against machinery accidents and operational testing; (3) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the Project; (4) transit coverage, including ocean marine coverage (unless insured by the supplier), with sub-limits sufficient to insure the full replacement value of any key equipment item; and (5) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the Site. Such insurance shall be on a form acceptable to Town to ensure adequacy and sublimit.
4. In addition, the policy shall meet the following requirements:
  - a. Insurance policies shall be so conditioned as to cover the performance of any extra work performed under the Contract.
  - b. Coverage shall include all materials stored on site and in transit.
  - c. Coverage shall include Contractor's tools and equipment.
  - d. Insurance shall include boiler, machinery and material hoist coverage.



- G. **Contractor's Pollution Liability Coverage.** Contractor shall provide pollution liability insurance in an amount not less than \$1,000,000 per occurrence and \$2,000,000 aggregate.
- H. Contractor shall require all tiers of sub-contractors working under this Contract to provide the insurance required under this Article unless otherwise agreed to in writing by Town. Contractor shall make certain that any and all subcontractors hired by Contractor are insured in accordance with this Contract. If any subcontractor's coverage does not comply with the foregoing provisions, Contractor shall indemnify and hold the Town harmless from any damage, loss, cost, or expense, including attorneys' fees, incurred by the Town as a result thereof.

#### **ARTICLE 39. FORM AND PROOF OF CARRIAGE OF INSURANCE**

- A. Any insurance carrier providing insurance coverage required by the Contract Documents shall be admitted to and authorized to do business in the State of California unless waived, in writing, by the Town's Risk Manager. Carrier(s) shall have an A.M. Best rating of not less than an A:VII. Insurance deductibles or self-insured retentions must be declared by the Contractor. At the election of the Town the Contractor shall either 1) reduce or eliminate such deductibles or self-insured retentions, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses. If umbrella or excess liability coverage is used to meet any required limit(s) specified herein, the Contractor shall provide a "follow form" endorsement satisfactory to the Town indicating that such coverage is subject to the same terms and conditions as the underlying liability policy.
- B. Each insurance policy required by this Contract shall be endorsed to state that: (1) coverage shall not be suspended, voided, reduced or cancelled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Town; and (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the Town, its officials, officers, agents, employees, and volunteers.
- C. The Certificates(s) and policies of insurance shall contain or shall be endorsed to contain the covenant of the insurance carrier(s) that it shall provide no less than thirty (30) days written notice be given to the Town prior to any material modification or cancellation of such insurance. In the event of a material modification or cancellation of coverage, the Town may terminate the Contract or stop the Work in accordance with the Contract Documents, unless the Town receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. Contractor shall not take possession, or use the Site, or commence operations under this Contract until the Town has been furnished original Certificate(s) of Insurance and certified original copies of endorsements or policies of insurance including all endorsements and any and all other attachments as required in this Article. The original endorsements for each policy and the Certificate of Insurance shall be signed by an individual authorized by the insurance carrier to do so on its behalf.

- D. The Certificate(s) of Insurance, policies and endorsements shall so covenant and shall be construed as primary, and the Town's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.
- E. Town reserves the right to adjust the monetary limits of insurance coverages during the term of this Contract including any extension thereof if, in the Town's reasonable judgment, the amount or type of insurance carried by the Contractor becomes inadequate.
- F. Contractor shall report to the Town, in addition to the Contractor's insurer, any and all insurance claims submitted by the Contractor in connection with the Work under this Contract.

#### **ARTICLE 40. TIME FOR COMPLETION AND LIQUIDATED DAMAGES**

- A. **Time for Completion/Liquidated Damages.** Time is of the essence in the completion of the Work. Work shall be commenced within ten (10) Days of the date stated in the Town's Notice to Proceed and shall be completed by Contractor in the time specified in the Contract Documents. The Town is under no obligation to consider early completion of the Project; and the Contract completion date shall not be amended by the Town's receipt or acceptance of the Contractor's proposed earlier completion date. Furthermore, Contractor shall not, under any circumstances, receive additional compensation from the Town (including but not limited to indirect, general, administrative or other forms of overhead costs) for the period between the time of earlier completion proposed by the Contractor and the Contract completion date. If the Work is not completed as stated in the Contract Documents, it is understood that the Town will suffer damage. In accordance with Government Code section 53069.85, being impractical and infeasible to determine the amount of actual damage, it is agreed that Contractor shall pay to the Town as fixed and liquidated damages, and not as a penalty, the sum stipulated in the Contract for each calendar day of delay until the Work is fully completed. Contractor and its surety shall be liable for any liquidated damages. Any money due or to become due the Contractor may be retained to cover liquidated damages.
- B. **Inclement Weather.** Contractor shall abide by the Engineer's determination of what constitutes inclement weather. Time extensions for inclement weather shall only be granted when the Work stopped during inclement weather is on the critical path of the Project schedule.
- C. **Extension of Time.** Contractor shall not be charged liquidated damages because of any delays in completion of the Work due to unforeseeable causes beyond the control and without the fault or negligence of Contractor (or its subcontractors or suppliers). Contractor shall within five (5) Days of identifying any such delay notify the Town in writing of causes of delay. The Town shall ascertain the facts and extent of delay and grant extension of time for completing the Work when, in its judgment, the facts justify such an extension. Time extensions to the Project shall be requested by the Contractor as they occur and without delay. No delay claims shall be permitted unless the event or occurrence delays the completion of the Project beyond the Contract completion date.

- D. **No Damages for Reasonable Delay.** The Town's liability to Contractor for delays for which the Town is responsible shall be limited to only an extension of time unless such delays were unreasonable under the circumstances. In no case shall the Town be liable for any costs which are borne by the Contractor in the regular course of business, including, but not limited to, home office overhead and other ongoing costs. Damages caused by unreasonable Town delay, including delays caused by items that are the responsibility of the Town pursuant to Government Code section 4215, shall be based on actual costs only, no proportions or formulas shall be used to calculate any delay damages.

#### **ARTICLE 41. COST BREAKDOWN AND PERIODIC ESTIMATES**

Contractor shall furnish on forms Approved by the Town:

- A. Within ten (10) Days of Notice to Proceed with the Contract, a detailed estimate giving a complete breakdown of the Contract price, if the Contract amount is a lump sum.
- B. A monthly itemized estimate of Work done for the purpose of making progress payments. In order for the Town to consider and evaluate each progress payment application, the Contractor shall submit a detailed measurement of Work performed and a progress estimate of the value thereof before the tenth (10th) Day of the following month.
- C. Contractor shall submit, with each of its payment requests, an adjusted list of actual quantities, verified by the Engineer, for unit price items listed, if any, in the Bid Form.
- D. Following the Town's Acceptance of the Work, the Contractor shall submit to the Town a written statement of the final quantities of unit price items for inclusion in the final payment request.
- E. The Town shall have the right to adjust any estimate of quantity and to subsequently correct any error made in any estimate for payment.

Contractor shall certify under penalty of perjury, that all cost breakdowns and periodic estimates accurately reflect the Work on the Project.

#### **ARTICLE 42. PROGRESS ESTIMATES AND PAYMENT**

- A. By the tenth (10th) Day of the following calendar month, Contractor shall submit to Engineer a payment request which shall set forth in detail the value of the Work done for the period beginning with the date work was first commenced and ending on the end of the calendar month for which the payment request is prepared. Contractor shall include any amount earned for authorized extra work. From the total thus computed, a deduction shall be made in the amount of five percent (5%) for retention, except where the Town has adopted a finding that the Work done under the Contract is substantially complex, and then the amount withheld as retention shall be the percentage specified in the Notice Inviting Bids. From the remainder a further deduction may be made in accordance with Section B below. The amount computed, less the amount withheld for retention and any amounts withheld as set forth below, shall be the amount of the Contractor's payment request.

- B. The Town may withhold a sufficient amount or amounts of any payment or payments otherwise due to Contractor, as in his judgment may be necessary to cover:
1. Payments which may be past due and payable for just claims against Contractor or any subcontractors for labor or materials furnished in and about the performance of work on the Project under this Contract.
  2. Defective work not remedied.
  3. Failure of Contractor to make proper payments to his subcontractor or for material or labor.
  4. Completion of the Contract if there is a reasonable doubt that the Work can be completed for balance then unpaid.
  5. Damage to another contractor or a third party.
  6. Amounts which may be due the Town for claims against Contractor.
  7. Failure of Contractor to keep the record ("as-built") drawings up to date.
  8. Failure to provide update on construction schedule as required herein.
  9. Site cleanup.
  10. Failure to comply with Contract Documents.
  11. Liquidated damages.
  12. Legally permitted penalties.
- C. The Town may apply such withheld amount or amounts to payment of such claims or obligations at its discretion with the exception of subsections (B)(1), (3), and (5) of this Article, which must be retained or applied in accordance with applicable law. In so doing, the Town shall be deemed the agent of Contractor and any payment so made by the Town shall be considered as a payment made under contract by the Town to Contractor and the Town shall not be liable to Contractor for such payments made in good faith. Such payments may be made without prior judicial determination of claim or obligations. The Town will render Contractor a proper accounting of such funds disbursed on behalf of Contractor.
- D. Upon receipt, the Engineer shall review the payment request to determine whether it is undisputed and suitable for payment. If the payment request is determined to be unsuitable for payment, it shall be returned to Contractor as soon as practicable but not later than seven (7) Days after receipt, accompanied by a document setting forth in writing the reasons why the payment request is not proper. The Town shall make the progress payment within 30 calendar days after the receipt of an undisputed and properly submitted payment request from Contractor, provided that a release of liens and claims has been received from the Contractor pursuant to Civil Code section 8132. The number of days available to the Town to make a payment without

incurring interest pursuant to this paragraph shall be reduced by the number of days by which the Engineer exceeds the seven (7) Day requirement.

- E. A payment request shall be considered properly executed if funds are available for payment of the payment request and payment is not delayed due to an audit inquiry by the financial officer of the Town.

#### **ARTICLE 43. SECURITIES FOR MONEY WITHHELD**

Pursuant to section 22300 of the Public Contract Code of the State of California, Contractor may request the Town to make retention payments directly to an escrow agent or may substitute securities for any money withheld by the Town to ensure performance under the contract. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with the Town or with a state or federally chartered bank as the escrow agent who shall return such securities to Contractor upon satisfactory completion of the contract. Deposit of securities with an escrow agent shall be subject to a written agreement substantially in the form provided in section 22300 of the Public Contract Code.

#### **ARTICLE 44. CHANGES AND EXTRA WORK.**

##### **A. Contract Change Orders.**

1. The Town, without invalidating the Contract, may order changes in the Work consisting of additions, deletions or other revisions, and the Contract Price and Contract Time shall be adjusted accordingly. Except as otherwise provided herein, all such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents. A Change Order signed by the Contractor indicates the Contractor's agreement therewith, including any adjustment in the Contract Price or the Contract Time, and the full and final settlement of all costs (direct, indirect and overhead) related to the Work authorized by the Change Order.
2. Contractor shall promptly execute changes in the Work as directed in writing by the Town even when the parties have not reached agreement on whether the change increases the scope of Work or affects the Contract Price or Contract Time. All claims for additional compensation to the Contractor shall be presented in writing. No claim will be considered after the Work in question has been done unless a written Change Order has been issued or a timely written notice of claim has been made by Contractor.
3. Whenever any change is made as provided for herein, such change shall be considered and treated as though originally included in the Contract, and shall be subject to all terms, conditions, and provisions of the original Contract.
4. Contractor shall not be entitled to claim or bring suit for damages, whether for loss of profits or otherwise, on account of any decrease or omission of any item or portion of Work to be done.
5. No dispute, disagreement, or failure of the parties to reach agreement on the terms of the Change Order shall relieve the Contractor from the obligation to

proceed with performance of the work, including Additional Work, promptly and expeditiously.

6. Contractor shall make available to the Town any of the Contractor's documents related to the Project immediately upon request of the Town, as set forth in Article 52.
7. Any alterations, extensions of time, Additional Work, or any other changes may be made without securing consent of the Contractor's surety or sureties.

## **B. Contract Price Change.**

### **1. Process for Determining Adjustments in Contract Price.**

- a. Owner Initiated Change. The Contractor must submit a complete cost proposal, including any change in the Contract Price or Contract Time, within seven (7) Days after receipt of a scope of a proposed change order initiated by the Town, unless the Town requests that proposals be submitted in less than seven (7) Days.
- b. Contractor Initiated Change. The Contractor must give written notice of a proposed change order required for compliance with the Contract Documents within seven (7) Days of discovery of the facts giving rise to the proposed change order.
- c. Whenever possible, any changes to the Contract amount shall be in a lump sum mutually agreed to by the Contractor and the Town.
- d. Price quotations from the Contractor shall be accompanied by sufficiently detailed supporting documentation to permit verification by the Town, including but not limited to estimates and quotations from subcontractors or material suppliers, as the Town may reasonably request. Contractor shall certify the accuracy of all Change Order Requests under penalty of perjury.
- e. If the Contractor fails to submit a complete cost proposal within the seven (7) Day period (or as requested), the Town has the right to order the Contractor in writing to commence the Work immediately on a time and materials basis and/or issue a lump sum change to the Contract Price and/or Contract Time in accordance with the Town's estimate. If the change is issued based on the Town's estimate, the Contractor will waive its right to dispute the action unless within fifteen (15) Days following completion of the added/deleted work, the Contractor presents written proof that the Town's estimate was in error.

### **2. Unit Price Change Orders.**

- a. When the actual quantity of a Unit Price item varies from the Bid Form, compensation for the change in quantity will be calculated by multiplying the actual quantity by the Unit Price. This calculation may result in either an additive or deductive Final Change Order pursuant to the Contract Documents.

- b. No Mark up for Overhead and Profit. Because the Contract Unit Prices provided in the Bid Form include Overhead and Profit as determined by Contractor at the time of Bid submission, no mark up or deduction for Overhead and Profit will be included in Unit Price Change Orders.
  - c. Bid items included on the Bid Form may be deducted from the Work in their entirety without any negotiated extra costs.
  - d. Contractor acknowledges that unit quantities are estimates and agrees that the estimated unit quantities listed on the Bid Form will be adjusted to reflect the actual unit quantities which may result in an adjustment to the Contract Unit Prices. Such an adjustment will be made by execution of a final additive or deductive Change Order following Contractor's completion of the Work. Upon notification, Contractor's failure to respond within seven (7) Days will result in Town's issuance of a unit quantity adjustment to the Contract Unit Prices and/or Contract Time in accordance with the Contract Documents.
  - e. The Town or Contractor may make a Claim for an adjustment in the Unit Price in accordance with the Contract Documents if:
    - i. the quantity of any item of Unit Price Work performed by Contractor differs by twenty-five percent (25%) or more from the estimated quantity of such item indicated in the Contract; and
    - ii. there is no corresponding adjustment with respect to any other item of Work; and
    - iii. Contractor believes that Contractor is entitled to an increase in Unit Price as a result of having incurred additional expense or the Town believes that the Town is entitled to a decrease in Unit Price and the parties are unable to agree as to the amount of any such increase or decrease..
3. Lump Sum Change Orders. Contractor shall incorporate the provisions of this Section into all agreements with Subcontractors. Compensation for Lump Sum Change Orders shall be limited to expenditures necessitated specifically by the Additional Work, and shall be according to the following:
- a. Overview. The Contractor will submit a properly itemized Lump Sum Change Order Proposal covering the Additional Work and/or the work to be deleted. This proposal will be itemized for the various components of the Additional Work and segregated by labor, material, and equipment in a detailed format satisfactory to the Town. The Town will require itemized change orders on all change order proposals from the Contractor, subcontractors, and sub-subcontractors regardless of tier. Details to be submitted will include detailed line item estimates showing detailed materials quantity take-offs, material prices by item and related labor hour pricing information and extensions (by line item or by drawing as applicable).
  - b. Labor. The costs of labor will be the actual cost for wages prevailing locally for each craft or type of worker at the time the Additional Work is done, plus

employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from Federal, State or local laws, as well as assessment or benefits required by lawful collective bargaining agreements. The use of a labor classification which would increase the Additional Work cost will not be permitted unless the Contractor establishes the necessity for such new classifications. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.

Estimated labor hours must only include hours for those workmen and working foremen directly involved in performing the change order work. Supervision above the level of working foremen (such as general foremen, superintendent, project manager, etc.) is considered to be included in the markup percentages as outlined below. Note that no separate allowances for warranty expense will be allowed as a direct cost of a change order. Costs attributed to warranty expenses will be considered to be covered by the markup.

- c. Labor Burden. Labor burden allowable in change orders shall be defined as employer's net actual cost of payroll taxes (FICA, Medicare, SUTA, FUTA), net actual cost for employer's cost of union benefits (or other usual and customary fringe benefits if the employees are not union employees), and net actual cost to employer for worker's compensation insurance taking into consideration adjustments for experience modifiers, premium discounts, dividends, rebates, expense constants, assigned risk pool costs, net cost reductions due to policies with deductibles for self-insured losses, assigned risk rebates, etc. Contractor shall reduce their standard payroll tax percentages to properly reflect the effective cost reduction due to the estimated impact of the annual maximum wages subject to payroll taxes. An estimated percentage for labor burden may be used for pricing change orders. However, the percentage used for labor burden to price change orders will be examined at the conclusion of the Project and an adjustment to the approved change orders will be processed if it is determined that the actual labor burden percentage should have been more or less than the estimated percentage used.
- d. Materials. The cost of materials reported shall be at invoice or lowest current price at which such materials are locally available in the quantities involved, plus sales tax, freight, and delivery. Materials costs shall be based upon supplier or manufacturer's invoice. If invoices or other satisfactory evidence of cost are not furnished within fifteen (15) Days of delivery, then the Town shall determine the materials cost, at its sole discretion. Estimated material change order costs shall reflect the Contractor's reasonably anticipated net actual cost for the purchase of the material needed for the change order work. Estimated material costs shall reflect cost reductions available to the Contractor due to "non-cash" discounts, trade discounts, free material credits, and/or volume rebates. "Cash" discounts (i.e., prompt payment discounts of 2% or less) available on material purchased for change order work shall be credited to the Town if the Contractor is provided the Town funds in time for Contractor to take advantage of any such "cash" discounts. The portion of



any "cash" discounts greater than 2% will not be considered "non-cash" discount for purposes of this provision. Price quotations from material suppliers must be itemized with unit prices for each specific item to be purchased. "Lot pricing" quotations will not be considered sufficient substantiating detail.

- e. Tool and Equipment Use. Costs for the use of small tools, which are tools that have a replacement value of \$1,000 or less, shall be considered included in the Overhead and Profit mark-ups established below. Allowable change order estimated costs may include appropriate amounts for rental of major equipment specifically needed to perform the change order work (defined as tools and equipment with an individual purchase cost of more than \$750). For Contractor owned equipment, the "bare" equipment rental rates allowed to be used for pricing change order proposals shall be 75% of the monthly rate listed in the most current publication of The AED Green Book divided by 176 to arrive at a maximum hourly rate to be applied to the hours the equipment is used performing the change order work. Further, for Contractor owned equipment, the aggregate equipment rent charges for any single piece of equipment used in all change order work shall be limited to 50% of the fair market value of the piece of equipment when the first change order is priced involving usage of the piece of equipment. Fuel necessary to operate the equipment will be considered as a separate direct cost associated with the change order work.
- f. Maximum Markup Percentage Allowable on Self-Performed Work. With respect to pricing change orders, the maximum markup percentage to be paid to any Contractor or subcontractor (regardless of tier) on self-performed work shall be a single markup percentage not-to-exceed fifteen percent (15%) of the net direct cost of (1) direct labor and allowable labor burden costs applicable to the change in the Work; (2) the net cost of material and installed equipment incorporated into the change in the Work, and (3) net rental cost of major equipment and related fuel costs necessary to complete the change in the Work. The markup computed using the above formula shall be considered to be allocated 2/3 to cover applicable overhead costs directly attributable to the field overhead costs related to processing, supervising and performing, the change order work, and the remaining 1/3 to cover home office overhead costs and profit
- g. Maximum Markup Percentages Allowable on Work Performed by Lower Tier Subcontractors. With respect to pricing the portion of change order proposals involving Work performed by lower tier contractors, the maximum markup percentage allowable to the Contractor or subcontractor supervising the lower tier subcontractor's work shall not exceed five percent (5%) of the net of all approved change order work performed by all subcontractors combined for any particular change order proposal. The markup computed using the above formula shall be considered to be allocated 2/3 to cover applicable overhead costs directly attributable to the field overhead costs related to processing, supervising and performing the change order work, and the remaining 1/3 to cover home office overhead costs and profit.

- h. No Markup on Bonds and Liability Insurance Costs. Change order cost adjustments due to increases or decreases in bond or insurance costs (if applicable) shall not be subject to any markup.
  - i. Direct and Indirect Costs Covered by Markup Percentages. As a further clarification, the agreed upon markup percentage set forth above is intended to cover the Contractor's profit and all indirect costs associated with the change order work. Items intended to be covered by the markup percentage include, but are not limited to: home office expenses, branch office and field office overhead expense of any kind, project management, superintendents, general foremen, estimating, engineering, coordinating, expediting, purchasing, detailing, legal, accounting, data processing or other administrative expenses, shop drawings, permits, auto insurance and umbrella insurance, pick-up truck costs, and warranty expense costs. The cost for the use of small tools is also to be considered covered by the markup percentage established above. Small tools shall be defined as tools and equipment (power or non-power) with an individual purchase cost of less than \$750.
  - j. Deduct Change Orders and Net Deduct Changes. The application of the markup percentages referenced above will apply to both additive and deductive change orders. In the case of a deductive change order, the credit will be computed by applying the sliding scale percentages as outlined above so that a deductive change order would be computed in the same manner as an additive change order. In those instances where a change involves both additive and deductive work, the additions and deductions will be netted and the markup percentage adjustments will be applied to the net amount.
  - k. Contingency. In no event will any lump sum or percentage amounts for "contingency" be allowed to be added as a separate line item in change order estimates. Unknowns attributable to labor hours will be accounted for when estimating labor hours anticipated performing the work. Unknowns attributable to material scrap and waste will be estimated as part of material costs.
  - l. Insurance and Bonds. In the event the Contractor has been required to furnish insurance and/or bonds as part of the base contract price, a final contract change order will be processed to account for the Contractor's net increase or decrease in insurance costs and/or bond premium costs associated with change orders to Contractor's base Contract Price.
4. Time and Materials Change Orders.
- a. General. The term Time and Materials means the sum of all costs reasonably and necessarily incurred and paid by Contractor for labor, materials, and equipment in the proper performance of Additional Work. Except as otherwise may be agreed to in writing by the Town, such costs shall be in amounts no higher than those prevailing in the locality of the Project, and shall include only the following items.

b. Timely and Final Documentation.

- i. T&M Daily Sheets. Contractor must submit timesheets, materials invoices, records of equipment hours, and records of rental equipment hours to the Town's Representative for an approval signature **each day** Additional Work is performed. Failure to get the Town's Representative's approval signature each Day shall result in a waiver of Contractor's right to claim these costs. The Town's Representative's signature on time sheets only serves as verification that the Work was performed and is not indicative of Town's agreement to Contractor's entitlement to the cost.
  - ii. T&M Daily Summary Sheets. All documentation of incurred costs ("T&M Daily Summary Sheets") shall be submitted by Contractor within **three (3) Days** of incurring the cost for labor, material, equipment, and special services as Additional Work is performed. Contractor's actual costs shall be presented in a summary table in an electronic spreadsheet file by labor, material, equipment, and special services. Each T&M Daily Summary Sheet shall include Contractor's actual costs incurred for the Additional Work performed that day and a cumulative total of Contractor's actual costs incurred for the Additional Work. Contractor's failure to provide a T&M Daily Summary Sheet showing a total cost summary within three (3) Days but within five (5) Days of performance of the Work will result in the Contractor's otherwise allowable overhead and profit being reduced by 50% for that portion of Additional Work which was not documented in a timely manner. Contractor's failure to submit the T&M Daily Summary Sheet within five (5) Days of performance of the Work will result in a total waiver of Contractor's right to claim these costs.
  - iii. T&M Total Cost Summary Sheet. Contractor shall submit a T&M Total Cost Summary Sheet, which shall include total actual costs, within **seven (7) Days** following completion of Town approved Additional Work. Contractor's total actual cost shall be presented in a summary table in an electronic spreadsheet file by labor, material, equipment, and special services. Contractor's failure to submit the T&M Total Cost Summary Sheet within seven (7) Days of completion of the Additional Work will result in Contractor's waiver for any reimbursement of any costs associated with the T&M Summary Sheets or the performance of the Additional Work.
- c. Labor. The Contractor will be paid the cost of labor for the workers used in the actual and direct performance of the Work. The cost of labor will be the sum of the actual wages paid (which shall include any employer payments to or on behalf of the workers for health and welfare, pension, vacation, and similar purposes) substantiated by timesheets and certified payroll for wages prevailing for each craft or type of workers performing the Additional Work at the time the Additional Work is done, and the labor surcharge set forth in the Department of Transportation publication entitled *Labor Surcharge and Equipment Rental Rates*, which is in effect on the date upon which the Work is accomplished and which is a part of the Contract. The labor surcharge shall constitute full compensation for all payments imposed by Federal, State,

or local laws and for all other payments made to, or on behalf of, the workers, other than actual wages.

- i. Equipment Operator Exception. Labor costs for equipment operators and helpers shall be paid only when such costs are not included in the invoice for equipment rental.
  - ii. Foreman Exception. The labor costs for foremen shall be proportioned to all of their assigned work and only that applicable to the Additional Work shall be paid. Indirect labor costs, including, without limitation, the superintendent, project manager, and other labor identified in the Contract Documents will be considered Overhead.
- d. Materials. The cost of materials reported shall be itemized at invoice or lowest current price at which materials are locally available and delivered to the Project site in the quantities involved, plus the cost of sales tax, freight, delivery, and storage.
- i. Trade discounts available to the purchaser shall be credited to the Town notwithstanding the fact that such discounts may not have been taken by Contractor.
  - ii. For materials secured by other than a direct purchase and direct billing to the purchaser, the cost shall be deemed to be the price paid to the actual supplier as determined by the Town's Representative.
  - iii. Payment for materials from sources owned wholly or in part by the purchaser shall not exceed the price paid by the purchaser for similar materials from said sources on Additional Work items or the current wholesale price for such materials delivered to the Project site, whichever price is lower.
  - iv. If, in the opinion of the Town's Representative, the cost of materials is excessive, or Contractor does not furnish satisfactory evidence of the cost of such materials, then the cost shall be deemed to be the lowest current wholesale price for the total quantity concerned delivered to the Project site less trade discounts.
  - v. The Town reserves the right to furnish materials for the Additional Work and no Claim shall be allowed by Contractor for costs of such materials or Indirect Costs or profit on Town furnished materials.
- e. Equipment.
- i. Rental Time. The rental time to be paid for equipment on the Project site shall be the time the equipment is in productive operation on the Additional Work being performed and, in addition, shall include the time required to move the equipment to the location of the Additional Work and return it to the original location or to another location requiring no more time than that required to return it to its original location; except that

moving time will not be paid if the equipment is used on other than the Additional Work, even though located at the site of the Additional Work.

(a) Rental Time Not Allowed. Rental time will not be allowed while equipment is inoperative due to breakdowns.

(b) Computation Method. The following shall be used in computing the rental time of equipment on the Project site.

(i) When hourly rates are paid, any part of an hour less than 30 minutes of operation shall be considered to be 1/2-hour of operation, and any part of an hour in excess of 30 minutes will be considered one hour of operation.

(ii) When daily rates are paid, any part of a day less than 4 hours operation shall be considered to be 1/2-day of operation, and any part of an hour in excess of 4 hours will be considered one day of operation.

ii. Rental Rates. Contractor will be paid for the use of equipment at the lesser of (i) the actual rental rate, or (ii) the rental rate listed for that equipment in the California Department of Transportation publication entitled *Labor Surcharge and Equipment Rental Rates*, which is in effect on the date upon which the Contract was executed. Such rental rates will be used to compute payments for equipment whether the equipment is under Contractor's control through direct ownership, leasing, renting, or another method of acquisition. The rental rate to be applied for use of each item of equipment shall be the rate (i.e., daily, monthly) resulting in the least total cost to the Town for the total period of use. If it is deemed necessary by Contractor to use equipment not listed in the publication, an equitable rental rate for the equipment will be established by the Town's Representative. Contractor may furnish cost data which might assist the Town's Representative in the establishment of the rental rate.

iii. Contractor-Owned Equipment.

(a) For Contractor-owned equipment, the allowed equipment rental rate will be limited to the monthly equipment rental rate using a utilization rate of 173 hours per month.

(b) For Contractor-owned equipment, the rental time to be paid for equipment on the Site shall be the time the equipment is in productive operation, unless, in the instance of standby time, the equipment could be actively used by Contractor on another project, then Town shall pay for the entirety of the time the equipment is on Site. It shall be Contractor's burden to demonstrate to the Town that the equipment could be actively used on another project.

- iv. All equipment shall, in the opinion of the Town's Representative, be in good working condition and suitable for the purpose for which the equipment is to be used.
  - v. Before construction equipment is used on the Additional Work, Contractor shall plainly stencil or stamp an identifying number thereon at a conspicuous location, and shall furnish to the Town's Representative, in duplicate, a description of the equipment and its identifying number and the scheduled Additional Work activities planned.
  - vi. Unless otherwise specified, manufacturer's rating and manufacturer approved modifications shall be used to classify equipment for the determination of applicable rental rates. Equipment which has no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer.
- f. Special Services. Special work or services are defined as that Additional Work characterized by extraordinary complexity, sophistication, or innovation or a combination of the foregoing attributes which are unique to the construction industry.
- i. Invoices for Special Services. When the Town's Representative and Contractor determine that a special service is required which cannot be performed by the forces of Contractor or those of any of its Subcontractors, the special service may be performed by an entity especially skilled in the Additional Work. Invoices for special services based upon the current fair market value thereof may be accepted without complete itemization of labor, material, and equipment rental costs, after validation of market values by the Town's Representative.
  - ii. Discount and Allowance. All invoices for special services will be adjusted by deducting all trade discounts offered or available, whether the discounts were taken or not. In lieu of Overhead and Profit specified herein, a total allowance not to exceed fifteen percent (15%) for Overhead and Profit will be added to invoices for Special Services.
  - iii. When the Town determines, in its sole discretion, that competitive bidding is necessary for certain special services, Contractor shall solicit competitive bids for those special services.
- g. Excluded Costs. The term Time and Material shall not include any of the following costs or any other home or field office overhead costs, all of which are to be considered administrative costs covered by Contractor's allowance for Overhead and Profit.
- i. Overhead Cost. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, timekeepers, clerks, and other personnel employed by Contractor

whether at the Site or in Contractor's principal office or any branch office, material yard, or shop for general administration of the Additional Work;

- ii. Office Expenses. Expenses of Contractor's principal and branch offices;
  - iii. Capital Expenses. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Additional Work and charges against Contractor for delinquent payments;
  - iv. Negligence. Costs due to the negligence of Contractor or any Subcontractor or Supplier, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including without limitation the correction of Defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property;
  - v. Other. Other overhead or general expense costs of any kind and the cost of any item not specifically and expressly included in the Contract Documents;
  - vi. Small Tools. Cost of small tools valued at less than \$1,000 and that remain the property of Contractor;
  - vii. Administrative Costs. Costs associated with the preparation of Change Orders (whether or not ultimately authorized), cost estimates, or the preparation or filing of Claims;
  - viii. Anticipated Lost Profits. Expenses of Contractor associated with anticipated lost profits or lost revenues, lost income or earnings, lost interest on earnings, or unpaid retention;
  - ix. Home Office Overhead. Costs derived from the computation of a "home office overhead" rate by application of the *Eichleay, Allegheny*, burden fluctuation, or other similar methods;
  - x. Special Consultants and Attorneys. Costs of special consultants or attorneys, whether or not in the direct employ of Contractor, employed for services specifically related to the resolution of a Claim, dispute, or other matter arising out of or relating to the performance of the Additional Work.
- h. Overhead, Profit and Other Charges. The mark-up for overhead (including supervision) and profit on work added to the Contract shall be according to the following:
- i. "Net Cost" is defined as consisting of costs of labor, materials, and tools and equipment only excluding overhead and profit. The costs of applicable insurance and bond premium will be reimbursed to the Contractor and subcontractors at cost only, without mark-up. Contractor shall provide Town with documentation of the costs, including, but not limited to, payroll records, invoices, and such other information as Town may reasonably request.

- ii. For Work performed by the Contractor's forces, the added cost for overhead and profit shall not exceed fifteen percent (15%) of the Net Cost of the Work.
  - iii. For Work performed by a subcontractor, the added cost for overhead and profit shall not exceed fifteen percent (15%) of the subcontractor's Net Cost of the Work to which the Contractor may add five percent (5%) of the subcontractor's Net Cost.
  - iv. For Work performed by a sub-subcontractor, the added cost for overhead and profit shall not exceed fifteen percent (15%) of the sub-subcontractor's Net Cost for Work to which the subcontractor and general contractor may each add an additional five percent (5%) of the Net Cost of the lower tier subcontractor.
  - v. No additional mark-up will be allowed for lower tier subcontractors, and in no case shall the added cost for overhead and profit payable by Town exceed twenty-five percent (25%) of the Net Cost as defined herein, of the party that performs the Work.
5. All of the following costs are included in the markups for overhead and profit described above, and Contractor shall not receive any additional compensation for: Submittals, drawings, field drawings, Shop Drawings, including submissions of drawings; field inspection; General Superintendence; General administration and preparation of cost proposals, schedule analysis, Change Orders, and other supporting documentation; computer services; reproduction services; Salaries of project engineer, superintendent, timekeeper, storekeeper, and secretaries; Janitorial services; Small tools, incidentals and consumables; Temporary On-Site facilities (Offices, Telephones, High Speed Internet Access, Plumbing, Electrical Power, Lighting; Platforms, Fencing, Water), Jobsite and Home office overhead or other expenses; vehicles and fuel used for work otherwise included in the Contract Documents; Surveying; Estimating; Protection of Work; Handling and disposal fees; Final Cleanup; Other Incidental Work; Related Warranties; insurance and bond premiums.
  6. For added or deducted Work by subcontractors, the Contractor shall furnish to the Town the subcontractor's signed detailed record of the cost of labor, material and equipment, including the subcontractor markup for overhead and profit. The same requirement shall apply to sub-subcontractors
  7. For added or deducted work furnished by a vendor or supplier, the Contractor shall furnish to the Town a detailed record of the cost to the Contractor, signed by such vendor or supplier.
  8. Any change in the Work involving both additions and deletions shall indicate a net total cost, including subcontracts and materials. Allowance for overhead and profit, as specified herein, shall be applied if the net total cost is an increase in the Contract Price; overhead and profit allowances shall not be applied if the net total cost is a deduction to the Contract Price. The estimated cost of deductions



shall be based on labor and material prices on the date the Contract was executed.

9. Contractor shall not reserve a right to assert impact costs, extended job site costs, extended overhead, constructive acceleration and/or actual acceleration beyond what is stated in the Change Order for Work. No claims shall be allowed for impact, extended overhead costs, constructive acceleration and/or actual acceleration due to a multiplicity of changes and/or clarifications. The Contractor may not change or modify the Town's change order form in an attempt to reserve additional rights.
10. If the Town disagrees with the proposal submitted by Contractor, it will notify the Contractor and the Town will provide its opinion of the appropriate price and/or time extension. If the Contractor agrees with the Town, a Change Order will be issued by the Town. If no agreement can be reached, the Town shall have the right to issue a unilateral Change Order setting forth its determination of the reasonable additions or savings in costs and time attributable to the extra or deleted work. Such determination shall become final and binding if the Contractor fails to submit a claim in writing to the Town within fifteen (15) Days of the issuance of the unilateral Change Order, disputing the terms of the unilateral Change Order, and providing such supporting documentation for its position as the Town may require.

#### **C. Change of Contract Times.**

1. The Contract Times may only be changed by a Change Order.
2. All changes in the Contract Price and/or adjustments to the Contract Times related to each change shall be included in Contractor's COR pursuant to this Article. No cost or time will be allowed for cumulative effects of multiple changes. All Change Orders must state that the Contract Time is not changed or is either increased or decreased by a specific number of days. Failure to include a change to time shall waive any change to the time unless the parties mutually agree in writing to postpone a determination of the change to time resulting from the Change Order.
3. Notice of the amount of the request for adjustment in the Contract Times with supporting data shall be delivered within seven (7) Days after such start of occurrence, unless Town's Representative allows an additional period of time to ascertain more accurate data in support of the request. No extension of time or additional compensation shall be given for a delay if the Contractor failed to give notice in the manner and within the time prescribed.
4. Town may elect, at Town's sole discretion, to grant an extension in Contract Times, without Contractor's request, because of delays or other factors.
5. Use of Float and Critical Path.
  - a. Float is for the benefit of the Project. Float shall not be considered for the exclusive use or benefit of either the Town or the Contractor.

- b. Contractor shall not be entitled to compensation, and Town will not compensate Contractor, for delays which impact early completion. Any difference in time between the Contractor's early completion and the Contract Time shall be considered a part of the Project float.
6. Contractor's entitlement to an extension of the Contract Times is limited to a Town-caused extension of the critical path, reduced by the Contractor's concurrent delays, and established by a proper time impact analysis. No time extension shall be allowed unless, and then only to the extent that, the Town-caused delay extends the critical path beyond the previously approved Contract Time. If approved, the increase in time required to complete the Work shall be added to the Contract Time.
- a. Contractor shall not be entitled to an adjustment in the Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.
  - b. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, pandemic, abnormal weather conditions (as determined by the Town), Acts of God, acts or failures to act of utility owners not under the control of Town, or other causes not the fault of and beyond control of Town and Contractor, then Contractor shall be entitled to a time extension when the Work stopped is on the critical path. Such a non-compensable adjustment shall be Contractor's sole and exclusive remedy for such delays. Contractor must submit a timely request in accordance with the requirements of this Article.
  - c. Utility-Related Delays.
    - i. Contractor shall immediately notify in writing the utility owner and Town's Representative of its construction schedule and any subsequent changes in the construction schedule which will affect the time available for protection, removal, or relocation of utilities. Requests for extensions of time arising out of utility relocation or repair delays shall be filed in accordance with this Article.
    - ii. Contractor shall not be entitled to damages or additional payment for delays attributable to utility relocations or alterations if correctly located, as noted in the Contract Documents or by the Underground Service Alert survey.
7. Content for Requests for Contract Extension. Contractor's justification for entitlement shall be clear and complete citing specific Contract Document references and reasons on which Contractor's entitlement is based. At a minimum, each request for a time extension must include:
- a. Each request for an extension of Contract Time must identify the impacting event, in narrative form, providing a description of the delay event and sufficient justification as to why the Contractor is entitled to a time extension.

Contractor must demonstrate that the delay arises from unforeseeable causes beyond the control and without the fault or negligence of both Contractor and any Subcontractors or Suppliers, or any other persons or organizations employed by any of them or for whose acts any of them may be liable, and that such causes in fact lead to performance or completion of the Work, or specified part in question, beyond the corresponding Contract Times, despite Contractor's reasonable and diligent actions to guard against those effects.

- b. Each request for an extension of Contract Time must include a time impact analysis in CPM format, using the Contemporaneous Impacted As-Planned Schedule Analysis to calculate the impact of the delay event.

8. No Damages for Reasonable Delay.

- a. Town's liability to Contractor for delays for which Town is responsible shall be limited to only an extension of time unless such delays were unreasonable under the circumstances. In no case shall Town be liable for any costs which are borne by the Contractor in the regular course of business, including, but not limited to, home office overhead and other ongoing costs.
  - b. Damages caused by unreasonable Town delay that impact the critical path, including delays caused by items that are the responsibility of the Town pursuant to Government Code section 4215, shall be compensated at the Daily Rate established in the Special Conditions. No other calculations, proportions or formulas shall be used to calculate any delay damages.
  - c. Town and Town's Representative, and the officers, members, partners, employees, agents, consultants, or subcontractors of each of them, shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.
9. Contractor's failure, neglect, or refusal to comply with the requirements of the Contract Documents, or any portion thereof, shall bar Contractor's request for extensions of the Contract Times. Such failure, neglect, or refusal prejudices Town's and Town's Representative's ability to recognize and mitigate delay, and such failure, neglect, or refusal prevent the timely analysis of requests for extensions of Contract Times, and whether such extensions may be warranted. Contractor hereby waives all rights to extensions of Contract Times due to delays or accelerations that result from or occur during periods of time for which Contractor fails, neglects, or refuses to fully comply with the requirements of this Article.

**ARTICLE 45. FINAL ACCEPTANCE AND PAYMENT**

- A. The acceptance of the Work on behalf of the Town will be made by the Engineer. Such acceptance by the Town shall not constitute a waiver of defects. When the

Work has been accepted there shall be paid to Contractor a sum equal to the contract price less any amounts previously paid Contractor and less any amounts withheld by the Town from Contractor under the terms of the contract. The final five percent (5%), or the percentage specified in the notice inviting bids where the Town has adopted a finding of substantially complete, shall not become due and payable until five (5) calendar days shall have elapsed after the expiration of the period within which all claims may be filed under the provisions of Civil Code section 9356. If the Contractor has placed securities with the Town as described herein, the Contractor shall be paid a sum equal to one hundred percent (100%) of the contract price less any amounts due the Town under the terms of the Contract.

- B. Unless Contractor advises the Town in writing prior to acceptance of the final five percent (5%) or the percentage specified in the notice inviting bids where the Town has adopted a finding of substantially complete, or the return of securities held as described herein, said acceptance shall operate as a release to the Town of all claims and all liability to Contractor for all things done or furnished in connection with this work and for every act of negligence of the Town and for all other claims relating to or arising out of this work. If Contractor advises the Town in writing prior to acceptance of final payment or return of the securities that there is a dispute regarding the amount due the Contractor, the Town may pay the undisputed amount contingent upon the Contractor furnishing a release of all undisputed claims against the Town with the disputed claims in stated amounts being specifically excluded by Contractor from the operation of the release. No payments, however, final or otherwise, shall operate to release Contractor or its sureties from the Faithful Performance Bond, Labor and Material Payment Bond, or from any other obligation under this contract.
- C. In case of suspension of the contract any unpaid balance shall be and become the sole and absolute property of the Town to the extent necessary to repay the Town any excess in the cost of the Work above the contract price.
- D. Final payment shall be made no later than 60 days after the date of acceptance of the Work by the Town or the date of occupation, beneficial use and enjoyment of the Work by the Town including any operation only for testing, start-up or commissioning accompanied by cessation of labor on the Work, provided that a release of liens and claims has been received from the Contractor pursuant to Civil Code section 8136. In the event of a dispute between the Town and the Contractor, the Town may withhold from the final payment an amount not to exceed 150% of the disputed amount.
- E. Within ten (10) calendar days from the time that all or any portion of the retention proceeds are received by Contractor, Contractor shall pay each of its subcontractors from whom retention has been withheld each subcontractor's share of the retention received. However, if a retention payment received by Contractor is specifically designated for a particular subcontractor, payment of the retention shall be made to the designated subcontractor if the payment is consistent with the terms of the subcontract.

## **ARTICLE 46. OCCUPANCY**

The Town reserves the right to occupy or utilize any portion of the Work at any time before completion, and such occupancy or use shall not constitute acceptance of any part of Work covered by this Contract. This use shall not relieve the Contractor of its responsibilities under the Contract.

## **ARTICLE 47. INDEMNIFICATION**

To the fullest extent permitted by law, Contractor shall immediately defend (with counsel of the Town's choosing), indemnify and hold harmless the Town, officials, officers, agents, employees, and representatives, and each of them from and against:

- A. Any and all claims, demands, causes of action, costs, expenses, injuries, losses or liabilities, in law or in equity, of every kind or nature whatsoever, but not limited to, injury to or death, including wrongful death, of any person, and damages to or destruction of property of any person, arising out of, related to, or in any manner directly or indirectly connected with the Work or this Contract, including claims made by subcontractors for nonpayment, including without limitation the payment of all consequential damages and attorney's fees and other related costs and expenses, however caused, regardless of whether the allegations are false, fraudulent, or groundless, and regardless of any negligence of the Town or its officers, employees, or authorized volunteers (including passive negligence), except the sole negligence or willful misconduct or active negligence of the Town or its officials, officers, employees, or authorized volunteers.
- B. Contractor's defense and indemnity obligation herein includes, but is not limited to damages, fines, penalties, attorney's fees and costs arising from claims under the Americans with Disabilities Act (ADA) or other federal or state disability access or discrimination laws arising from Contractor's Work during the course of construction of the improvements or after the Work is complete, as the result of defects or negligence in Contractor's construction of the improvements.
- C. Any and all actions, proceedings, damages, costs, expenses, fines, penalties or liabilities, in law or equity, of every kind or nature whatsoever, arising out of, resulting from, or on account of the violation of any governmental law or regulation, compliance with which is the responsibility of Contractor;
- D. Any and all losses, expenses, damages (including damages to the Work itself), attorney's fees, and other costs, including all costs of defense which any of them may incur with respect to the failure, neglect, or refusal of Contractor to faithfully perform the Work and all of Contractor's obligations under the agreement. Such costs, expenses, and damages shall include all costs, including attorney's fees, incurred by the indemnified parties in any lawsuit to which they are a party.

Contractor shall immediately defend, at Contractor's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the Town, its officials, officers, agents, employees and representatives. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against the Town, its officials, officers, employees, agents, employees and representatives, in any such

suit, action or other legal proceeding. Contractor shall reimburse the Town, its officials, officers, agents, employees and representatives for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The only limitations on this provision shall be those imposed by Civil Code section 2782.

#### **ARTICLE 48. PROCEDURE FOR RESOLVING DISPUTES**

Contractor shall timely comply with all notices and requests for changes to the Contract Time or Contract Price, including but not limited to all requirements of Article 44, Changes and Extra Work, as a prerequisite to filing any claim governed by this Article. The failure to timely submit a notice of delay or notice of change, or to timely request a change to the Contract Price or Contract Time, or to timely provide any other notice or request required herein shall constitute a waiver of the right to further pursue the claim under the Contract or at law.

- A. **Intent.** Effective January 1, 1991, Section 20104 et seq., of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Article is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code. This Article shall be construed to be consistent with said statutes.
- B. **Claims.** For purposes of this Article, "Claim" means a separate demand by the Contractor, after a change order duly requested in accordance with Article 44 "Changes and Extra Work" has been denied by the Town, for (A) a time extension, (B) payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract, or (C) an amount the payment of which is disputed by the Town. Claims governed by this Article may not be filed unless and until the Contractor completes all procedures for giving notice of delay or change and for the requesting of a time extension or change order, including but not necessarily limited to the procedures contained in Article 44, Changes and Extra Work, and Contractor's request for a change has been denied in whole or in part. Claims governed by this Article must be filed no later than the date of final payment. The claim shall be submitted in writing to the Town and shall include on its first page the following in 16 point capital font: "THIS IS A CLAIM." Furthermore, the claim shall include the documents necessary to substantiate the claim. Nothing herein is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims, including all requirements pertaining to compensation or payment for extra Work, disputed Work, and/or changed conditions. Failure to follow such contractual requirements shall bar any claims or subsequent lawsuits for compensation or payment thereon.
- C. **Supporting Documentation.** The Contractor shall submit all claims in the following format:
  - 1. Summary of claim merit and price, reference Contract Document provisions pursuant to which the claim is made
  - 2. List of documents relating to claim:

- a. Specifications
    - b. Drawings
    - c. Clarifications (Requests for Information)
    - d. Schedules
    - e. Other
  3. Chronology of events and correspondence
  4. Analysis of claim merit
  5. Analysis of claim cost
  6. Time impact analysis in CPM format
  7. If Contractor's claim is based in whole or in part on an allegation of errors or omissions in the Drawings or Specifications for the Project, Contractor shall provide a summary of the percentage of the claim subject to design errors or omissions and shall obtain a certificate of merit in support of the claim of design errors and omissions.
- D. Town's Response.** Upon receipt of a claim pursuant to this Article, Town shall conduct a reasonable review of the claim and, within a period not to exceed 45 Days, shall provide the Contractor a written statement identifying what portion of the claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the claim will be processed and made within 60 Days after the Town issues its written statement.
1. If the Town needs approval from its governing body to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the claim, and the Town's governing body does not meet within the 45 Days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the Town shall have up to three Days following the next duly publicly noticed meeting of the Town's governing body after the 45-Day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.
  2. Within 30 Days of receipt of a claim, the Town may request in writing additional documentation supporting the claim or relating to defenses or claims the Town may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of Town and the Contractor. The Town's written response to the claim, as further documented, shall be submitted to the Contractor within 30 Days (if the claim is less than \$15,000, within 15 Days) after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.

- E. **Meet and Confer.** If the Contractor disputes the Town's written response, or the Town fails to respond within the time prescribed, the Contractor may so notify the Town, in writing, either within 15 Days of receipt of the Town's response or within 15 Days of the Town's failure to respond within the time prescribed, respectively, and demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, the Town shall schedule a meet and confer conference within 30 Days for settlement of the dispute.
- F. **Mediation.** Within 10 business Days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the Town shall provide the Contractor a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 Days after the Town issues its written statement. Any disputed portion of the claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with the Town and the Contractor sharing the associated costs equally. The Town and Contractor shall mutually agree to a mediator within 10 business Days after the disputed portion of the claim has been identified in writing, unless the parties agree to select a mediator at a later time.
1. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.
  2. For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.
  3. Unless otherwise agreed to by the Town and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Public Contract Code Section 20104.4 to mediate after litigation has been commenced.
  4. The mediation shall be held no earlier than the date the Contractor completes the Work or the date that the Contractor last performs Work, whichever is earlier. All unresolved claims shall be considered jointly in a single mediation, unless a new unrelated claim arises after mediation is completed.
- G. **Procedures After Mediation.** If following the mediation, the claim or any portion remains in dispute, the Contractor must file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code prior to initiating litigation. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits his or her written claim pursuant to subdivision (a) until the time the claim is denied, including any period of time utilized by the meet and confer conference.



H. **Civil Actions.** The following procedures are established for all civil actions filed to resolve claims of \$375,000 or less:

1. Within 60 Days, but no earlier than 30 Days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of this Contract. The mediation process shall provide for the selection within 15 Days by both parties of a disinterested third person as mediator, shall be commenced within 30 Days of the submittal, and shall be concluded within 15 Days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.
2. If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

I. **Government Code Claims.** In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra Work, disputed Work, construction claims and/or changed conditions, the Contractor must comply with the claim procedures set forth in Government Code Sections 900, et seq. prior to filing any lawsuit against the Town. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra Work, disputed Work, construction claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if the prerequisite contractual requirements are not satisfied, no action against the Town may be filed. **A Government Code claim must be filed no earlier than the date the Work is completed or the date the Contractor last performs Work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved claims unless a new unrelated claim arises after the Government Code claim is submitted.**

J. **Non-Waiver.** The Town's failure to respond to a claim from the Contractor within the time periods described in this Article or to otherwise meet the time requirements of this Article shall result in the claim being deemed rejected in its entirety.

## ARTICLE 49. TOWN'S RIGHT TO TERMINATE CONTRACT

A. **Termination for Cause by the Town:**

1. In the sole estimation of the Town, if the Contractor refuses or fails to prosecute the Work or any separable part thereof with such diligence as will insure its completion within the time specified by the Contract Documents, or any extension thereof, or fails to complete such Work within such time, or if the Contractor should be adjudged a bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or the Contractor or any of its subcontractors should violate any of the provisions of this Contract, the Town may serve written notice upon the Contractor and its Surety of the Town's intention to terminate this Contract. This notice of intent to terminate shall contain the reasons for such intention to terminate this Contract, and a statement to the effect that the Contractor's right to perform this Contract shall cease and terminate upon the expiration of ten (10) calendar days unless such violations have ceased and arrangements satisfactory to the Town have been made for correction of said violations.
2. In the event that the Town serves such written notice of termination upon the Contractor and the Surety, the Surety shall have the right to take over and perform the Contract. If the Surety does not: (1) give the Town written notice of Surety's intention to take over and commence performance of the Contract within 15 calendar days of the Town's service of said notice of intent to terminate upon Surety; and (2) actually commence performance of the Contract within 30 calendar days of the Town's service of said notice upon Surety; then the Town may take over the Work and prosecute the same to completion by separate contract or by any other method it may deem advisable for the account and at the expense of the Contractor.
3. In the event that the Town elects to obtain an alternative performance of the Contract as specified above: (1) the Town may, without liability for so doing, take possession of and utilize in completion of the Work such materials, appliances, plants and other property belonging to the Contractor that are on the site and reasonably necessary for such completion (A special lien to secure the claims of the Town in the event of such suspension is hereby created against any property of Contractor taken into the possession of the Town under the terms hereof and such lien may be enforced by sale of such property under the direction of the Town without notice to Contractor. The proceeds of the sale after deducting all expenses thereof and connected therewith shall be credited to Contractor. If the net credits shall be in excess of the claims of the Town against Contractor, the balance will be paid to Contractor or Contractor's legal representatives.); and (2) Surety shall be liable to the Town for any cost or other damage to the Town necessitated by the Town securing an alternate performance pursuant to this Article.

**B. Termination for Convenience by the Town:**

1. The Town may terminate performance of the Work called for by the Contract Documents in whole or, from time to time, in part, if the Town determines that a termination is in the Town's interest.

2. The Contractor shall terminate all or any part of the Work upon delivery to the Contractor of a Notice of Termination specifying that the termination is for the convenience of the Town, the extent of termination, and the Effective Date of such termination.
3. After receipt of Notice of Termination, and except as directed by the Town's Representative, the Contractor shall, regardless of any delay in determining or adjusting any amounts due under this Termination for Convenience clause, immediately proceed with the following obligations:
  - a. Stop Work as specified in the Notice.
  - b. Complete any Work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents.
  - c. Leave the property upon which the Contractor was working and upon which the facility (or facilities) forming the basis of the Contract Document is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety.
  - d. Terminate all subcontracts to the extent that they relate to the portions of the Work terminated.
  - e. Place no further subcontracts or orders, except as necessary to complete the continued portion of the Contract.
  - f. Submit to the Town's Representative, within ten (10) calendar days from the Effective Date of the Notice of Termination, all of the usual documentation called for by the Contract Documents to substantiate all costs incurred by the Contractor for labor, materials and equipment through the Effective Date of the Notice of Termination. Any documentation substantiating costs incurred by the Contractor solely as a result of the Town's exercise of its right to terminate this Contract pursuant to this clause, which costs the contractor is authorized under the Contract documents to incur, shall: (1) be submitted to and received by the Engineer no later than 30 calendar days after the Effective Date of the Notice of Termination; (2) describe the costs incurred with particularity; and (3) be conspicuously identified as "Termination Costs occasioned by the Town's Termination for Convenience."
4. Termination of the Contract shall not relieve Surety of its obligation for any just claims arising out of or relating to the Work performed.
5. In the event that the Town exercises its right to terminate this Contract pursuant to this clause, the Town shall pay the Contractor, upon the Contractor's submission of the documentation required by this clause and other applicable provisions of the Contract Documents, the following amounts:
  - a. All actual reimbursable costs incurred according to the provisions of this Contract.

- b. A reasonable allowance for profit on the cost of the Work performed, provided Contractor establishes to the satisfaction of the Town's Representative that it is reasonably probable that Contractor would have made a profit had the Contract been completed and provided further, that the profit allowed shall in no event exceed fifteen (15%) percent of the costs.
  - c. A reasonable allowance for Contractor's administrative costs in determining the amount payable due to termination of the Contract under this Article.
- C. Notwithstanding any other provision of this Article, when immediate action is necessary to protect life and safety or to reduce significant exposure or liability, the Town may immediately order Contractor to cease Work on the Project until such safety or liability issues are addressed to the satisfaction of the Town or the Contract is terminated.
- D. Town shall not be liable for any costs other than the charges or portions thereof which are specified herein. Contractor shall not be entitled to payment for unperformed Work including, without limitation, any overhead and profit on the portion of the Work that is terminated and shall not be entitled to damages or compensation of any kind or nature for termination of Work.

#### **ARTICLE 50. WARRANTY AND GUARANTEE OF WORK**

- A. Contractor hereby warrants that materials and Work shall be completed in conformance with the Contract Documents and that the materials and Work provided will fulfill the requirements of this Warranty. Contractor hereby agrees to repair or replace, at the discretion of the Town, any or all Work that may prove to be defective in its workmanship, materials furnished, methods of installation or fail to conform to the Contract Document requirements together with any other Work which may be damaged or displaced by such defect(s) within a period of one (1) year from the date of the Notice of Completion of the Project without any expense whatever to the Town, ordinary wear and tear and unusual abuse and neglect excepted. Contractor shall be required to promptly repair or replace defective equipment or materials, at Contractor's option. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor.
- B. For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one (1) year period, commencing with the date of acceptance of such corrected Work. The reinstatement of the one (1) year warranty shall apply only to that portion of work that was corrected. Contractor shall perform such tests as Town may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Contract. In the event of Contractor's failure to comply with the above-mentioned conditions within ten (10) calendar days after being notified in writing of required repairs, to the reasonable satisfaction of the Town, the Town shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the Town for any expenses incurred hereunder immediately upon demand.

- C. In addition to the warranty set forth in this Article, Contractor shall obtain for Town all warranties that would be given in normal commercial practice and assign to Town any and all manufacturer's or installer's warranties for equipment or materials not manufactured by Contractor and provided as part of the Work, to the extent that such third-party warranties are assignable and extend beyond the warranty period set forth in this Article. Contractor shall furnish the Town with all warranty and guarantee documents prior to final Acceptance of the Project by the Town as required.
- D. When specifically indicated in the Contract Documents or when directed by the Engineer, the Town may furnish materials or products to the Contractor for installation. In the event any act or failure to act by Contractor shall cause a warranty applicable to any materials or products purchased by the Town for installation by the Contractor to be voided or reduced, Contractor shall indemnify Town from and against any cost, expense, or other liability arising therefrom, and shall be responsible to the Town for the cost of any repairs, replacement or other costs that would have been covered by the warranty but for such act or failure to act by Contractor.
- E. The Contractor shall remedy at its expense any damage to Town-owned or controlled real or personal property.
- F. The Town shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage. The Contractor shall within ten (10) calendar days after being notified commence and perform with due diligence all necessary Work. If the Contractor fails to promptly remedy any defect, or damage; the Town shall have the right to replace, repair or otherwise remedy the defect, or damage at the Contractor's expense.
- G. In the event of any emergency constituting an immediate hazard to health, safety, property, or licensees, when caused by Work of the Contractor not in accordance with the Contract requirements, the Town may undertake at Contractor's expense, and without prior notice, all Work necessary to correct such condition.
- H. Acceptance of Defective Work.
  - 1. If, instead of requiring correction or removal and replacement of Defective Work, the Town prefers to accept it, Town may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Town's evaluation of and determination to accept such Defective Work and for the diminished value of the Work.
  - 2. If any acceptance of defective work occurs prior to release of the Project Retention, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Town shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work and all costs incurred by Town.

3. If the Project Retention is held in an escrow account as permitted by the Contract Documents, Contractor will promptly alert the escrow holder, in writing, of the amount of Retention to be paid to Town.
  4. If the acceptance of Defective Work occurs after release of the Project Retention, an appropriate amount will be paid by Contractor to Town.
- I. Town May Correct Defective Work.
1. If Contractor fails within a reasonable time after written notice from Town's Representative to correct Defective Work, or to remove and replace rejected Work as required by Town, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Town may, after seven (7) Days' written notice to Contractor, correct, or remedy any such deficiency.
  2. In connection with such corrective or remedial action, Town may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Town has paid Contractor but which are stored elsewhere. Contractor shall allow Town and Town's Representative, and the agents, employees, other contractors, and consultants of each of them, access to the Site to enable Town to exercise the rights and remedies to correct the Defective Work.
  3. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Town correcting the Defective Work will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions into the Contract Documents with respect to the Work; and Town shall be entitled to an appropriate decrease in the Contract Price.
  4. Such claims, costs, losses and damages will include, but not be limited to, all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Defective Work.
  5. If the Change Order is executed after all payments under the Contract have been paid by Town and the Project Retention is held in an escrow account as permitted by the Contract Documents, Contractor will promptly alert the escrow holder, in writing, of the amount of Retention to be paid to Town.
  6. If the Change Order is executed after release of the Project Retention, an appropriate amount will be paid by Contractor to Town.
  7. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to Town correcting Defective work.

- J. Nothing in the Warranty or in the Contract Documents shall be construed to limit the rights and remedies available to Town at law or in equity, including, but not limited to, Code of Civil Procedure section 337.15.

#### **ARTICLE 51. DOCUMENT RETENTION & EXAMINATION**

- A. In accordance with Government Code section 8546.7, records of both the Town and the Contractor shall be subject to examination and audit by the State Auditor General for a period of three (3) years after final payment.
- B. Contractor shall make available to the Town any of the Contractor's other documents related to the Project immediately upon request of the Town.
- C. In addition to the State Auditor rights above, the Town shall have the right to examine and audit all books, estimates, records, contracts, documents, bid documents, subcontracts, and other data of the Contractor (including computations and projections) related to negotiating, pricing, or performing the modification in order to evaluate the accuracy and completeness of the cost or pricing data at no additional cost to the Town, for a period of four (4) years after final payment.

#### **ARTICLE 52. SEPARATE CONTRACTS**

- A. The Town reserves the right to let other contracts in connection with this Work or on the Project site. Contractor shall permit other contractors reasonable access and storage of their materials and execution of their work and shall properly connect and coordinate its Work with theirs.
- B. To ensure proper execution of its subsequent Work, Contractor shall immediately inspect work already in place and shall at once report to the Engineer any problems with the Work in place or discrepancies with the Contract Documents.
- C. Contractor shall ascertain to its own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by the Town in prosecution of the Project to the end that Contractor may perform this Contract in the light of such other contracts, if any. Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy at site of the Project. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on the Project. If simultaneous execution of any contract for the Project is likely to cause interference with performance of some other contract or contracts, the Engineer shall decide which Contractor shall cease Work temporarily and which contractor shall continue or whether work can be coordinated so that contractors may proceed simultaneously. The Town shall not be responsible for any damages suffered or for extra costs incurred by Contractor resulting directly or indirectly from award, performance, or attempted performance of any other contract or contracts on the Project site.

#### **ARTICLE 53. NOTICE AND SERVICE THEREOF**

All notices shall be in writing and either served by personal delivery or mailed to the other party as designated in the Bid Forms. Written notice to the Contractor shall be addressed to Contractor's principal place of business unless Contractor designates another address in writing for service of notice. Notice to Town shall be addressed to the Town as designated in the

Notice Inviting Bids unless Town designates another address in writing for service of notice. Notice shall be effective upon receipt or five (5) calendar days after being sent by first class mail, whichever is earlier. Notice given by facsimile shall not be effective unless acknowledged in writing by the receiving party.

#### **ARTICLE 54. NOTICE OF THIRD PARTY CLAIMS**

Pursuant to Public Contract Code section 9201, the Town shall provide the Contractor with timely notification of the receipt of any third-party claims relating to the Contract. The Town is entitled to recover reasonable costs incurred in providing such notification.

#### **ARTICLE 55. STATE LICENSE BOARD NOTICE**

Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

#### **ARTICLE 56. INTEGRATION**

- A. **Oral Modifications Ineffective.** No oral order, objection, direction, claim or notice by any party or person shall affect or modify any of the terms or obligations contained in the Contract Documents.
- B. **Contract Documents Represent Entire Contract.** The Contract Documents represent the entire agreement of the Town and Contractor.

#### **ARTICLE 57. ASSIGNMENT OF CONTRACT**

Contractor shall not assign, transfer, convey, sublet or otherwise dispose of the rights or title of interest of any or all of this contract without the prior written consent of the Town. Any assignment or change of Contractor's name or legal entity without the written consent of the Town shall be void. Any assignment of money due or to become due under this Contract shall be subject to a prior lien for services rendered or Material supplied for performance of Work called for under the Contract Documents in favor of all persons, firms, or corporations rendering such services or supplying such Materials to the extent that claims are filed pursuant to the Civil Code, the Code of Civil Procedure or the Government Code.

#### **ARTICLE 58. CHANGE IN NAME AND NATURE OF CONTRACTOR'S LEGAL ENTITY**

Should a change be contemplated in the name or nature of the Contractor's legal entity, the Contractor shall first notify the Town in order that proper steps may be taken to have the change reflected on the Contract and all related documents. No change of Contractor's name or nature will affect Town's rights under the Contract, including but not limited to the bonds.

#### **ARTICLE 59. ASSIGNMENT OF ANTITRUST ACTIONS**

Pursuant to Public Contract Code section 7103.5, in entering into a public works contract or



subcontract to supply goods, services, or materials pursuant to a public works contract, Contractor or subcontractor offers and agrees to assign to the Town all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 USC, Section 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from the purchase of goods, services, or materials pursuant to this contract or any subcontract. This assignment shall be made and become effective at the time the Town tenders final payment to the Contractor, without further acknowledgment by the parties.

#### **ARTICLE 60. PROHIBITED INTERESTS**

No Town official or representative who is authorized in such capacity and on behalf of the Town to negotiate, supervise, make, accept, or approve, or to take part in negotiating, supervising, making, accepting or approving any engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the project, shall be or become directly or indirectly interested financially in the Contract.

#### **ARTICLE 61. CONTROLLING LAW**

Notwithstanding any subcontract or other contract with any subcontractor, supplier, or other person or organization performing any part of the Work, this Contract shall be governed by the law of the State of California excluding any choice of law provisions.

#### **ARTICLE 62. JURISDICTION; VENUE**

Contractor and any subcontractor, supplier, or other person or organization performing any part of the Work agrees that any action or suits at law or in equity arising out of or related to the bidding, award, or performance of the Work shall be maintained in the Superior Court of San Mateo County, California, and expressly consent to the jurisdiction of said court, regardless of residence or domicile, and agree that said court shall be a proper venue for any such action.

#### **ARTICLE 63. LAWS AND REGULATIONS**

- A. Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on conduct of work as indicated and specified. If Contractor observes that drawings and specifications are at variance therewith, it shall promptly notify the Engineer in writing and any necessary changes shall be adjusted as provided for in this Contract for changes in work. If Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Engineer, it shall bear all costs arising therefrom.
- B. Contractor shall be responsible for familiarity with the Americans with Disabilities Act ("ADA") (42 U.S.C. § 12101 et seq.). The Work will be performed in compliance with ADA regulations.

#### **ARTICLE 64. PATENTS**

Contractor shall hold and save the Town, officials, officers, employees, and authorized volunteers harmless from liability of any nature or kind of claim therefrom including costs and expenses for or on account of any patented or unpatented invention, article or appliance manufactured, furnished or used by Contractor in the performance of this contract.

#### **ARTICLE 65. OWNERSHIP OF CONTRACT DOCUMENTS**

All Contract Documents furnished by the Town are Town property. They are not to be used by Contractor or any subcontractor on other work nor shall Contractor claim any right to such documents. With exception of one complete set of Contract Documents, all documents shall be returned to the Town on request at completion of the Work.

#### **ARTICLE 66. NOTICE OF TAXABLE POSSESSORY INTEREST**

In accordance with Revenue and Taxation Code section 107.6, the Contract Documents may create a possessory interest subject to personal property taxation for which Contractor will be responsible.

#### **ARTICLE 67. SURVIVAL OF OBLIGATIONS**

All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

#### **END OF GENERAL CONDITIONS**

## 00 73 13 – SPECIAL CONDITIONS

### 1.1 Engineer of Record.

- A. For purposes of this Project, the Engineer of Record or Engineer shall be: City Engineer Cyrus Kianpour.

### 1.2 Location of the Project.

- A. The Project is located F Street in the Town of Colma.
- B. The general location of the Project is shown on Town Drawing No. \_\_\_\_\_.

### 1.3 Shared Cost Savings for Reductions in Contract Price; Value Engineering.

[NOT USED.]

### 1.4 Status of the Project Area and Rights-of-Way.

- A. Town, at its expense, will provide all rights-of-way or permits, or both, covering the crossing of private property and public and private rights-of-way necessary for the permanent Work; provided, however, Contractor shall, at its expense, obtain any bonds or insurance policies or pay any fees and enter into any agreements required by a controlling authority, e.g., Caltrans or Union Pacific Railroad Company, before Contractor enters upon any property or right-of-way under the jurisdiction of any such controlling authority for the purpose of performing Work.
- B. Town has acquired or is negotiating to acquire any rights-of-way, or both, necessary for the permanent Work.
- C. If such permits are required, all operations of Contractor shall conform to the restrictions, regulations, and requirements set forth in said permits, copies of which will be included in the Contract Documents.
- D. Contractor may be required, as a condition for receiving final payment, to obtain, and provide Town's Representative with copies of, executed damage releases from the owners of public and private property whose property has been damaged by the Work. The damage releases will be on a form provided by Town.
- E. Contractor shall, also, as a condition for receiving final payment, obtain, and provide Town's Representative with copies of, executed damage releases from the owners of certain public and private property or areas which have been crossed by the Work or otherwise affected by the Work. The damage releases will be on a form provided by Town.

### 1.5 Site Data.

[NOT USED.]

1.6 Pre-Purchased or Pre-Negotiated Material.

[NOT USED.]

1.7 Designation of Town's Representative.

A. Unless otherwise modified by Town, Town's Representative shall be Public Works Director Brad Donohue.

1.8 Modification of Hours of Work.

[NOT USED.]

1.9 Project Retention

In accordance with Public Contract Code § 7201, Town will withhold 5% of each progress payment as retention on the Project.

1.10 Reverse Liquidated Damages Due to Unreasonable Town Delay.

A. In compliance with the provisions of California Public Contract Code § 7102, the Contractor will be compensated for damages incurred due to delays in completing the Work due solely to the fault of the Town, where such delay is unreasonable under the circumstances and not contemplated by the parties and such delay is not the result of Additional Work. The Contractor and Town agree that determining actual damages is impracticable and extremely difficult. As such, the Contractor shall be entitled to the appropriate time extension and to payment of liquidated damages in the sum of **\$1,000** per Day of delay in excess of the time specified for the Completion of the Work. Such amount shall constitute the only payment allowed and shall necessarily include all overhead (direct or indirect), all profit, all administrative costs, all bond costs, all labor, materials, equipment and rental costs, and any other costs, expenses and fees incurred or sustained as a result of such delay. The Contractor expressly agrees to be limited solely to the liquidated damages for all such delays as defined in this subsection.

1.11 Liquidated Damages Due to Contractor Delay.

A. Time is of the essence. Should Contractor fail to complete all or any part of the Work within the time specified in the Contract Documents, Town will suffer damage, the amount of which is difficult, if not impossible, to ascertain and, pursuant to the authority of Government Code section 53069.85, Town shall therefore be entitled to **\$1,000** per Day as liquidated damages for each Day or part thereof that actual completion extends beyond the time specified.

B. Liquidated damages may be deducted from progress payments due Contractor, Project retention or may be collected directly from Contractor, or from Contractor's surety. These provisions for liquidated damages shall not prevent Town, in case of Contractor's default, from terminating the Contractor.

1.12 Utility Outages – Notices to Residents.

- A. Should Contractor's operations require interruption of any utility service, Contractor shall notify Town at least ten (10) Days prior to the scheduled outage. Contractor will notify all impacted residents on a form provided by Town at least seven (7) Days prior to the scheduled outage.
- B. Contractor shall be responsible for providing, at its cost, any temporary utility or facilities necessitated by the utility outage.

1.13 Schedule Constraints.

NOT USED.

1.14 Noise Restrictions

- A. Contractor shall use only such equipment on the Work and in such state of repair so that the emission of sound therefrom is within the noise tolerance level of that equipment as established by Cal/OSHA.
- B. Contractor shall comply with the most restrictive of the following: (1) local sound control and noise level rules, regulations and ordinances and (2) the requirements contained in these Contract Documents, including hours of operation requirements.
- C. No internal combustion engine shall be operated on the Project without a muffler of the type recommended by the manufacturer. Should any muffler or other control device sustain damage or be determined to be ineffective or defective, the Contractor shall promptly remove the equipment and shall not return said equipment to the job until the device is repaired or replaced. Said noise and vibration level requirements shall apply to all equipment on the job or related to the job, including but not limited to, trucks, transit mixers or transit equipment that may or may not be owned by the Contractor.

1.15 Safety Programs.

- A. In addition to all other safety requirements of the Contract Documents, Contractor must comply with CalOSHA safety programs at all times during the completion of the Work.
- B. Town has considered these Safety Programs when determining the Contract Times and no additional time or compensation will be added to the Contract due to these Programs.

1.16 Coordination with Other Contractors.

NOT USED.

**END OF SPECIAL CONDITIONS**

## **01 00 00 – GENERAL REQUIREMENTS**

### **PART 1 -- GENERAL**

#### **1.1 DESCRIPTION**

- A. To be added

#### **1.2 RELATED REQUIREMENTS SPECIFIED ELSEWHERE**

### **PART 2 -- PRODUCTS (NOT USED)**

### **PART 3 -- EXECUTION**

#### **3.1 LAYOUT OF WORK AND QUANTITY SURVEYS**

- A. General. The Contractor shall utilize a properly licensed surveyor to perform all layout surveys required for the control and completion of the Work, and all necessary surveys to compute quantities of Work performed.

Town and/or the Engineer of Record has established primary control to be used by the Contractor for establishing lines and grades required for the Work.

Primary control consists of benchmarks and horizontal control points in the vicinity of the Work. A listing and identification of the primary control is provided on the Drawings. Before beginning any layout work or construction activity, the Contractor shall check and verify primary control, and shall advise the Town Representative of any discrepancies.

- B. Quantity surveys. The Contractor shall perform such surveys and computations as are necessary to determine quantities of Work performed or placed during each progress payment period, and shall perform all surveys necessary for the Town Representative to determine final quantities of Work in place. The Town Representative will determine final quantities based upon the survey data provided by the Contractor, and the design lines and grades. If requested by the Town Representative, the Contractor shall provide an electronic copy of data used for quantity computations.

All surveys performed for measurement of final quantities of Work and material shall be subject to approval of Town's Representative. Unless waived by Town's Representative in each specific case, quantity surveys made by the Contractor shall be made in the presence of Town's Representative.

- C. Surveying

- 1. Accuracy. Degree of accuracy shall be an order high enough to satisfy tolerances specified for the Work and the following:

- (a) Right-of-way and alignment of tangents and curves shall be within 0.1 foot.
  - (b) Structure points shall be set within 0.01 foot, except where operational function of the special features or installation of metalwork and equipment require closer tolerances. When formwork has been placed and is ready for concrete, the Contractor shall check the formwork for conformance with the drawings and to ensure that the forms are sufficiently within the tolerance limits for the completed work.
  - (c) Cross-section points shall be located within 0.1 foot, horizontally and vertically.
  - (d) Aerial Mapping shall meet National Mapping Standards for 2-foot contour intervals.
- D. Records. Survey data shall be recorded in accordance with recognized professional surveying standards. Original field notes, computations, and other surveying data shall be recorded on electronic data collectors or in standard field books and must be of sufficient quality to enable the Contractor to prepare accurate record drawings as required by the Contract Documents.
- E. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required for surveys for the layout of work and quantity surveys shall be included in the Schedule of Pay Items for items of work requiring the surveys. No additional compensation shall be made to the Contractor for this Work.

### 3.2 SCHEDULE

- A. Estimated Schedule. Within 14 Days after the issuance of the Notice to Proceed, Contractor shall prepare a Project schedule and shall submit this to the Engineer for Approval. The receipt or Approval of any schedules by the Engineer or the Town shall not in any way relieve the Contractor of its obligations under the Contract Documents. The Contractor is fully responsible to determine and provide for any and all staffing and resources at levels which allow for good quality and timely completion of the Project. Contractor's failure to incorporate all elements of Work required for the performance of the Contract or any inaccuracy in the schedule shall not excuse the Contractor from performing all Work required for a completed Project within the specified Contract time period. If the required schedule is not received by the time the first payment under the Contract is due, Contractor shall not be paid until the schedule is received, reviewed and accepted by the Engineer.
- B. Schedule Contents. The schedule shall indicate the beginning and completion dates of all phases of construction; critical path for all critical, sequential time related activities; and "float time" for all "slack" or "gaps" in the non-critical activities. The schedule shall clearly identify all staffing and other resources which in the Contractor's judgment are needed to complete the Project within the time specified for completion. The overall Project Schedule duration shall be within the Contract time.
- C. Schedule Updates. Contractor shall continuously update its construction schedule. Contractor shall submit an updated and accurate construction schedule to the

Engineer monthly when requested to do so by Engineer. Contractor shall also submit schedules showing a three week detailed look-ahead at bi-weekly meetings conducted with the Town. The Engineer may withhold progress payments or other amounts due under the Contract Documents if Contractor fails to submit an updated and accurate construction schedule.

### 3.3 TEMPORARY FIELD OFFICE

NOT USED.

### 3.4 PROTECTION OF WORK AND PROPERTY

- A. All traffic detector loops, fences, walls, culverts, property line monuments, or other obstructions (except property line monuments within five (5) feet of the centerline of the mains) which are removed, damaged, or destroyed in the course of the Work, shall be replaced or repaired to the original condition. If Contractor provides the Town with reasonable notice of the need for such repair or replacement, it shall be performed by the Town. If the Contractor fails to provide the Town with reasonable notice, the repair or replacement shall be performed by and at the expense of the Contractor to the satisfaction of the Town, whether or not those obstructions have been shown on the Plans, unless otherwise stated herein. It is then the Contractor's responsibility to employ at its expense a Licensed Land Surveyor to restore all property line monuments located more than five (5) feet from the centerline of the mains, which are destroyed or obliterated. Property line monuments located within five (5) feet of the centerline of the mains will be replaced by the Town at no expense to the Contractor, provided the Town is notified at least 48 hours before the property line monuments are damaged.
- B. Contractor shall provide such heat, covering, and enclosures as are necessary to protect all Work, materials, equipment, appliances, and tools against damage by weather conditions.
- C. Contractor shall take adequate precautions to protect existing sidewalks, curbs, pavements, utilities, and other adjoining property and structures, and to avoid damage thereto, and Contractor shall repair any damage thereto caused by the Work operations. Contractor shall:
  - 1. Enclose the working area with a substantial barricade, and arrange work to cause minimum amount of inconvenience and danger to the public.
  - 2. Provide substantial barricades around any shrubs or trees indicated to be preserved.
  - 3. Deliver materials to the Project site over a route designated by the Engineer.
  - 4. Provide any and all dust control required and follow the Applicable air quality regulations as appropriate. If the Contractor does not comply, the Town shall have the immediate authority to provide dust control and deduct the cost from payments to the Contractor.



5. Confine Contractor's apparatus, the storage of materials, and the operations of its workers to limits required by law, ordinances, permits, or directions of the Engineer. Contractor shall not unreasonably encumber the Project site with its materials.
  6. Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by a civil engineer or land surveyor acceptable to the Town, at no cost to the Town.
  7. Ensure that existing facilities, fences and other structures are all adequately protected and that, upon completion of all Work, all facilities that may have been damaged are restored to a condition acceptable to the Town.
  8. Preserve and protect from injury all buildings, pole lines and all direction, warning and mileage signs that have been placed within the right-of-way.
  9. At the completion of work each day, leave the Project site in a clean, safe condition.
  10. Comply with any stage construction and traffic control plans. Access to residences and businesses shall be maintained at all times, unless otherwise permitted in writing by the Town.
- D. These precautionary measures will apply continuously and not be limited to normal working hours. Full compensation for the Work involved in the preservation of life, safety and property as above specified shall be considered as included in the prices paid for the various contract items of Work, and no additional allowance will be made therefore.
- E. Should damage to persons or property occur as a result of the Work, Contractor shall be responsible for proper investigation, documentation, including video or photography, to adequately memorialize and make a record of what transpired. The Town shall be entitled to inspect and copy any such documentation, video, or photographs.

### 3.5 SITE CONDITIONS SURVEYS

A. Work Included.

Contractor shall conduct thorough pre-construction and post-construction site condition surveys of the entire project area. Site Conditions surveys shall include written documentation of the conditions found, as well as photographs and video recordings of the area within at least 80 feet of any construction area and staging area. The written notes, photographs, and video shall be suitable for forensic purposes to resolve any damage claims that may arise as a result of construction.

B. Submittals.

1. Written documentation of site condition survey at pre-construction and post-construction.

2. Photographs as described herein of pre-construction and post-construction conditions.
3. Video recordings as described herein of pre-construction and post-construction conditions.
4. Submittals shall be made within three days of the surveys. All post-construction data shall be submitted prior to the final project inspection.

C. Site Condition Written Documentation.

Written documentation shall include the time, date, and conditions under which the site survey was made. The documentation shall note the condition of structures, pavement, sidewalks, utilities, fences, and etc. within the work areas.

D. Photographs.

1. General – Contractor shall take enough photographs during each site survey to provide a record of conditions existing prior to construction and conditions after construction. Pre-construction photographs shall be taken prior to any construction or mobilization of equipment, but not more than one week prior to actual start of work. The pre-construction photographs may be staged at different times to match the progression of the Work.
2. The photographs shall document existing damage to public and private facilities, both prior to and after construction. Conditions to be documented include, but are not limited to: sidewalk cracks, broken curbs, separated property walls, improvements within public right-of-ways, access roads used, utility covers and markings, signs, pavement striping, pavement, unique or unusual conditions, adjacent driveways, landscaping, survey markers, and any feature directed by the Engineer. Private property that is adjacent to the public right-of-way shall be documented to the extent visible from the public right-of-way.
3. Photographs shall include items to indicate scale, as needed. In particular, scales or other items shall be laid next to close ups of structural cracks and other damaged areas being recorded. Scaling shall also be used to document elevation differences, as needed.
4. One set of color prints shall be submitted. Additional sets shall be available for reviewing in settling any construction disputes. A set of photos shall also be furnished in electronic format. The resolution shall be at least equal to 7 megapixels. All photos shall be documented as to time and date taken, photographer, project number, location, and orientation. Documentation shall include a brief description of objects photographed.

E. Video Recording.

1. Video recordings shall document the conditions of the entire area affected by construction, as well as nearby structures and facilities. The general documentation requirements for videos are the same as for photographs. Video recorders shall accurately and continuously record the time and date.

2. Video recordings shall include an audio portion made simultaneously during the videoing. The audio recording shall describe the location, time, orientation, and objects being recorded. Special commentary shall be provided for unusual conditions or damage noted.
3. Video equipment shall be capable of producing high resolution images and shall have zoom capabilities.
4. Video recordings shall provide an overall picture of the sites and shall provide detailed images of damaged areas. Video shall extend to the maximum height of structures.
5. The Engineer shall have the right to reject any audio video recordings submitted with unintelligible audio, uncontrolled pan or zoom, or of poor quality. Video recordings shall be repeated when rejected.
6. Video recordings shall be submitted with labels indicating the project, date, recorder, and other pertinent information. Recordings shall be submitted on standard DVDs in a standard format.

F. Timing.

Contractor shall provide written notice of the time scheduled for the site conditions survey and the place it is to begin. Contractor shall obtain the Engineer's concurrence prior to beginning the condition survey. The Engineer reserves the right to cancel the survey due to weather conditions or other problems. Videoing shall be done during times of good visibility and no videoing or photography shall be done during periods of visible precipitation or when standing water obscures pavement. Contractor shall provide the Engineer with an opportunity to have a representative present when taking the photos and provide guidance during photographing.

G. Site Surveyor.

The site condition surveyor(s) shall be experienced in construction and potential damage concerns. The site condition surveyor(s) shall be familiar with the photography and video equipment being used.

H. Field Quality Control.

Prior to submitting videos and photographs, the Contractor shall spot check the photos and videos in the field to insure they accurately reflect the actual conditions and to insure they are correctly labeled.

I. Soils Compaction Testing.

1. All soils compaction testing will be done by a licensed geotechnical engineer furnished by the Town. Soils compaction testing will be done for all footings and foundations prior to placement of rebar or concrete.
2. For pipeline construction, soil compaction testing will be done at 100-foot intervals at the bottom of the trench prior to placement of pipe bedding; at the top

of the pipe bedding above the pipe; every two vertical feet of trench backfill; at the top of the trench backfill, which could be the bottom of the pavement section; and at the top of the aggregate base prior to pavement construction.

### 3.6 SUBMITTAL REQUIREMENTS AND RECORD DRAWINGS

- A. General. The Contractor shall furnish all materials and perform all Work required for furnishing submittals to Town in accordance with Contract Documents.
- B. Record Drawings
  - 1. The Contractor shall maintain one record set of Drawings at the Site. On these, it shall mark all Project conditions, locations, configurations, and any other changes or deviations which may vary from the information represented in the original Contract Documents, including buried or concealed construction and utility features which are revealed during the course of construction. Special attention shall be given to recording the horizontal and vertical location of all buried utilities that differ from the locations indicated, or which were not indicated on the Contract Drawings. Said record drawings shall be supplemented by any detailed sketches as necessary or directed to fully indicate the Work as actually constructed. These master record drawings of the as-built conditions, including all revisions made necessary by Addenda and Change Orders shall be maintained up-to-date during the progress of the Project. Red ink shall be used for alterations and notes. Notes shall identify relevant Change Orders by number and date.
  - 2. For all Projects involving the installation of any pipeline, Contractor shall survey and record the top of the pipe at a minimum of every 100 linear feet, and at each bend, recording both the horizontal and vertical locations.
  - 3. Record drawings shall be accessible to Town's Representative at all times during the construction period. Failure on the Contractor's part to keep record drawings current could result in withholding partial payment.
  - 4. Upon Completion of the Project and as a condition of final acceptance, the Contractor shall finalize and deliver a complete set of Record Drawings to Town's Representative. The information submitted by the Contractor will be assumed to be correct, and the Contractor shall be responsible for, and liable to Town, for the accuracy of such information, and for any errors or omissions which may or may not appear on the Record Drawings.
- C. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to complete the Manuals and Record Drawings shall be included in Contractor's bid and distributed in the Schedule of Pay. No additional compensation shall be made to the Contractor for this Work.

### 3.7 MATERIALS

- A. Materials to be Furnished by the Contractor
  - 1. Inspection of Materials. Materials furnished by the Contractor which will become a part of the Project shall be subject to inspection at any one or more of the

following locations, as determined by Town's Representative: at the place of production or manufacture, at the shipping point, or at the site of the Work. To allow sufficient time to provide for inspection, the Contractor shall submit to Town's Representative, at the time of issuance, copies of purchase orders or other written instrument confirming procurement of the materials, including drawings and other pertinent information, covering materials on which inspection will be made.

2. No later than fourteen (14) Days prior to manufacture of material, Contractor shall inform Town's Representative, in writing, the date the material is to be manufactured.
3. Contractors Obligations. The inspection of materials at any of the locations specified above or the waiving of the inspection thereof shall not impact whether the materials and equipment conform to the Contract Documents. Contractor will not be relieved from furnishing materials meeting the requirements of the Contract Documents due to Town's inspection or lack of inspection of the equipment or materials. Acceptance of any materials will be made only after materials are installed in the Project.
4. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to accommodate Town's testing efforts, including any travel required by Contractor's forces, shall be included in Contractor's bid and distributed in the Schedule of Pay Items related to the materials requiring testing. No additional compensation shall be made to the Contractor for this Work.

### 3.8 LOCAL CONDITIONS AND REQUIREMENTS

#### A. Access to Work and Haul Routes

1. General. All work on the rights-of-way necessary for access to the Site shall be performed by the Contractor.
2. Access, Damage, Restoration. The Contractor shall make his own investigation of the condition of available public or private roads and of clearances, restrictions, bridge-load limits, permit or bond requirements, and other limitations that affect or may affect transportation and ingress or egress at the Site. Claims for changes in Contract Price or Contract Times arising out of the unavailability of transportation facilities or limitations thereon shall not be considered by Town.
3. The Contractor shall maintain and repair any damage arising out of Contractor's operations to all roads used during construction of the Project, and upon completion of all Work, but prior to final acceptance, the roads shall be restored to their original condition. Prior to using any road for access to the Site, the Contractor shall conduct a photograph and/or video survey of the roadway with a copy submitted to Town's Representative.
4. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to complete this Work, shall be included in

Contractor's bid and distributed in the Schedule of Pay Items. No additional compensation shall be made to the Contractor for this Work.

- B. Power. Contractor shall provide at its own expense all necessary power required for operations under the contract. The Contractor shall provide and maintain in good order such modern equipment and installations as shall be adequate in the opinion of the Engineer to perform in a safe and satisfactory manner the Work required by the contract.
- C. Construction Water.
  - 1. Construction water shall not be used for purposes other than those required to satisfactorily complete the contract.
  - 2. All connections to the Town's water system used for the purposes of obtaining construction water shall utilize a temporary construction meter and backflow prevention device supplied by the Town. The Town-furnished backflow prevention device shall be tested immediately after installation and the construction meter and backflow prevention device shall not be placed into service until the backflow prevention device passes such tests. Backflow prevention device testing shall be performed in accordance with applicable standards, and test results shall be provided to the Engineer. If the temporary construction meter and backflow prevention device are moved to alternate location(s) during construction, the backflow prevention device shall again be tested as described above immediately after re-installation.
  - 3. For each temporary construction meter requested by the Contractor for the performance of work under this contract, an amount equivalent to the deposit requirement for temporary construction meters listed in the current approved version of the Town's Policies and Procedures Manual shall be withheld from the final contract payment until the temporary construction meters are returned.
- D. Operation of Existing Water Facilities
  - 1. The Contractor shall not operate any of the existing water systems, including pumps, motors, and hydrants, but shall contact the Town two (2) working days in advance with a list and location of the water system facilities that will require operating, opening, stopping, or closure by the Town.
  - 2. At the option of the Engineer, the Contractor may be permitted to operate valves for the purpose of making connections to existing mains. The Town will perform all notification to existing customers regarding temporary loss of service.
  - 3. Contractor shall submit a request on Town's standard form for any shut-down of existing water facilities.
- E. Construction at Existing Utilities
  - 1. General. Where the Work to be performed crosses or otherwise interferes with water, sewer, gas, or oil pipelines; buried cable; or other public or private utilities, the Contractor shall perform construction in such a manner so that no damage

will result to either public or private utilities. It shall be the responsibility of the Contractor to determine the actual locations of, and make accommodations to maintain, all utilities.

2. **Permission, Notice and Liability.** Before any utility is taken out of service, permission shall be obtained by the Contractor from the owner. The owner, any impacted resident or business owner and the Town Representative will be advised of the nature and duration of the utility outage as well as the Contractor's plan for providing temporary utilities if required by the owner. The Contractor shall be liable for all damage which may result from its failure to maintain utilities during the progress of the Work, and the Contractor shall indemnify Town as required by the Contract Documents from all claims arising out of or connected with damage to utilities encountered during construction; damages resulting from disruption of service; and injury to persons or damage to property resulting from the negligent, accidental, or intentional breaching of utilities.
3. **Cost.** Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to complete this Work, shall be included in Contractor's bid and distributed in the Schedule of Pay Items. No additional compensation shall be made to the Contractor for this Work.

#### F. Traffic Control

1. **General.** Contractor shall abide by traffic control plans approved by the appropriate jurisdiction.
2. **Protections.** Roads subject to interference by the Work shall be kept open or suitable temporary passages through the Work shall be provided and maintained by the Contractor. The Contractor shall provide, erect, and maintain all necessary barricades, suitable and sufficient flasher lights, flag persons, danger signals, and signs, and shall take all necessary precautions for the protection of the Work and the safety of the public. No construction work along public or private roads may proceed until the Contractor has proper barricades, flasher lights, flag persons, signals, and signs in place at the construction site.
3. **Cost.** Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to complete this Work, shall be included in Contractor's bid and distributed in the Schedule of Pay Items. No additional compensation shall be made to the Contractor for this Work.

#### G. Cleaning Up

1. Contractor at all times shall keep premises free from debris such as waste, rubbish, and excess materials and equipment. Contractor shall not store debris under, in, or about the premises. Contractor shall also clean all asphalt and concrete areas to the degree necessary to remove oil, grease, fuel, or other stains caused by Contractor operations or equipment. The use of water, resulting in mud on streets, will not be permitted as substitute for sweeping or other methods. Dust control may require having a water truck onsite for the

duration of the project, and/or use of temporary hoses and pipelines to convey water.

2. Contractor shall fully clean up the site at the completion of the Work. If the Contractor fails to immediately clean up at the completion of the Work, the Town may do so and the cost of such clean up shall be charged back to the Contractor.

### 3.9 ENVIRONMENTAL QUALITY PROTECTION

#### A. Environmental Conditions

NOT USED.

#### B. Landscape and Vegetation Preservation

1. General. The Contractor shall exercise care to preserve the natural landscape and vegetation, and shall conduct operations so as to prevent unnecessary destruction, scarring, or defacing of the natural surroundings in the vicinity of the Work.
2. Damage and Restoration. Movement of crews and equipment within the rights-of-way and over routes provided for access to the Work shall be performed in a manner to prevent damage to property. When no longer required, construction roads shall be restored to original contours.
3. Upon completion of the Work, and following removal of construction facilities and required cleanup, land used for construction purposes and not required for the completed installation shall be scarified and regraded, as required, so that all surfaces are left in a condition that will facilitate natural revegetation, provide for proper drainage, and prevent erosion.
4. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to complete this Work, shall be included in Contractor's bid and distributed in the Schedule of Pay Items. No additional compensation shall be made to the Contractor for this Work.

#### C. Protected Species

1. General. If, in the performance of the Work, evidence of the possible occurrence of any Federally listed threatened or endangered plant or animal is discovered, the Contractor shall notify the Town Representative immediately, giving the location and nature of the findings. Written confirmation of the evidence, location and nature of the findings shall be forwarded to Town within 2 Days.
2. Procedures. The Contractor shall immediately cease all construction activities in the immediate area of the discovery to the extent necessary to protect the endangered plant or animal.

If directed by the Town Representative, Contractor will refrain from working in the immediate area, suspend the Work in its entirety, or alter its performance to



ensure full compliance with all applicable permits, laws and regulations. Any Town directed changes to the Work as a result of a siting will be pursuant to the Contract Documents.

3. False Siting. Any costs or delays incurred by Town or the Contractor due to unreasonable or false notification of an endangered plant or animal will be borne by the Contractor.
4. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to comply with this paragraph, shall be included in Contractor's bid and distributed in the Schedule of Pay Items. No additional compensation shall be made to the Contractor for this Work.

D. Preservation of Historical and Archeological Resources

1. General. If, in the performance of the Work, Contractor should unearth cultural resources (for example, human remains, animal bones, stone tools, artifacts and/or midden deposits) through excavation, grading, watering or other means, the Contractor notify the Construction/Archeological Monitor and/or the Town Representative immediately, giving the location and nature of the findings. Written confirmation of the evidence, location and nature of the findings shall be forwarded to the Construction/Archeological Monitor and/or Town within 2 Days.
2. Procedures. The Contractor shall immediately cease all construction activities in the immediate area of the discovery to the extent necessary to protect the cultural resource.

If directed by the Town Representative, Contractor will refrain from working in the immediate area, suspend the Work in its entirety, or re-sequence and/or alter its performance to ensure full compliance with all applicable permits, laws and regulations. Should the presence of cultural resources be confirmed, the Contractor will assist the Town Representative and the Construction/Archeological Monitor in the preparation and implementation of a data recovery plan. The Contractor shall provide such cooperation and assistance as may be necessary to preserve the cultural resources for removal or other disposition. Any Town directed changes to the Work as a result of the cultural resource will be pursuant to the Contract Documents.

3. Contractor's Liability. Should Contractor, without permission, injure, destroy, excavate, appropriate, or remove any cultural resource on or adjacent to the Site, it will be subject to disciplinary action, arrest and penalty under applicable law. The Contractor shall be principally responsible for all costs of mitigation and/or restoration of cultural resources related to the unauthorized actions identified above. Contractor shall be required to pay for unauthorized damage and mitigation costs to cultural resources (historical and archeological resources) as a result of unauthorized activities that damage cultural resources and shall indemnify Town pursuant to the Contract Documents.

4. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to comply with this paragraph, shall be included in Contractor's bid and distributed in the Schedule of Pay Items. No additional compensation shall be made to the Contractor for this Work.

E. Dust and Pollution Control

1. Contractor shall provide all necessary material, equipment and labor to prevent and control the emission of dust and any other potential pollutant on site.
2. Contractor shall not discharge into the atmosphere from any source smoke, dust or other air contaminants in violation of the law, rules, and regulations of the governing agency.
3. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to comply with this paragraph, shall be included in Contractor's bid and distributed in the Schedule of Pay Items. No additional compensation shall be made to the Contractor for this Work.

F. Fugitive Dust

1. In addition to all other environmental and air quality requirements of the Contract Documents, Contractor must also comply with the most recent version of any rules implemented by the Air Quality Management District (AQMD) with jurisdiction over the Project in order to reduce the amount of particulate matter entrained in the ambient air as a result of the Project. All equipment shall be AQMD compliant and permitted, as needed.
2. Town has considered these other requirements when determining the Contract Times and no additional time or compensation will be added to the Contract due to these requirements.

G. Management of Storm, Surface and Other Waters

1. Storm water, surface water, groundwater, and nuisance, or other waters may be encountered at various times during construction of the Project. Federal and State laws require the Town and its contractors to manage such waters pursuant to the requirements of California State Water Resources Control Board Order Number 2009-0009-DWQ, the Federal Clean Water Act, and the California Porter Cologne Water Quality Control Act. Contractor acknowledges that it has investigated the risk arising from such waters in conjunction with the Project, and assumes any and all risks and liabilities arising therefrom.
2. The Contractor shall perform all construction operations in such a manner as to comply, and ensure all subcontractors to comply, with all applicable Federal, State, and local laws, orders, and regulations concerning the control and abatement of water pollution; and all terms and conditions of any applicable permits issued for the Project. In the event there is a conflict between Federal, State, and local laws, regulations, and requirements, the most stringent shall apply.

3. Contractor violations. If noncompliance should occur, the Contractor shall report this to the Town Representative immediately, with the specific information submitted in writing within 2 Days. Consistent violations of applicable Federal, State, or local laws, orders, regulations, or Water Quality Standards may result in Town stopping all site activity until compliance is ensured. The Contractor shall not be entitled to any change in Contract Price or Contract Times, claim for damage, or additional compensation by reason of such a work stoppage. Corrective measures required to bring activities into compliance shall be at the Contractor's expense.
4. Compliance with Construction General Storm water Permit. Contractor shall be required to comply with all aspects of the State Water Resources Control Board (State Board) Water Quality Order No. 2009-0009-DWQ, National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity (Permit) for all projects that involve construction on or disturbance of one acre or more of land or which are part of a larger common area of development.
  - (a) Contractor shall prepare and implement a Storm Water Pollution Prevention Plan (SWPPP) for the Project site based on the appropriate Risk Level requirements, and draft and coordinate submittal of all Permit related documents with Town's Legally Responsible Person and/or Authorized Signatory as those terms are defined in the Permit. The Contractor shall submit the SWPPP to the Town Representative for review not less than fifteen (15) Days prior to the start of on- site construction work. Town will file the Notice of Intent and pay the filing fee.
  - (b) The SWPPP shall be developed by a Qualified SWPPP Developer and implemented by a Qualified SWPPP Practitioner as those terms are defined in the Permit and shall include industry standard requirements for water quality control including but not be limited to the following:
    - (1) Sediment and erosion control measures to manage sediment and erosion including vegetative practices, structural control, silt fences, straw dikes, sediment controls or operator controls as appropriate. Storm water management measures shall be instituted as required, including velocity dissipaters, and solid waste controls shall address controls for building materials and offsite tracking of sediment.
    - (2) Wastewater and storm water management controls to divert offsite surface flows around the Project site and to divert surface flows within the Project area away from areas of open earth or stockpiles of building and other materials. Wastewater from general construction activities, such as drain water collection, aggregate processing, concrete batching, drilling, grouting, or other construction operations, shall not enter flowing or dry watercourses without having met the authorized non-storm water discharge requirements listed in State Board Water Quality Order No. 2009-0009-DWQ, Section III.C., including proper notification to the Regional Water Board.
    - (3) Pollution prevention measures including methods of dewatering, unwatering, excavating, or stockpiling earth and rock materials which

include prevention measures to control silting and erosion, and which will intercept and settle any runoff of sediment-laden waters.

- (4) Turbidity prevention measures for prevention of excess turbidity including, but are not restricted to, intercepting ditches, settling ponds, gravel filter entrapment dikes, flocculating processes, recirculation, combinations thereof, or other approved methods that are not harmful to aquatic life. All such wastewaters discharged into surface waters, shall contain the least concentration of settleable material possible, and shall meet all conditions of section 402, the National Pollutant Discharge Elimination System (NPDES) permit.
  - (5) Overall construction site management measures to address changes at the Project site as the Project moves through different phases and changes that account for rainy and dry season management practices.
  - (6) Pollution control measures and construction activity methods that will prevent entrance, or accidental spillage, of solid matter, contaminants, debris, or other pollutants or wastes, into streams, flowing or dry watercourses, lakes, wetlands, reservoirs, or underground water sources. Such pollutants and wastes include, but are not restricted to: refuse, garbage, cement, sanitary waste, industrial waste, hazardous materials, radioactive substances, oil and other petroleum products, aggregate processing, tailings, mineral salts, and thermal pollution.
  - (7) Control measures for stockpiled or deposited materials prohibiting the stockpile or deposit of excavated materials, or other construction materials, near or on stream banks, lake shorelines, or other watercourse perimeters where they can be washed away by high water or storm runoff, or can, in any way, encroach upon the watercourse.
  - (8) Develop and implement a Rain Event Action Plan (REAP), if required, that must be designed and implemented to protect all exposed portions of the site 48 hours prior to any likely precipitation event.
  - (9) Monitoring, reporting and record keeping, as necessary to achieve compliance with applicable Permit requirements, including but not limited to annual reports and rain event reports.
- (c) Before any Permit related documents, including the SWPPP, rain event reports, or annual reports may be submitted to the State Board or implemented on the Project site, they must first be reviewed and approved by Town.
- (d) Town retains the right to procure and maintain coverage under the Permit for the Project site if the Contractor fails to draft a SWPPP or other Permit related document, or fails to proceed in a manner that is satisfactory to Town. Town reserves the right to implement its own SWPPP at the Project site, and hire additional contractors to maintain compliance. Whether Contractor has adequately maintained compliance with the Permit shall be Town's sole determination. In the event that Contractor has failed or is unable to maintain compliance with the Permit, any costs or fines incurred by

Town in implementing a SWPPP, or otherwise maintaining compliance with the Construction General Permit shall be paid by the Contractor.

- (e) Failure to implement the SWPPP or otherwise comply with the Permit is a violation of federal and state law. Contractor hereby agrees to indemnify Town as required by the Contract Documents for any noncompliance or alleged noncompliance with the Permit arising out of or in connection with the Project, except for liability resulting from the sole established negligence, willful misconduct or active negligence of Town. Town may seek damages from Contractor for delay in completing the Contract in accordance with the Contract Documents, caused by Contractor's failure to comply with the Permit.
- 5. In addition to compliance with the Permit, Contractor shall comply with the lawful requirements of any applicable municipality, district, drainage district, flood control district, and other local agencies regarding discharges of storm water, surface water, groundwater or other nuisance waters off of the Project site.
- 6. Oil storage tanks management.
  - (a) Storage tank placement. All oil or other petroleum product (hereinafter referred to collectively as oil) storage tanks shall be placed at least 20 feet from streams, flowing or dry watercourses, lakes, wetlands, reservoirs, and any other water source.
  - (b) Storage area dikes. Storage areas shall be diked at least 12 inches high or graded and sloped to permit safe containment of leaks and spills equal to the capacity of all tanks and/or containers located within each area, plus a sufficient amount of freeboard to contain the 25-year rainstorm.
  - (c) Diked area barriers. Diked areas shall have an impermeable barrier at least 10 mils thick. Areas used for refueling operations shall have an impermeable liner at least 10 mils thick buried under 2 to 4 inches of soil.
  - (d) Spill Prevention Control and Countermeasure Plan (SPCC). Where the location of a construction site is such that oil from an accidental spillage could reasonably be expected to enter into or upon the navigable waters of the United States or adjoining shorelines, and the aggregate storage of oil at the site is over 1,320 gallons or a single container has a capacity in excess of 660 gallons, the Contractor shall prepare an SPCC Plan. The Contractor shall submit the SPCC Plan to the Engineer at least 30 days prior to delivery or storage of oil at the site. The Plan must have been reviewed and certified by a registered professional engineer in accordance with 40 C.F.R., part 112
- 7. Underground tank prohibition. The Contractor shall not use underground storage tanks.
- 8. Construction safety standards. The Contractor shall comply with the sanitation and potable water requirements of Section 7 of United States Bureau of Reclamation's publication "Reclamation Safety And Health Standards."
- 9. Other Permits.

- (a) Other permits applicable to the Project are listed in the Special Conditions. The Contractor shall obtain all other necessary licenses and permits.
  - (b) Monitoring. The Contractor is required to conduct monitoring in order to meet the requirements of the permits, which may include sampling, testing and inspections.
  - (c) Recordkeeping. The Contractor shall retain all records and data required by the permits for the time specified in the contract.
10. Cost. Except as specified herein, the cost of complying with this section shall be included in the Schedule of Pay Items for work which necessitate the water pollution prevention measures required by this paragraph.

**END OF GENERAL REQUIREMENTS**

**EXHIBIT "A"**  
**CHANGE ORDER FORM**

**Town of Colma**

*1198 El Camino Real  
Colma, CA 94014*

**Contract Change Order #**

**Project:**

**Change Order No.:**

**Orig. Contract Amt.:** \$ Days

**Contract No.:**

**Contractor:** **Prev. Appvd. Changes:** \$ Days

**Owner:** Town of Colma **This Change:** \$ Days

**Revised Contract Amt.:** \$ Days

This Change Order covers changes to the subject contract as described herein. The Contractor shall construct, furnish equipment and materials, and perform all work as necessary or required to complete the Change Order items for a lump sum price agreed upon between the Contractor and Town of Colma, otherwise referred to as Owner.

Item No.	Description of Changes	Increase/ (Decrease) in Contract Amount	Contract Time Extension, Days
1			
2			
	<b>Totals</b>	<b>\$</b>	

This Contract Change Order consists of **2 pages** and any exhibits attached to this Contract Change Order shall not be part of the Contract Change Order unless specifically initialed by or on behalf of both the Contractor and the Town of Colma.

Contract Change Order # \_\_\_\_\_ Page 1 of 2

The amount of the contract will be increased by the sum of \$\_\_\_\_\_ and the contract time shall be extended by working days. The undersigned Contractor approves the foregoing Change Order # as to the changes, if any, in the contract price specified for each item including any and all supervision costs and other miscellaneous costs relating to the change in work, and as to the extension of time allowed, if any, for completion of the entire work on account of said Change Order #. The Contractor agrees to furnish all labor and materials and perform all other necessary work, inclusive of the directly or indirectly related to the approved time extension, required to complete the Change order items. This document will become a supplement of the contract and all provisions will apply hereto. It is understood that the Change Order shall be effective when approved by the Owner.

Contractor accepts the terms and conditions stated above as full and final settlement of any and all claims arising out of or related to the subject of this Change Order and acknowledges that the compensation (time and cost) set forth herein comprises the total compensation due for the work or change defined in the Change Order, including all impact on any unchanged work. By signing this Change Order, the Contractor acknowledges and agrees that the stipulated compensation includes payment for all Work contained in the Change Order, plus all payment for any acceleration or interruption of schedules, extended overhead costs, delay, and all impact or cumulative impact on all Work under this Contract. The signing of this Change Order acknowledges full mutual accord and satisfaction for the change and that the stated time and/or cost constitute the total equitable adjustment owed the Contractor as a result of the change. The Contractor hereby releases and agrees to waive all rights, without exception or reservation of any kind whatsoever, to file any further claim or request for equitable adjustment of any type, for any reasonably foreseeable cause that shall arise out of, or as a result of, this Change Order and/or its impact on the remainder of the Work under the Contract.

Accepted:

\_\_\_\_\_  
(Signature) Contractor's Authorized Representative

\_\_\_\_\_  
Date

Recommended:

\_\_\_\_\_  
(Signature) **\*\*INSERT NAME, TITLE\*\***

\_\_\_\_\_  
Date

Approved:

\_\_\_\_\_  
(Signature) **\*\*INSERT NAME, TITLE\*\***

\_\_\_\_\_  
Date

Item No.	Justification for Change(s)
1	
2	

This Contract Change Order consists of **2 pages** and any exhibits attached to this Contract Change Order shall not be part of the Contract Change Order unless specifically initialed by or on behalf of both the Contractor and the Town of Colma.

Contract Change Order #

Page 2 of 2





# STAFF REPORT

TO: Mayor and Members of the City Council

FROM: Kathleen Gallagher, Sustainability Programs Manager, CSG Consultants  
Michael P. Laughlin, City Planner, CSG Consultants

VIA: Brian Dossey, City Manager  
Christopher J. Diaz, City Attorney

MEETING DATE: July 28, 2021

SUBJECT: Senate Bill 1383 Overview Presentation

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## RECOMMENDATION

Staff recommends that the City Council receive the Overview Presentation of Senate Bill 1383 (Lara, Chapter 395, Statutes of 2016) and the regulations promulgated by the California Department of Resources Recycling and Recovery ("CalRecycle") to implement SB 1383 ("SB 1383 Regulations") during the study session and provide comments to staff.

## EXECUTIVE SUMMARY

SB 1383 is landmark legislation that builds on California's commitment to reduce greenhouse gas emissions by reducing methane, a potent greenhouse gas emitted from landfilled organic waste. SB 1383 requires a 75% reduction in the disposal of organic waste by 2025, and recovery of 20% of edible food currently disposed of by 2025 because these actions will greatly reduce methane production. SB 1383 directed CalRecycle to adopt and enforce regulations to reduce organic waste and these regulations were finalized in November 2020.

SB 1383 requires jurisdictions to implement several measures that include adoption of an enforceable ordinance, adoption of a recovered organic waste procurement policy, new outreach/education requirements, mandatory organics collection programs, route monitoring/contamination monitoring, capacity reporting, enforcement requirements, establishment of an edible food recovery program, and compliance reporting to CalRecycle of mandatory measures. Due to previous City Council approvals of sustainability programs such as adoption of the Sustainability Procurement Policy and inclusion of organics collection in the franchise agreement, Colma already has some basic SB 1383 components. However, additional effort is needed to meet SB 1383 requirements. Some requirements can be accomplished by working in partnership with the Office of Sustainability, regional partners, and Republic Services, however, SB 1383 states the jurisdiction is ultimately responsible for compliance and more staff time, resources and funding will be needed to meet these new requirements by January 1, 2022. The purpose of the study session is to present an SB 1383 overview, highlight

the measures required, discuss the draft timeline, and provide responses to City Council questions regarding SB 1383 Regulations.

## **FISCAL IMPACT**

There is no fiscal impact to receive the staff report; staff has been working to prepare the implementation of the SB 1383 requirements. Staff will be returning to the City Council in the coming months for Council to take action on SB 1383 requirements and to provide further information.

## **BACKGROUND AND ANALYSIS**

SB 1383 established requirements to reduce organic waste (e.g., food waste, yard waste, wood waste, paper products, biosolids, manure, etc.) that are landfilled to reduce methane, a powerful greenhouse gas. Methane is emitted from landfilled organic waste. Per CalRecycle data, California currently landfills approximately 22 million tons of organic waste every year, which is approximately 66% of California's total waste sent to landfill. CalRecycle finalized the regulations to meet organic reduction requirements in November 2020. SB 1383 does not include jurisdiction-specific targets for organics reduction, instead the regulations include separate, specific program requirements for jurisdictions to implement. SB 1383 requires jurisdictions to adopt ordinances, adopt a recovered organics/recycled content procurement policy, implement new outreach/education requirements, require mandatory organics collection programs, increase monitoring and reporting, implement route/contamination audits, add enforcement provisions, establish an edible food recovery program, and complete robust compliance reporting to CalRecycle regarding the mandatory measures.

Since the adoption of the SB 1383 Regulations, staff has been working with the San Mateo County Office of Sustainability, CalRecycle, regional partners. Staff has presented SB 1383-related questions to Republic Services regarding collection programs and held preliminary conversations with Republic Services. Staff has also held discussions with BB&K regarding the draft Edible Food Recovery Program MOU which will be presented at the September City Council meeting. More significant staff work is underway and necessary to expeditiously meet the January 1, 2022 deadline to implement SB 1383 requirements. This work is detailed in the SB 1383 Plan and timeline.

The purpose of the July 28<sup>th</sup> study session is to provide the City Council and the community an overview of the SB 1383 Regulations and action items that will be brought to the City Council in the coming months to meet the first deadlines in January 2022. The information below includes the SB 1383 ordinance, the updated procurement policy, the amended franchise agreement, the MOU for the Edible Food Recovery Program, and other programs.

## **Summary of SB 1383 Requirements**

SB 1383 has several significant requirements, and many have complex components, therefore, the following summary provides only the highlights.

1. **Adopt Enforceable SB 1383 Ordinance:** SB 1383 requires jurisdictions to implement and mandate programs. The ordinance must be adopted by January 1, 2022, and

requires organic waste generators, haulers, and other entities to comply with SB 1383 Regulations. Staff has drafted the ordinance using the model developed by CalRecycle and this will be presented to Council in September and October. The ordinance includes establishment of enforceable SB 1383-related requirements for organic waste generators, haulers, etc. and provides tools to regulate compliance with SB 1383 regulations. Jurisdictions are responsible for SB 1383 compliance and cannot delegate this authority to a private entity such as a waste hauler. The ordinance requires all residents and businesses to participate in their organic waste collection programs; requires haulers to transport all recovered organic waste to qualifying organic processing facilities; and sets penalties on generators and haulers who fail to comply with requirements. The ordinance will include requirements for generators to participate in organic waste collection programs; business owners and property managers to support organic waste disposal reduction; and commercial edible food generators to recover edible food through contracts or written agreements with food recovery organizations and services.

Additionally, jurisdictions that have not already adopted ordinances to require compliance with certain provisions of the California Green Building Standards Code (CALGreen) and the Model Water Efficient Landscape Ordinance must include these provisions in the ordinance. The ordinance needs to be adopted by January 1, 2022. Starting January 1, 2024, the Town can begin enforcement action by issuing Notice of Violations (NOVs) and fines on generators and other entities who violate the SB 1383 Regulations. Per SB 1383 Regulations, the prescribed administrative penalties are \$50-100 for a first violation, \$100-200 for a second violation, and \$250-500 for a third or subsequent violation.

2. **Adopt (Update) Procurement Policy:** Colma already has a Sustainability Procurement Policy in place, but this policy needs to be updated to include the annual procurement of recovered organic waste products (e.g., compost, mulch, renewable gas, etc.) to comply with SB 1383 Regulations. Note this requirement can be met through direct procurement or through a direct service provider. Colma staff is working with the Office of Sustainability to coordinate a potential regional effort to comply with this portion of the SB 1383 Regulations regarding the procurement of recovered organic waste.

Also, in this policy, jurisdictions are required to purchase paper products (purchased by the jurisdiction) that contain at least 30% recycled content. Colma has had a similar policy in place since 2013 but there is additional staff work that will be necessary to document/ provide ongoing verification per SB 1383 requirements, and staff will need to ensure there is documentation of purchase and reporting by Town facilities.

3. **Update Organic Waste Collection Programs and other components in the Franchise Agreement:** Colma currently has a voluntary organics collection program for residents and businesses in the franchise agreement with Republic Services. However, SB 1383 requires that organic waste collection services be provided. Additionally, there are additional services that need to be upgraded or changed to meet other requirements. For example, the color of the collection bins needs to be green for organics, blue for recycling, grey/black/brown for garbage. Some of the current containers serviced by Republic are currently non-compliant and preliminary discussions

have been held, but more information is needed. There are also required additional education and outreach components, minimum label requirements, route monitoring and contamination monitoring requirements and other elements to be included. SB 1383 requirements include compliance review and route monitoring and requirements to provide educational material to non-compliant generators. From January 2022 through December 2023, no enforcement actions are necessary. However, after January 2024, jurisdictions will need to take progressive enforcement against organic waste generators that are out of compliance with their organic waste collection requirements, including issuing notices of violations followed by penalties.

4. **Establish an Edible Food Recovery Program:** SB 1383 requires that certain commercial food generators hold a contract with a food recovery organization that arranges for as much of the generators surplus edible food to be recovered by the food recovery organization as possible. Colma has only 2 businesses that meet the threshold. There are two tiers of commercial edible food generators. Tier 1 generators include supermarkets, grocery stores (10,000+ sq. ft.), food service providers, food distributors, and wholesale food vendors. Tier 2 generators include, among others, restaurants ( $\geq$  250 seats or 5,000 sq. ft.). Tier 1 generators must comply with SB 1383 Regulations by January 1, 2022 and Tier 2 generators must comply by January 1, 2024. Colma staff has been working with the San Mateo County Office of Sustainability, which is developing a county-wide edible food recovery program at no cost to the jurisdictions. Staff is currently in the process of executing an MOU with the County for the County to implement and enforce the SB 1383 Regulations related to an edible food recovery program within the Town's jurisdiction. The Town will include in its enforceable ordinance a requirement that all Tier 1 or 2 generators hold a contract with an edible food recovery organization and penalties for noncompliance.
5. **Comply with Education/Outreach Requirements:** SB 1383 Regulations require jurisdictions to provide specific education and outreach materials and activities to organic waste generators. Starting in 2022, educational materials must be provided to non-compliant waste generators; and, after January 1, 2024, fines may be imposed by the jurisdiction against non-compliant waste generators.
6. **Organic Waste Recycling Capacity Planning:** SB 1383 requires the County to conduct organic waste recycling capacity studies on behalf of and in coordination with jurisdictions. The Town will need to coordinate with the County to complete these studies. If the County finds that the jurisdictions lack organic waste recycling capacity, jurisdictions must submit implementation reports to CalRecycle.
7. **Complete Required Reporting/Maintain Records /Submit CalRecycle Reports:** SB 1383 Regulations impose extensive recordkeeping requirements on jurisdictions' staff and an implementation record must be made available to CalRecycle within 10 business days of its request. Colma staff will need to submit a copy of its ordinance and other enforceable mechanisms and information to CalRecycle by April 1, 2022, a report by October 1, 2022, for the January-June 2022 reporting period, and annual reports for each calendar year every August 1.

8. **Compliance Monitoring and Enforcement:** SB 1383 requires implementation of an inspection and enforcement program to ensure overall compliance and institute a procedure for receipt/investigation of written complaints of alleged violations, which must be investigated within 90 days. As of January 1, 2024, jurisdictions must take enforcement action and issue a Notice of Violation when a generator or other entity violates regulations. If a respondent fails to respond/timely comply by the deadline in the Notice of Violation, the jurisdiction must take action to issue administrative penalties.

### **CalRecycle Enforcement**

CalRecycle can take enforcement action against non-compliant jurisdictions beginning in 2022. Therefore, the timeline for SB 1383 program implementation is a time intensive staff effort through this first deadline, and several responsibilities continue after this date, to meet the SB 1383 deadlines.

### **Next Steps**

Staff will continue to work expeditiously to meet the SB 1383 deadline which will require staff effort through the first deadline of January 2022. Several responsibilities will continue after the January 2022 date to meet additional SB 1383 deadlines. In the next several months, staff will meet frequently to discuss specific actions to meet SB 1383 that include review of the draft ordinance and policy documents, resources, the Edible Food Recovery Program MOU with the County of San Mateo, review of documents with BB&K staff, meetings with Republic Services regarding collection programs/amending the franchise agreement, assessing SB 1383 financial impacts, establishing an SB 1383 fee, route auditing, education/promotion requirements, reporting documents, and other aspects to meet SB 1383 requirements. Per the SB 1383 timeline, staff will be returning to Council in the coming months to present for City Council consideration and adoption of the ordinance, the updated procurement policy, and the amended franchise agreement.

### **Council Adopted Values**

The study of SB 1383 is consistent with the City Council value of *vision* and *responsibility* because it provides essential information to meet mandated requirements, reduce organic waste to landfill, increase diversion of edible food recovery to food donation organizations, and increases sustainability in Colma.

### **Sustainability Impact**

Implementation of the SB 1383 Plan will improve sustainability by establishing programs to divert 75% organic materials from landfill and reduce methane a potent greenhouse gas.

### **ATTACHMENT**

- A. SB 1383 Implementation Plan and Timeline





## TOWN OF COLMA SB 1383 Action Plan Timeline

DRAFT

[illegible]







**UPDATED  
MINUTES  
REGULAR MEETING**

City Council of the Town of Colma  
Meeting Held Remotely via Zoom.us  
**Wednesday, July 14, 2021  
7:00 PM**

**PLEDGE OF ALLEGIANCE AND ROLL CALL**

Mayor Diana Colvin called the meeting to order at 7:02 p.m.

Council Present – Mayor Diana Colvin, Vice Mayor Helen Fisicaro, Council Members Joanne F. del Rosario and John Irish Goodwin were present. Council Member Raquel Gonzalez was absent.

Staff Present – City Manager Brian Dossey, City Attorney Christopher Diaz, Chief of Police John Munsey, Director of Public Works Brad Donohue, City Engineer Cyrus Kianpour, City Planner Michael Laughlin, Senior Engineer Nichol Bowersox and City Clerk Caitlin Corley were in attendance.

The Mayor announced, “Welcome to another of our completely remote Council Meeting. A few notes about tonight’s meeting: We are accepting public comments through email or the chat function—you can email our City Clerk at ccorley@colma.ca.gov or use the chat function to let her know which item you would like to speak on. Please keep your comments to 3 minutes or less. Thank you.”

**ADOPTION OF THE AGENDA**

Mayor Colvin asked if there were any changes to the agenda; none were requested. She asked for a motion to adopt the agenda.

**Action:** Council Member del Rosario moved to adopt the agenda; the motion was seconded by Council Member Goodwin and carried by the following vote:

Name	Voting		Present, Not Voting		Absent
	Aye	No	Abstain	Not Participating	
Diana Colvin, Mayor	✓				
Helen Fisicaro	✓				
Raquel Gonzalez					✓
Joanne F. del Rosario	✓				
John Irish Goodwin	✓				
	4	0			

**PUBLIC COMMENTS**

Mayor Colvin opened the public comment period at 7:05 p.m. Resident Liz Taylor made a comment regarding two traffic accidents at Hillside and Lawndale Boulevards. The Mayor closed the public comment period at 7:13 p.m.

## CONSENT CALENDAR

1. Motion to Accept the Minutes from the June 23, 2021 Special Meeting.
2. Motion to Accept the Minutes from the June 23, 2021 Regular Meeting.
3. Motion to Approve Report of Checks Paid for June 2021.
4. Motion to Adopt an Ordinance Repealing Colma Municipal Code Subchapter 4.13 and Adopting a New Subchapter 4.13 Regulating the Use of Disposable Food Service Ware by Food Facilities Pursuant to CEQA Guideline 15061(b)(3) and 15308 (second reading).
5. Motion to Accept Informational Report on Recreation Department Programs, Activities, Events, and Trips for the Second Quarter of 2021.
6. Motion to Adopt a Resolution Accepting the Mission Road Bicycle and Pedestrian Improvement Project as Complete, Directing the Director of Public Works to File a Notice of Completion for the Project with the San Mateo County Recorder's Office, and Authorizing a Budget Amendment.

**Action:** Council Member del Rosario moved to approve the consent calendar items #1 through 6; the motion was seconded by Vice Mayor Fisicaro and carried by the following vote:

Name	Voting		Present, Not Voting		Absent
	Aye	No	Abstain	Not Participating	
Diana Colvin, Mayor	✓				
Helen Fisicaro	✓				
Raquel Gonzalez					✓
Joanne F. del Rosario	✓				
John Irish Goodwin	✓			Item #6 Only	
	4	0			

## NEW BUSINESS

### 7. SEWER ENTERPRISE REQUEST FOR PROPOSAL

Director of Public Works Brad Donohue and City Engineer Cyrus Kianpour presented the staff report. Mayor Colvin opened the public comment period at 7:19 p.m. and seeing no one request to speak, she closed the public comment period. Council discussion followed.

**Action:** **Vice Mayor Fisicaro** moved to Authorize Staff to Release a Request for Proposal for Professional Consulting Services to Prepare a Sewer Service Rate Study; the motion was seconded by **Council Member del Rosario** and carried by the following vote:

Name	Voting		Present, Not Voting		Absent
	Aye	No	Abstain	Not Participating	
Diana Colvin, Mayor	✓				
Helen Fisicaro	✓				
Raquel Gonzalez					✓
Joanne F. del Rosario	✓				
John Irish Goodwin	✓				
	4	0			

## 8. ENGINEER REPORT OF SANITARY SEWER CHARGES FOR FY 2021-22

Director of Public Works Brad Donohue presented the staff report. Mayor Colvin opened the public hearing at 7:31 p.m. and seeing no one request to speak, she closed the public comment hearing. Council discussion followed.

**Action:** Vice Mayor Fisicaro moved to Adopt a Resolution Overruling Protests to and Adopting Engineer's Report on Sewer Service Charges for Fiscal Year 2021-22, Directing the City Engineer to File a Copy of the Engineer's Report with the San Mateo County Tax Collector, and Authorizing the County Tax Collector to Place the Charges on the Property Tax Roll and Direct the City Attorney to remove alternate provisions in sections 2a, 3a and 3b; the motion was seconded by Council Member del Rosario and carried by the following vote:

Name	Voting		Present, Not Voting		Absent
	Aye	No	Abstain	Not Participating	
Diana Colvin, Mayor	✓				
Helen Fisicaro	✓				
Raquel Gonzalez					✓
Joanne F. del Rosario	✓				
John Irish Goodwin	✓				
	4	0			

## STUDY SESSION

### 9. F STREET RETAINING WALL REPAIR PROJECT

Director of Public Works Brad Donohue, Senior Engineer/Project Manager Nichol Bowersox and CSG Consultant Tom Walker presented the staff report. Mayor Colvin opened the public hearing at 7:52 p.m. Business owner Yvette Cortes made a comment. The Mayor closed the public comment hearing. Council discussion followed.

*This item was for discussion only; no action was taken at this meeting.*

## COUNCIL CALENDARING

The next Regular Meeting will be on Wednesday, July 28, 2021 at 7:00 p.m. and it will be held remotely.

## REPORTS

City Manager Brian Dossey gave an update on the following topics:

- The Town had a plaque made honoring Madeleine Hur, Daly City Youth Poet Laureate and first ever youth poet laureate in San Mateo County. The plaque features one of Madeleine's poems.
- There will be a Closed Session on Wednesday, July 28, 2021 at 6pm.
- National Night Out will return in person on Tuesday, August 3 from 5:00 – 7:00 p.m. at the Colma Community Center.
- Summer Concerts will return on August 19 and August 26 at the Colma Community Center.
- The Regular Council Meeting on August 11, 2021 will be cancelled.

## ADJOURNMENT AND CLOSE IN MEMORY

Mayor Colvin announced, "Before we close the meeting, I do want to mention that we had two special birthdays this month! Council Member Gonzalez had a birthday on July 8 and Council Member del Rosario had a birthday on July 10. Please join me in wishing both of them a very happy birthday!"

Mayor Colvin adjourned the meeting at 8:33 p.m. in memory of: David Pieruccini, brother of Janet Fisicaro; James Nelson, resident of Veterans Village who had been there since the beginning and who spoke often about how happy he was to be a part of that community; and Rea Gogan, longtime Executive Assistant to the Chief of Police. In addition to keeping things at PD running day to day, Rea also coordinated the long running and highly respected county wide training program, Inner Perspectives for many years. She was a joy to work with, always professional, kind, and humble. Rea was the glue that holds the Colma Police Department together, and she will be greatly missed. The Mayor also read a tribute to Rea submitted by former Colma Chief of Police Bob Lotti.

Respectfully submitted,

Caitlin Corley  
City Clerk



# STAFF REPORT

TO: Mayor and Members of the City Council  
FROM: Brad Donohue, Director of Public Works, CSG  
Nichol Bowersox, Project Manager  
VIA: Brian Dossey, City Manager  
MEETING DATE: July 28, 2021  
SUBJECT: F Street Retaining Wall Improvement Project – Bid Package Approval

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## RECOMMENDATION

Staff recommends that the City Council adopt the following resolution:

RESOLUTION APPROVING BID DOCUMENT PACKAGE AND AUTHORIZING STAFF TO ADVERTISE NOTICE INVITING BIDS FOR THE F STREET RETAINING WALL IMPROVEMENT PROJECT AND AUTHORIZE THE CITY MANAGER TO APPROVE CHANGES TO THE PLAN DOCUMENTS AS NEEDED OR REQUIRED

## EXECUTIVE SUMMARY

Staff has prepared project plans and bid specifications ("Bid Package") for the F Street Retaining Wall Improvement Project ("Project"). Prior to publishing and advertising the Project Bid Package, staff is requesting the City Council review, comment and approve the Project Bid Package plans and specifications. If approved, staff will proceed with advertising the notice inviting bids in accordance with the Uniform Public Construction Cost Accounting Act for the Project.

## FISCAL IMPACT

There is no fiscal impact to approve the Bid Package. Currently there is an Engineers Estimate of \$252,760 for the base bid scope of work. At the time of contract award, staff will request from City Council a CIP budget amendment incorporating all project costs (construction costs including contingencies).

## BACKGROUND

The F Street retaining wall is 18 feet high at its highest point from street level. The wall is considered to be what is called a bin-type concrete retaining wall. Bin-type walls are typically a system of adjoining closed faced sections that is then filled with earth to help gravitationally retain the slope.

Concerns have been raised by the community on the structural stability of the existing retaining wall mainly due to the visible cracks and spalling on the face of the lower wall structure. Staff was asked to evaluate the stability and condition of the retaining wall and to report findings back to the City Council.

In 2019, the Town requested the Town's Engineering staff to review the existing wall and provide a report with condition assessments and recommendations. Based on the findings of the inspection and condition assessment, staff identified several repair measures to address the wall deficiencies. Repairs consisted of chipping away all unsound concrete, preparing concrete and steel surfaces and placing an epoxy concrete patch material. Cracks will be pressure injected with epoxy to seal the crack and prevent water intrusion and corrosion of the reinforcement. Drain rock and weep holes will be added to the existing lower wall to reduce loading due to water pressure build up behind the wall.

## **ANALYSIS**

A City Council Study Session was held on July 14, 2021 to discuss the current condition of the retaining wall and to receive feedback and comments from the City Council and members of the public. It was noted in the meeting that the wall was experiencing some deterioration of the concrete structure but was still considered to be stable and safe. If left unattended, deterioration would likely worsen to the point where rehabilitation of the existing wall would no longer be an option and would require complete replacement. Because the current condition of the retaining wall is repairable, plans, specifications and an engineer's estimate have been completed for long term repairs to the deteriorated parts of the retaining wall.

The various wall repairs consist of:

- Removing the concrete spalling (areas of the wall where the concrete surfacing is chipping away), removing any unsound concrete around the exposed rebar, cleaning and preparing and patching with high pressure concrete; and
- Exposing and cleaning cracks (Any crack over 1/16 inch) and injecting epoxy seal; and
- Excavating behind wall, installing a drainage system that consists of wall and pipe drainage, weep holes to relieve hydrostatic water buildup, permeable backfill, and installing wall and drainpipe.

Other items that came from the City Council Study Session that are included in the plans and specifications are:

- Community outreach when construction will start and potential impacts; and
- Additive alternate bid items for different finishes for the wall, such as a smooth wall surface that can support a platform for community art, or a stucco finish; and
- Add alternatives for different finishes in the area between the upper and lower wall, such as landscape features or hardscape features; and

- An annual maintenance program to help preserve the wall, this action item may be established after the wall rehabilitation is complete.

Upon review and feedback from the City Council, staff will make all revisions directed by the City Council and proceed with advertising the Project bid package. Staff and the project management team will continue to update the City Council and the City Manager regarding the bidding process.

The proposed project schedule is as follows:

July 28, 2021:	Approve PS&E Package and authorize to release bid package
Early August 2021:	Advertise Project.
August 17, 2021:	Pre-Bid Meeting
August 25, 2021	Award Construction Contract
Late Sept/Early Oct.:	Start Construction
Late Dec./Early Jan.	End of Construction

## ALTERNATIVES

The City Council could choose to postpone the project to a later date. However, this option is not recommended, as additional deterioration could take place reducing the ability to repair the wall, leaving full wall replacement as the only option.

## Council Adopted Values

Adoption of the resolution is consistent with the City Council's value of being *responsible*. Repair of the wall will keep homeowners and businesses in the area of the F Street Retaining Wall safe from wall failure in the future. The City Council also will exhibit fiscal responsibility by expensing a fraction of cost to rehabilitate in lieu of replacement of the wall. City Council has taken a visionary approach and expressed an interest in providing an opportunity to the community to use portions of the retaining wall surface as a canvas for a community art program.

## CONCLUSION

Staff seeks Council's adoption of the resolution approving the Bid Package and authorizing advertisement of the noticing inviting bids for the Project and authorizing the City Manager to approve minor changes and or additions as needed or required.

## ATTACHMENTS

- A. Resolution
- B. Bid Documents - Plans
- C. Bid Documents - Specifications





**RESOLUTION NO. 2021-\_\_**  
**OF THE CITY COUNCIL OF THE TOWN OF COLMA**

**RESOLUTION APPROVING BID DOCUMENT PACKAGE AND AUTHORIZING STAFF TO  
ADVERTISE NOTICE INVITING BIDS FOR THE F STREET RETAINING WALL  
IMPROVEMENT PROJECT AND AUTHORIZE THE CITY MANAGER TO APPROVE  
CHANGES TO THE PLAN DOCUMENTS AS NEEDED OR REQUIRED**

The City Council of the Town of Colma does resolve as follows:

**1. Background**

- (a) The City Council of the Town of Colma has reviewed plans and specifications for the F Street Retaining Wall Project (the "project"); and
- (b) Staff has recommended approval of said plans and specifications; and
- (c) The proposed project is a public works project requiring competitive bidding.

**2. Findings**

- (a) The City Council finds that the design set forth in the plans and specifications is reasonable.
- (b) Currently there is an Engineers Estimate of \$252,760 for the base bid scope of work. At the time of contract award, staff will request from City Council a CIP budget amendment incorporating all project costs (construction costs including contingencies).

**3. Approval and Authorization**

- (a) The plans and specifications for the F Street Retaining Wall Project, a copy of which is on file at Town Hall, are hereby approved.
- (b) Staff is hereby authorized to advertise the notice inviting bids for the project.
- (c) The City Manager is hereby authorized to make minor changes to the project documents as needed or legally required.

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### Certification of Adoption

I certify that the foregoing Resolution 2021-\_\_ was duly adopted at a regular meeting of said City Council held on July 28, 2021 by the following vote:

Name	Voting		Present, Not Voting		Absent
	Aye	No	Abstain	Not Participating	
Diana Colvin, Mayor					
Helen Fisicaro					
Raquel "Rae" Gonzalez					
Joanne F. del Rosario					
John Irish Goodwin					
<i>Voting Tally</i>					

Dated \_\_\_\_\_

\_\_\_\_\_  
Diana Colvin, Mayor

Attest: \_\_\_\_\_  
Caitlin Corley, City Clerk





TOWN OF COLMA  
PUBLIC WORKS & ENGINEERING DEPARTMENT

PLANS FOR  
F STREET RETAINING WALL REPAIR PROJECT

SHEET INDEX

1. TITLE SHEET
2. RETAINING WALL PLAN & PROFILE
3. WALL REPAIR DETAILS No. 1
4. WALL REPAIR DETAILS No. 2

GENERAL NOTES

PROJECT DESCRIPTION:

THE WORK SHALL CONSIST IN GENERAL OF PROVIDING ALL MATERIALS, LABOR, AND EQUIPMENT NECESSARY TO COMPLETE RETAINING WALL REPAIRS TO THE F STREET RETAINING WALL LOCATED IN THE TOWN OF COLMA, CALIFORNIA. WORK SHALL INCLUDE, BUT NOT BE LIMITED TO, TRAFFIC CONTROL, REPAIRING SPALLED CONCRETE, CORING CONCRETE WEEP HOLES AND INSTALLING A RETAINING WALL DRAINAGE SYSTEM.

NOTES:

1. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE 2018 CALTRANS STANDARD SPECIFICATIONS AND PLANS, AND TOWN OF COLMA STANDARDS.

2. CONTRACTOR SHALL BE RESPONSIBLE FOR THE VERIFICATION OF LOCATIONS OF EXISTING UTILITIES, BEFORE BEGINNING CONSTRUCTION. LOCATIONS SHOWN ON THE PLANS ARE APPROXIMATE AND FOR GENERAL INFORMATION ONLY. UTILITY COMPANIES AND USA SHALL BE NOTIFIED 48 HOURS PRIOR TO EXCAVATION WITHIN PROJECT AREA. (CALL 811 BEFORE YOU DIG).

3. CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTION OF EXISTING UTILITIES, DRAINAGE SYSTEMS, AND ALL EXISTING FACILITIES EXCEPT AS SHOWN ON THESE PLANS.

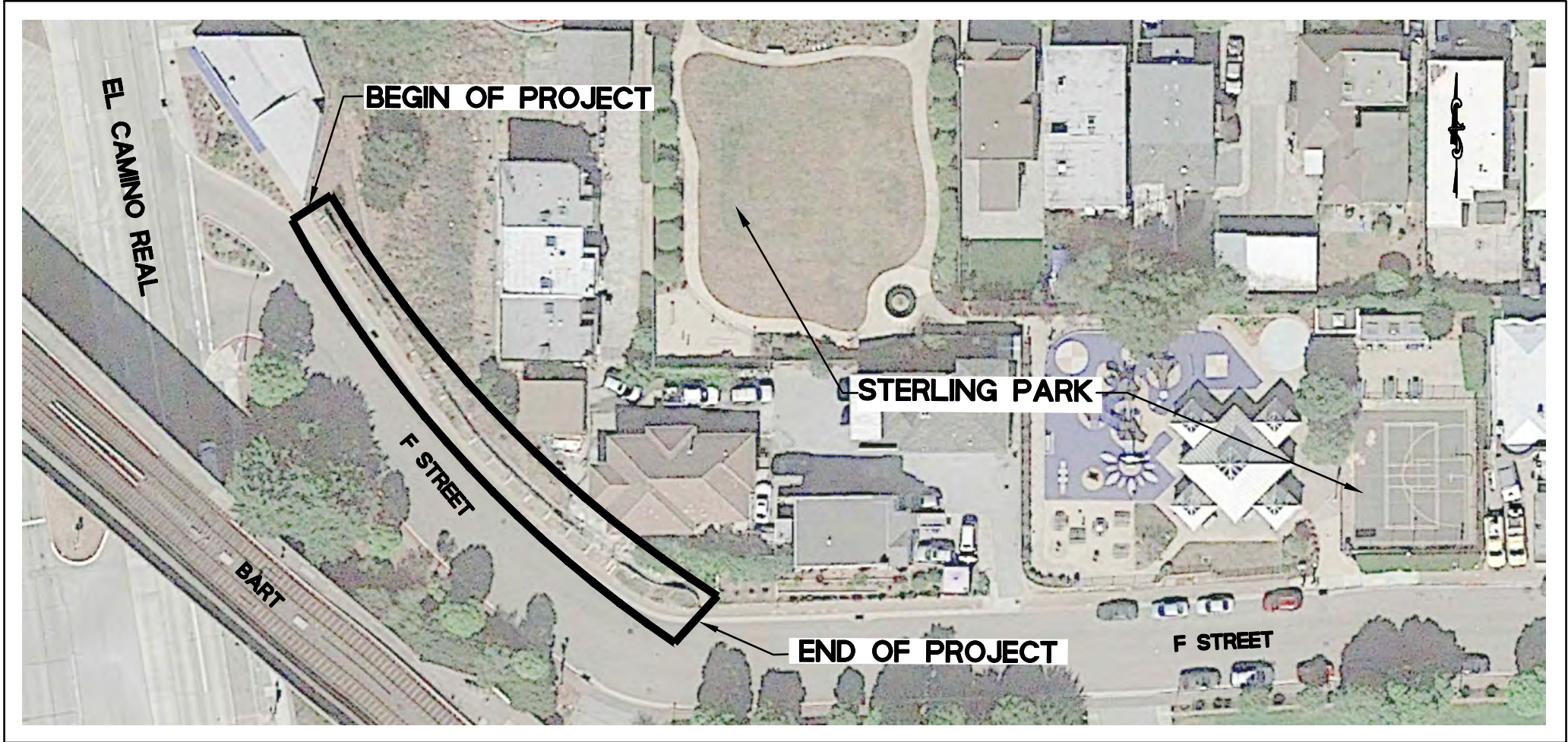
4. EXISTING CONDITIONS AS SHOWN ON THESE PLANS ARE FOR REFERENCE ONLY. CONTRACTOR IS REQUIRED TO FIELD VERIFY ALL EXISTING FIELD CONDITIONS BEFORE ORDERING OR FABRICATING ANY MATERIAL AND PRIOR TO CONSTRUCTION. CONTRACTOR SHALL REPORT ALL CONDITIONS THAT CONFLICT WITH THE CONTRACT DOCUMENTS TO THE TOWN REPRESENTATIVE. NO DEVIATIONS FROM THE CONTRACT DOCUMENTS ARE ALLOWED WITHOUT WRITTEN DIRECTION FROM THE TOWN. DO NOT SCALE DRAWINGS.

5 THE CONTRACTOR IS TO NOTE THAT WORK ON THIS PROJECT INVOLVES WORKING WITH AN EXISTING STRUCTURE. EVERY EFFORT HAS BEEN MADE TO IDENTIFY DISCREPANCIES AND ENSURE THAT THE DETAILS ARE DEPICTED CORRECTLY. THESE DRAWINGS HAVE BEEN PREPARED BASED ON INFORMATION AVAILABLE. THE CONTRACTOR CAN EXPECT AND SHOULD PLAN ON ENCOUNTERING VARIANCES AND DEVIATIONS BETWEEN THE INFORMATION IN THESE PLANS AND THE EXISTING SITE CONDITIONS. ACTUAL FIELD CONDITIONS MAY REQUIRE MODIFICATIONS IN CONSTRUCTION DETAILS AND QUANTITIES.

6. THE CONTRACTOR SHALL NOTIFY THE ENGINEER IF ADDITIONAL ELEMENTS REQUIRE REPAIR. NO ADDITIONAL REPAIR WORK SHALL BE PERFORMED BEFORE PRIOR APPROVAL OF THE ENGINEER.

7. PROJECT SITE VISITATION PRIOR TO BID IS REQUIRED.

TO BE SUPPLEMENTED BY TOWN OF COLMA SPECIAL PROVISIONS AND STANDARDS AND  
STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION, STANDARD PLANS AND STANDARD SPECIFICATIONS DATED 2018



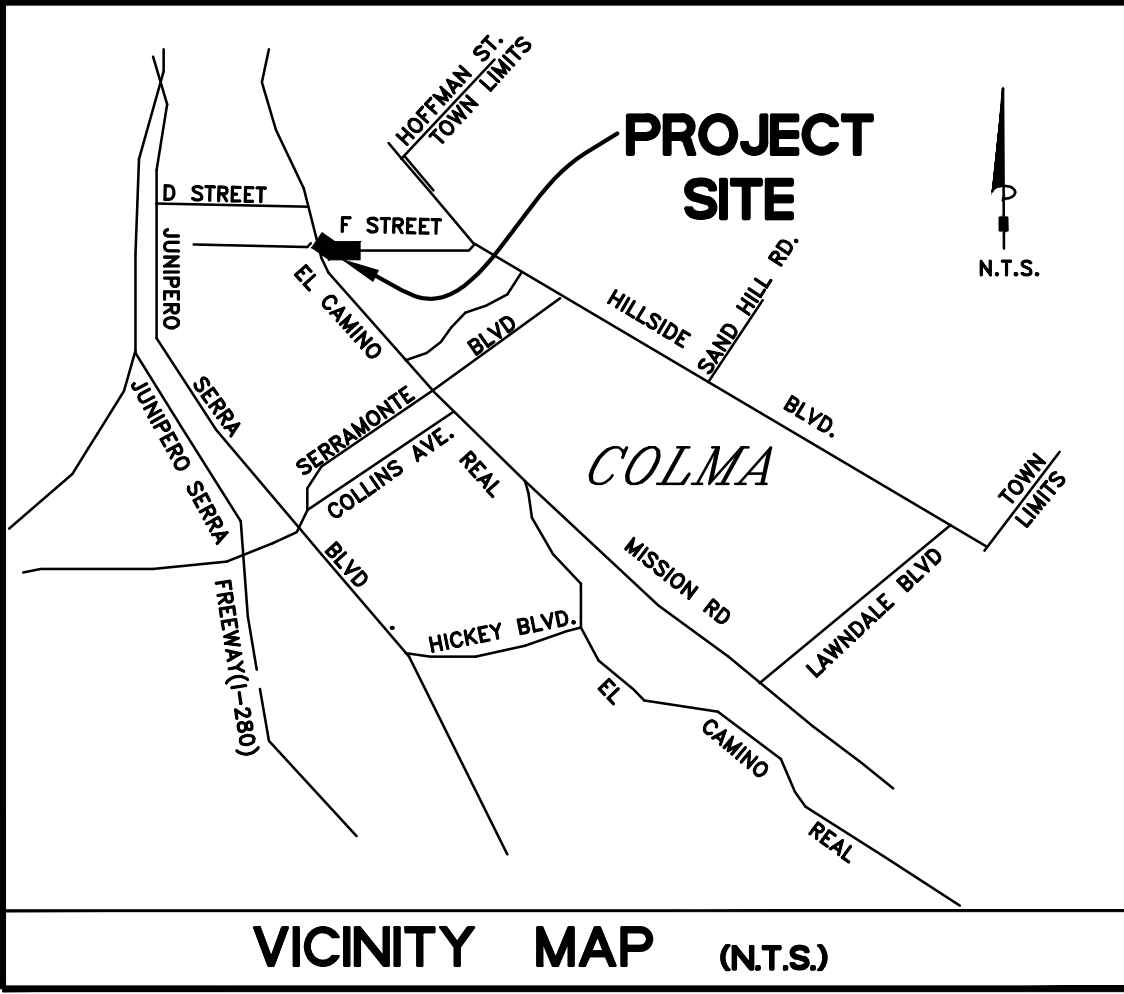
LOCATION MAP  
No scale

ABBREVIATIONS

Approx	APPROXIMATELY	(N)	NEW
Arch	ARCHITECTURAL		
		OC	ON CENTER
CBC	CALIFORNIA BUILDING CODE	Reinf	STEEL REINFORCEMENT
CLR	CLEAR	Req'd	REQUIRED
Conc	CONCRETE		
Const	CONSTRUCTION	Trans	TRANSVERSE
		Typ	TYPICAL
Exist	EXISTING		
		UNO	UNLESS NOTED OTHERWISE
MAX	MAXIMUM		
MFR	MANUFACTURER		
MIN	MINIMUM	Vert	VERTICAL

APPLICABLE 2018 CALTRANS STANDARD PLANS

A3A	ABBREVIATIONS (SHEET 1 OF 3)
A3B	ABBREVIATIONS (SHEET 2 OF 3)
A3C	ABBREVIATIONS (SHEET 3 OF 3)
B0-3	BRIDGE DETAILS



VICINITY MAP (N.T.S.)

TOWN OF COLMA

DATE:XX/XX/21

BRAD DONOHOE,  
DIRECTOR OF PUBLIC WORKS

PREPARED UNDER MY SUPERVISION

DATE: 8/xx/21

TOM WALKER

PE LIC. C56247, EXPIRES 12/31/22

100% SUBMITTAL 7/27/21  
NOT FOR CONSTRUCTION



DATE	REVISIONS	NO.	SCALE: AS SHOWN	DRAWN: B.F.	DESIGNED: T.W.	APPROVED: -
-	-	-	-	-	-	-
-	-	-	-	-	-	-
-	-	-	-	-	-	-

PREPARED BY:  
**CSG CONSULTANTS, INC.**  
550 PILGRIM DRIVE  
FOSTER CITY, CA 94404  
PHONE: (650) 522-2500  
FAX: (650) 522-2599

**CSG CONSULTANTS**  
EMPLOYEE-OWNED

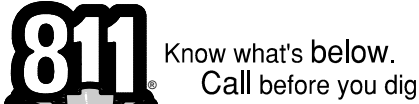
PREPARED FOR:  
**TOWN OF COLMA**  
PUBLIC WORKS & ENGINEERING DEPARTMENT  
1198 EL CAMINO REAL, COLMA, CA 94014  
PHONE: (650) 757-8888  
FAX: (650) 757-8880

TITLE: **TITLE SHEET & GENERAL NOTES**

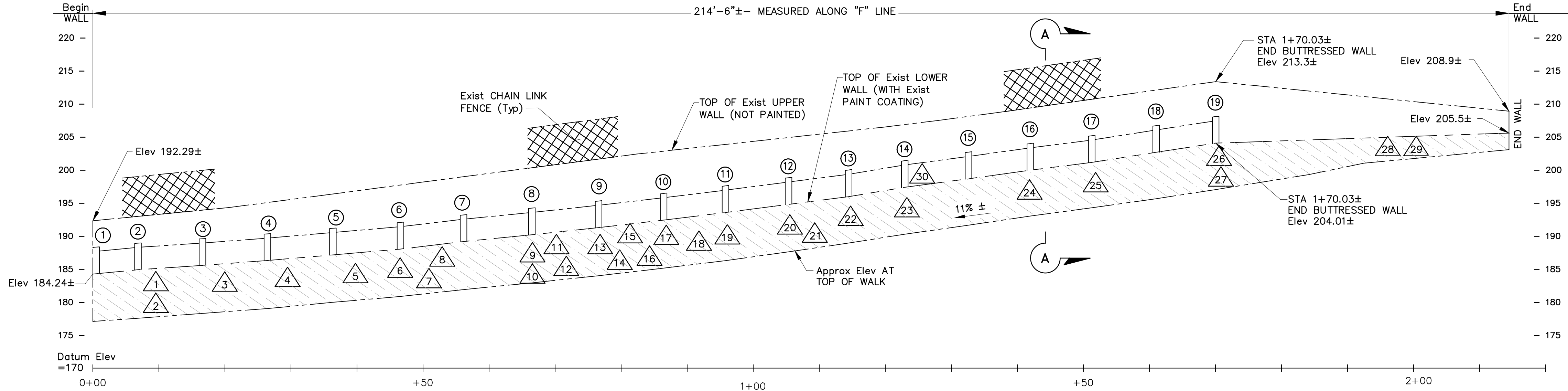
**F STREET RETAINING WALL REPAIR PROJECT**

**SHEET 1 OF 4**

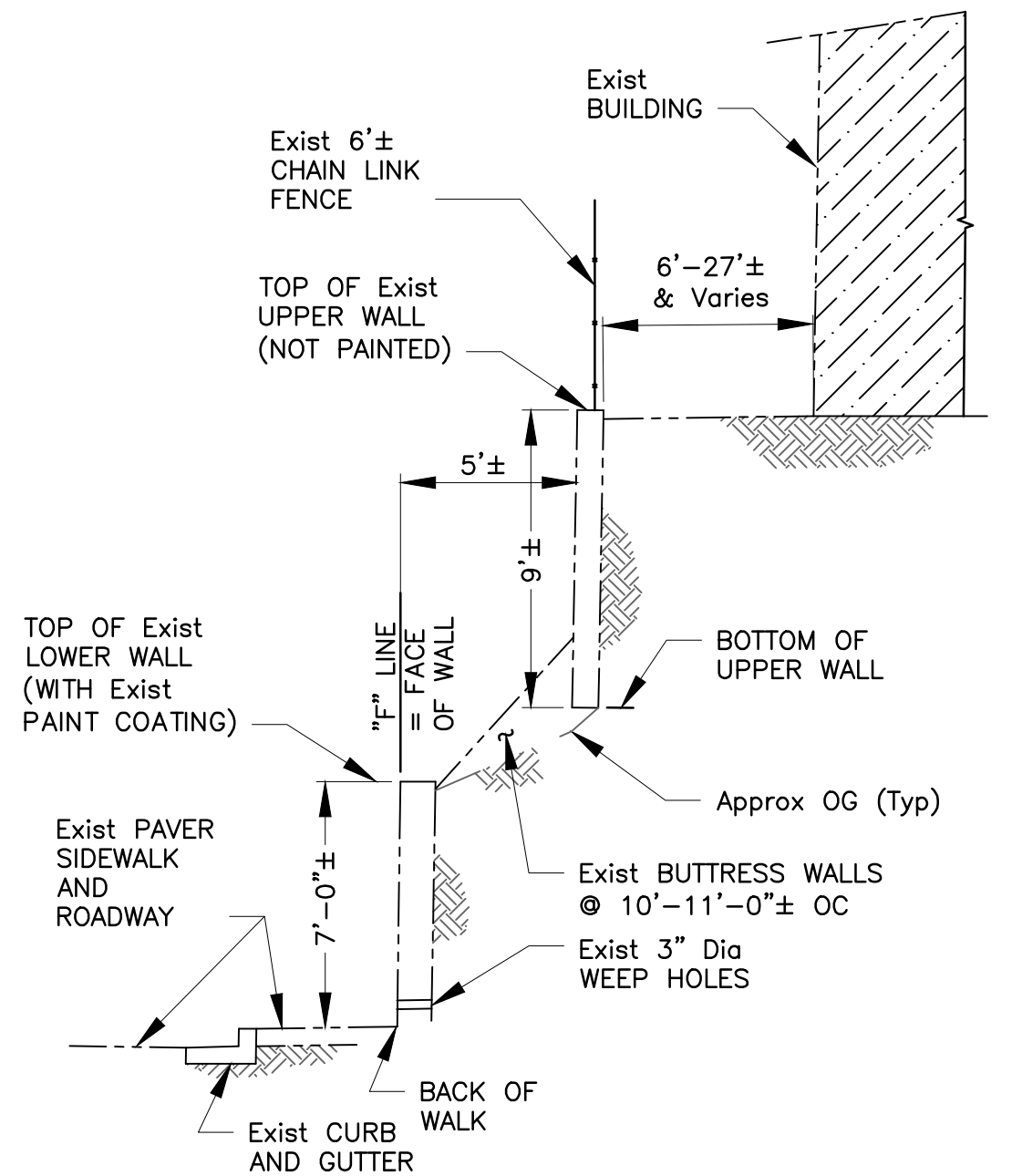
DATE : 7/26/21  
JOB#: 21.356-1







ELEVATION - EXISTING RETAINING WALL  
SCALE: 1"=10'



SECTION (A-A)  
TYPICAL AT EXISTING RETAINING WALL  
SCALE: 1"=5'



PLAN - EXISTING RETAINING WALL  
SCALE: 1"=10'

LEGEND

- INDICATES BALLUSTER NUMBER
- INDICATES REPAIR LOCATION No.
- Exist STREET LIGHT
- Exist STORM DRAIN MANHOLE
- Exist DRAINAGE INLET
- Exist CITY MONUMENT
- LIMITS OF PAINTED FACE OF LOWER WALL

F STREET WALL REPAIR SCHEDULE			
LOCATION	REPAIR TYPE	AREA OF SPALL (SQFT) or CRACK LENGTH (Ft)	DETAIL
1	WALL SPALL	4.0	1
2	WALL SPALL	3.0	1
3	WALL CRACK	7.0	2
4	WALL CRACK	7.0	2
5	WALL CRACK	7.0	2
6	WALL SPALL	8.0	1
7	WALL CRACK	7.0	2
8	WALL CRACK	7.0	2
9	WALL SPALL	6.0	1
10	WALL CRACK	7.0	2
11	WALL CRACK	7.0	2
12	WALL CRACK	7.0	2
13	WALL SPALL	4.0	1
14	WALL CRACK	7.0	2
15	WALL CRACK	7.0	2
16	WALL CRACK	7.0	2
17	WALL SPALL	12.0	1
18	WALL CRACK	7.0	2
19	WALL SPALL	4.0	1
20	WALL SPALL	4.5	1
21	WALL CRACK	7.0	2
22	WALL SPALL	8.0	1
23	WALL SPALL	10.5	1
24	WALL SPALL	4.5	1
25	WALL CRACK	4.0	2
26	WALL SPALL	9.0	1
27	WALL SPALL	12.0	1
28	WALL SPALL	1.5	1
29	WALL SPALL	1.0	1
30	BUTTRESS SPALL	5.0	3

DATE

REVISIONS

NO.

SCALE: AS SHOWN

DRAWN: B.F.

DESIGNED: T.W.

APPROVED: -

REGISTERED PROFESSIONAL ENGINEER

THOMAS L. WALKER

No. 00927

Exp. 12/31/2020

STATE OF CALIF.

PREPARED BY:

CSG CONSULTANTS, INC.

550 PILGRIM DRIVE

FOSTER CITY, CA 94404

PHONE: (650) 522-2500

FAX: (650) 522-2599

PREPARED FOR:

TOWN OF COLMA

PUBLIC WORKS & ENGINEERING DEPARTMENT

1198 EL CAMINO REAL, COLMA, CA 94014

PHONE: (650) 757-8888

FAX: (650) 757-8880

TITLE:

RETAINING WALL PLAN & PROFILE

F STREET RETAINING WALL

REPAIR PROJECT

SHEET

2 OF 4

DATE : 7/26/21

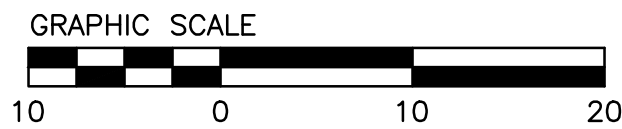
JOB# : 21.356-1



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Plotted on: 07/27/21 @ 02:44:50 PM



Know what's below.  
Call before you dig.



## CONCRETE CRACK AND SPALL REPAIR NOTES

1. SPALL REPAIRS ARE TO BE PERFORMED AT ATLERNATING REPAIR LOCATIONS. ADJACENT SPALL LOCATIONS ARE NOT TO BE REPAIRED AT THE SAME TIME.

2. REMOVE ALL UNSOUND CONCRETE. IF DURING THE REMOVAL OPERATION, REINFORCING STEEL IS EXPOSED, THEN REMOVE CONCRETE AROUND THE BAR TO PROVIDE A MINIMUM 3/4 INCH CLEAR SPACE BETWEEN THE REBAR AND SURROUNDING CONCRETE OR A CLEAR SPACE OF 1/4 INCH LARGER THAN THE MAXIMUM SIZE AGGREGATE IN THE REPAIR MATERIAL, WHICHEVER IS GREATER.

2. AFTER REMOVING LARGE LOOSE AREAS OF UNSOUND CONCRETE, A 15 LBS. MAX CHIPPING HAMMER SHOULD BE USED TO REMOVE THE CONCRETE IN THE VICINITY OF THE REINFORCEMENT. DO NOT IMPACT THE REINFORCEMENT OR OTHERWISE CAUSE DAMAGE TO ITS BOND TO CONCRETE AT THE REPAIR SURFACE BOUNDARY.

3. THE CONCRETE SURFACE SHOULD BE AT OPTIMUM MOISTURE CONDITIONING PER MANUFACTURER'S RECOMMENDATIONS.

4. THE SURFACE SHALL BE FREE OF DUST, LAITANCE OR ANY OTHER FOREIGN MATERIALS; THE SURFACE TEMPERATURE SHOULD BE WITHIN SUITABLE LIMITS TO PERMIT PROPER WETTING BY THE REPAIR MATERIALS.

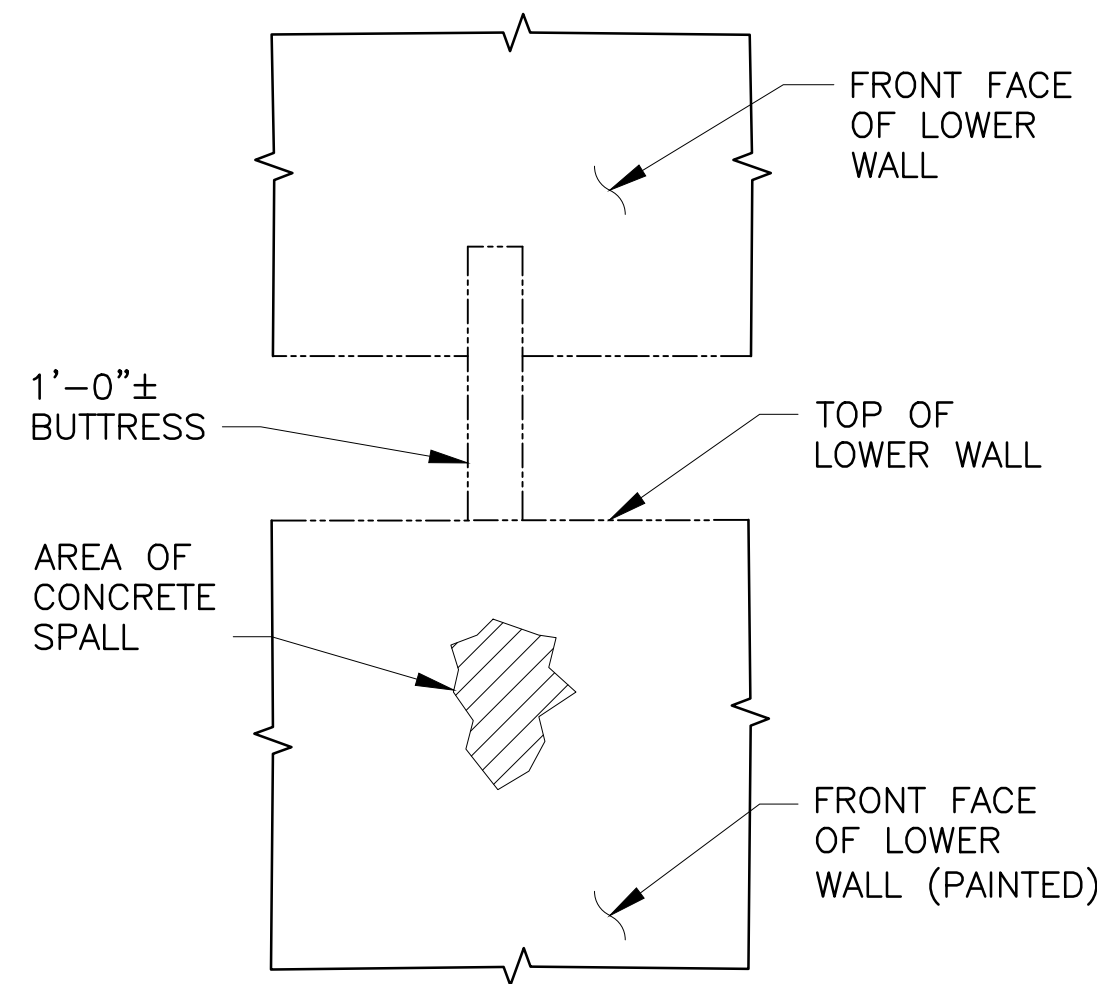
5. PLACE REPAIR CONCRETE AS SOON AS POSSIBLE AFTER CONCRETE REMOVAL AND CLEANING IS COMPLETED OR PROTECT THE CLEANED AND PREPARED CONCRETE AND REINFORCEMENT SURFACES FROM CONTAMINATION.

6. IF THE CROSS-SECTION AREA OF THE EXPOSED REBAR HAS BEEN REDUCED BY CORROSION BY MORE THAN 20 PERCENT, THE ENGINEER SHALL MAKE THE DECISION ON THE ACTIONS TO BE TAKEN. ONE OF THREE OPTIONS MAY BE TAKEN:

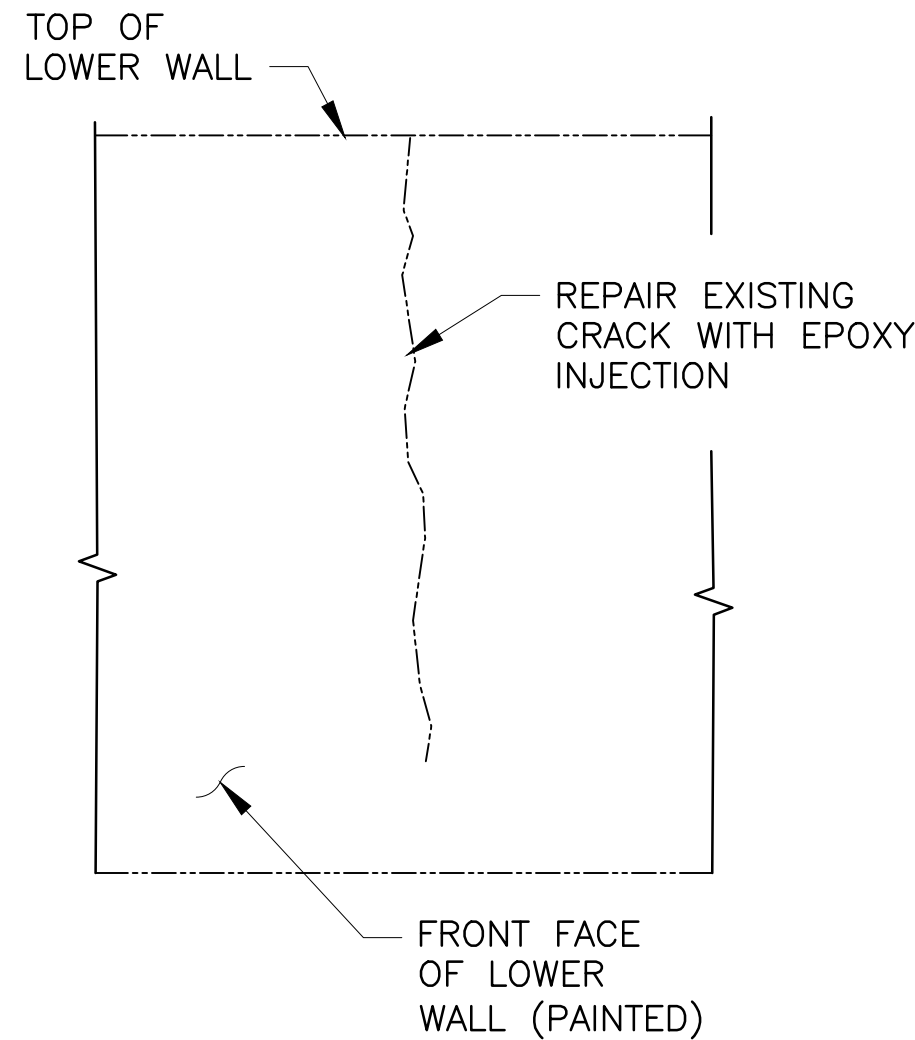
1. DO NOTHING
2. ADD SUPPLEMENTAL REINFORCEMENT
3. REPLACE

7. REPAIR CONCRETE WALL CRACKS WITH SIMPSON CRACK-PAC® INJECTION EPOXY AND PORTS OR APPROVED EQUAL. REPAIR CRACK LOCATIONS ARE AS SHOWN ON THE PLANS AND AT THE DIRECTION OF THE ENGINEER.

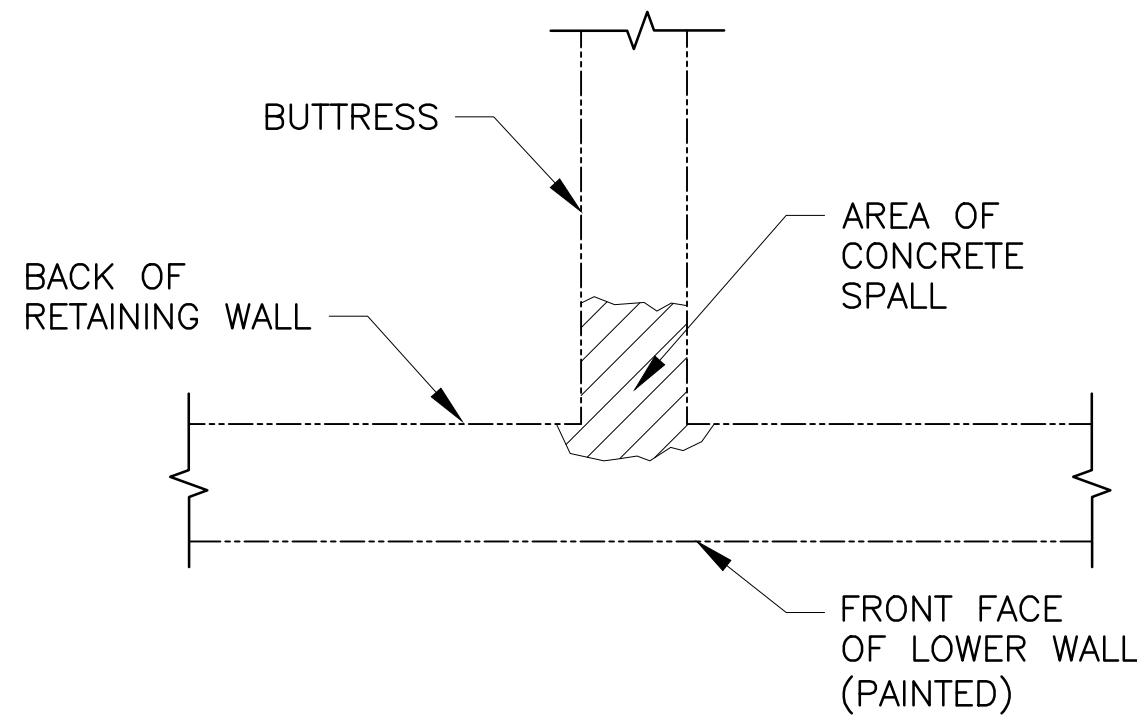
### 1 WALL SPALL REPAIR No scale



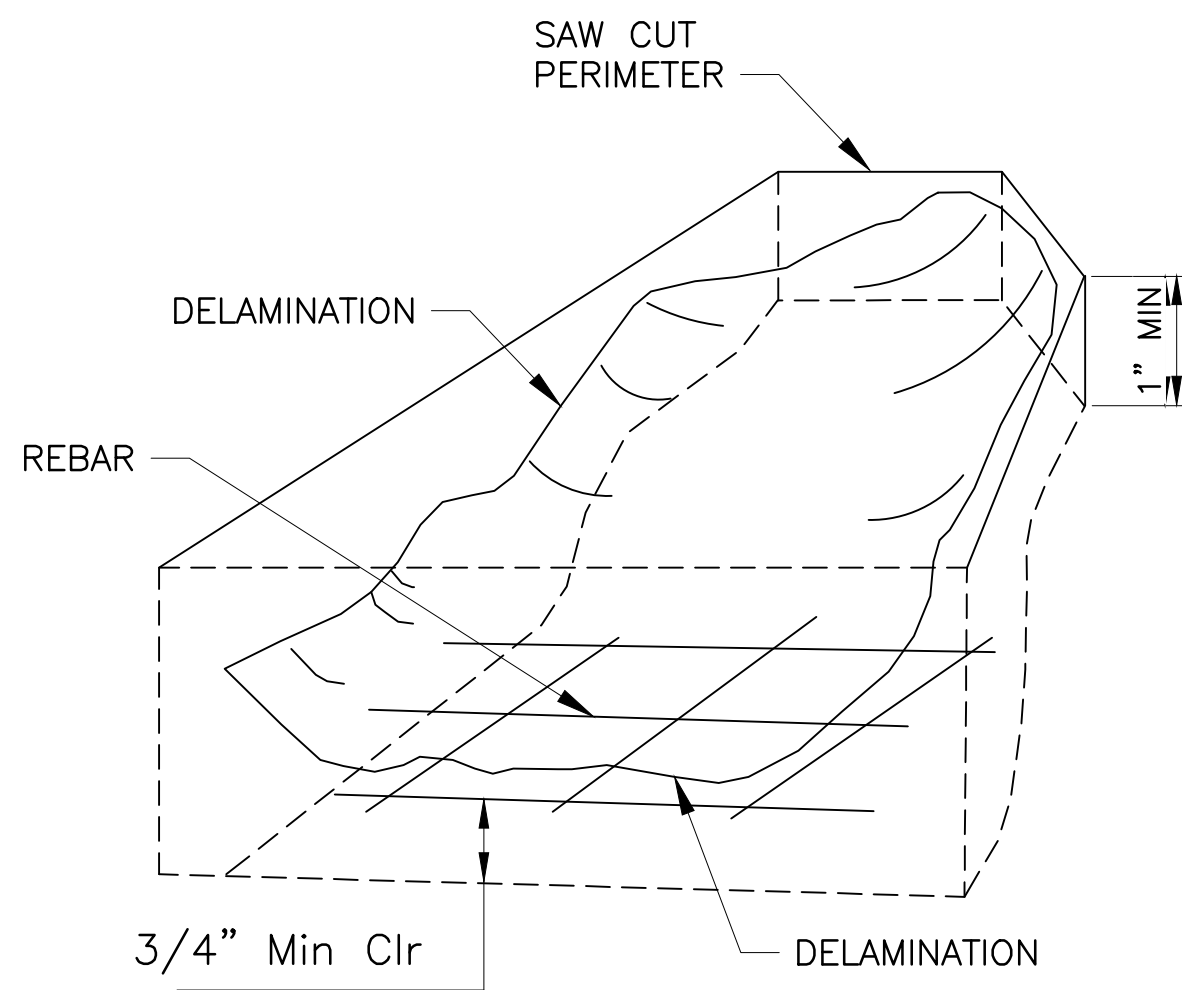
### 2 WALL CRACK REPAIR No scale



### 3 PLAN - BUTTRESS/WALL SPALL REPAIR No scale

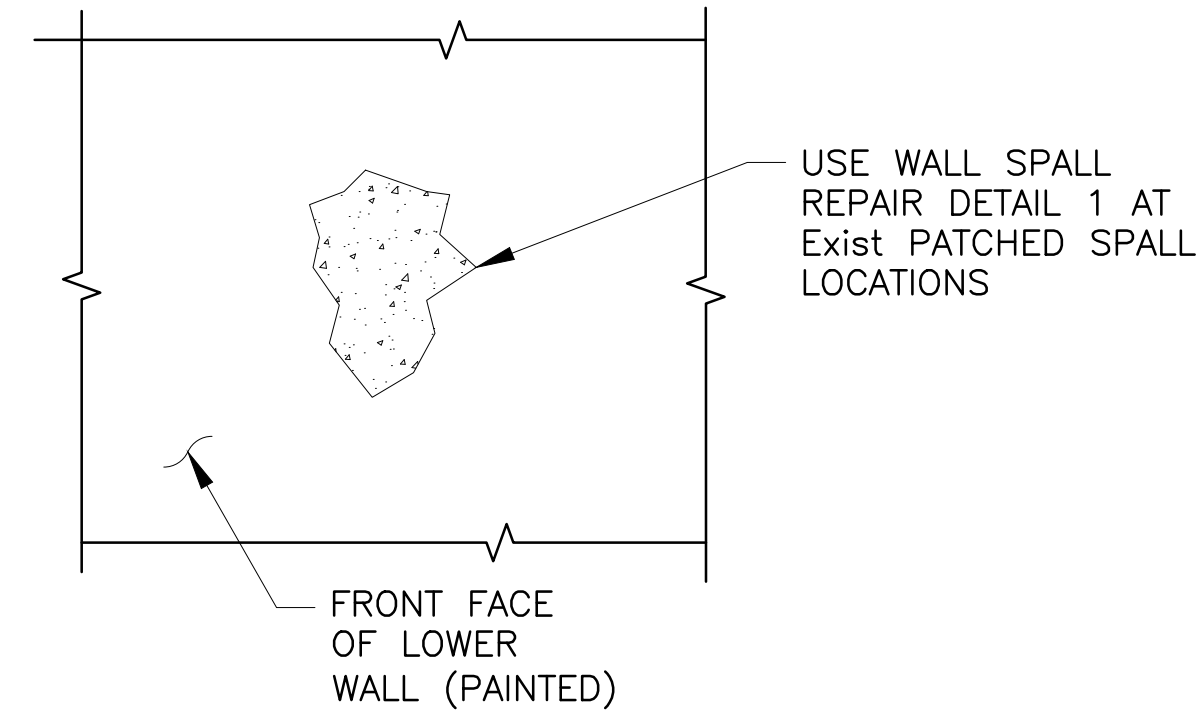


### 6 SCHEMATIC OF CONCRETE SPALL REPAIR PREPARATION No scale

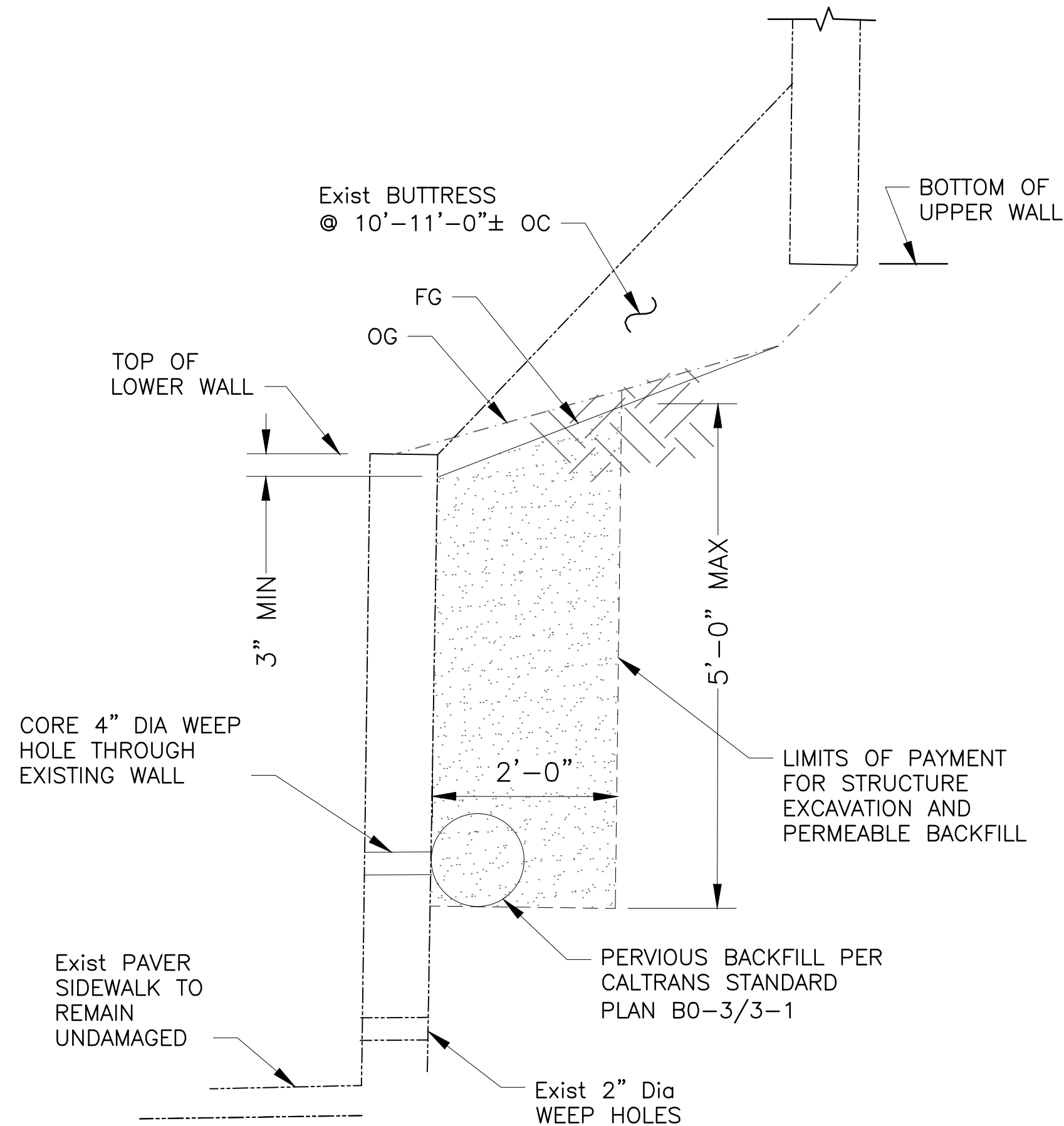


1. ALL REINFORCING BARS SHALL CONFORM TO ASTM A-615, GRADE 60.
2. CONCRETE SHOULD BE REMOVED ALONG THE EXISTING REINFORCEMENT LENGTH UNTIL THE BAR IS FREE OF CORROSION PRODUCTS.
3. ALL LOOSE CORROSION (RUST) MUST BE REMOVED FROM THE EXISTING REINFORCING BY SCRUBBING, GRINDING ETC. WITH AN APPROPRIATE TOOL (WIRE BRUSH, SAND BLASTER, ETC.), DEPENDING ON THE EXTENT AND LEVEL OF CORROSION.
4. APPLY REBAR COATING & BONDING AGENT, ANTI-CORROSIVE EPOXY PRIMER OR FERROSEAL CEMENT-BASED ANTI-CORROSIVE COATING APPLIED TO THE REBARS.
5. REINFORCING STEEL SHALL HAVE MINIMUM 1" CONCRETE COVER OR MATCH EXISTING COVER, WHICHEVER IS GREATER.
6. NO WELDING OF REINFORCEMENT IS ALLOWED.

### 4 CONCRETE PATCH REPAIR No scale



### 5 DETAIL - WEEP HOLE AND PERVIOUS BACKFILL 3/4"=1'-0"



#### NOTES:

1. DRAINAGE INSTALLATION IS TO BE PERFORMED AT ATLERNATING BAYS. ADJACENT BAYS ARE NOT TO BE EXCAVATED AT THE SAME TIME.
2. THE CONTRACTOR IS SOLELY RESPONSIBLE FOR EXCAVATION PROCEDURES INCLUDING TEMPORARY SHORING, BRACING AND PROTECTION OF EXISTING STRUCTURES.

#### LEGEND

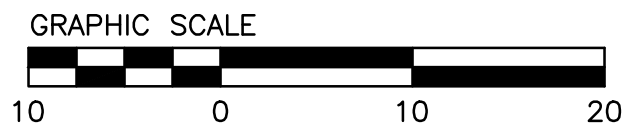
- EXISTING CONCRETE
- PROPOSED CONSTRUCTION
- ▨▨▨▨ AREA OF CONCRETE REPAIR

DATE : 7/26/21		SHEET 3 OF 4		TITLE: WALL REPAIR DETAILS No. 1		PREPARED FOR: TOWN OF COLMA PUBLIC WORKS & ENGINEERING DEPARTMENT 1198 EL CAMINO REAL, COLMA, CA 94014 PHONE: (650) 757-8888 FAX: (650) 757-8880		 EMPLOYEE-OWNED		PREPARED BY: CSG CONSULTANTS, INC. 550 PILGRIM DRIVE FOSTER CITY, CA 94404 PHONE: (650) 522-2500 FAX: (650) 522-2599				SCALE: AS SHOWN		NO.		REVISIONS		DATE	
												DRAWN: B.F.		—						—	
												DESIGNED: T.W.		—						—	
												APPROVED: —		—						—	

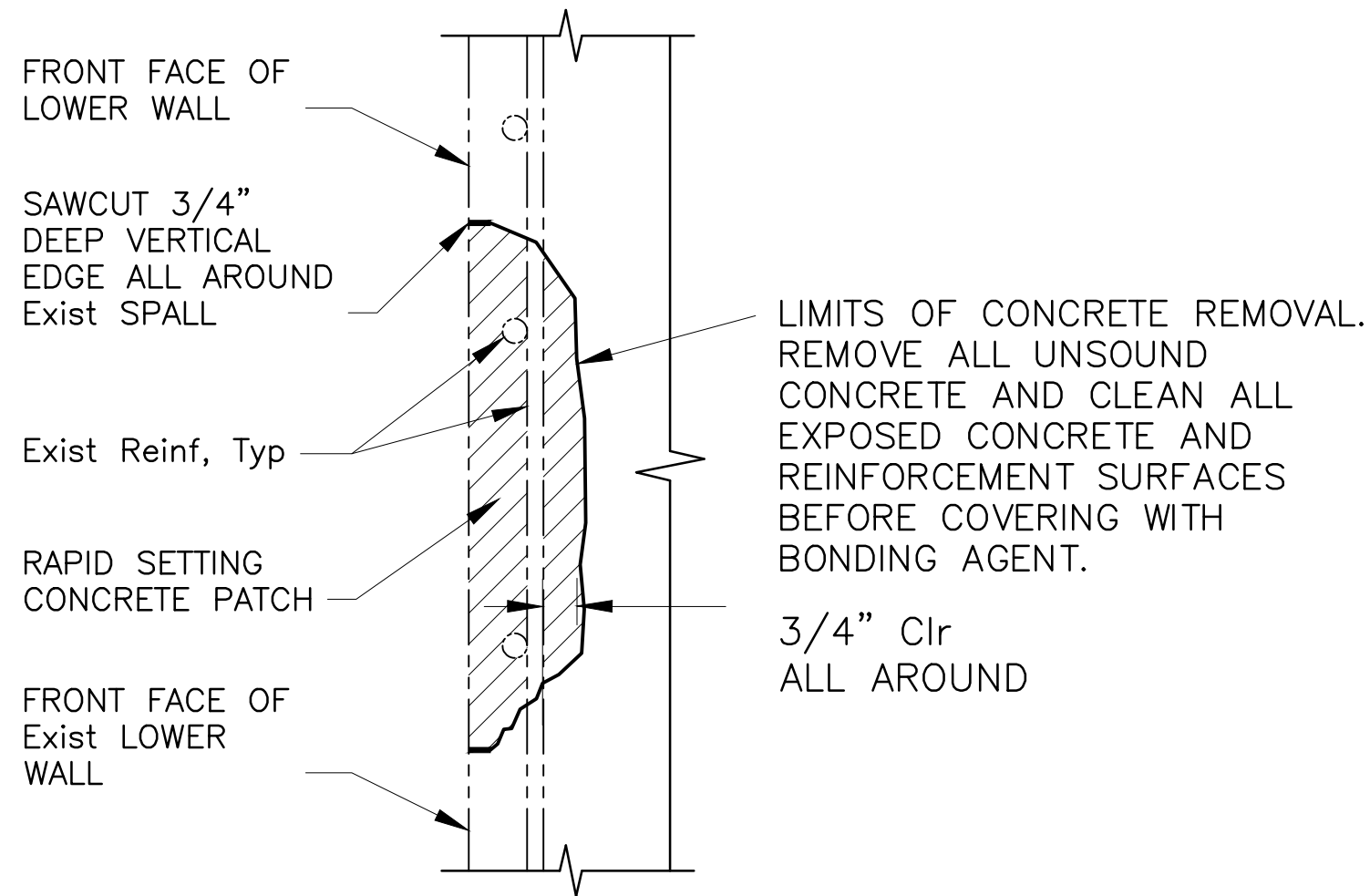
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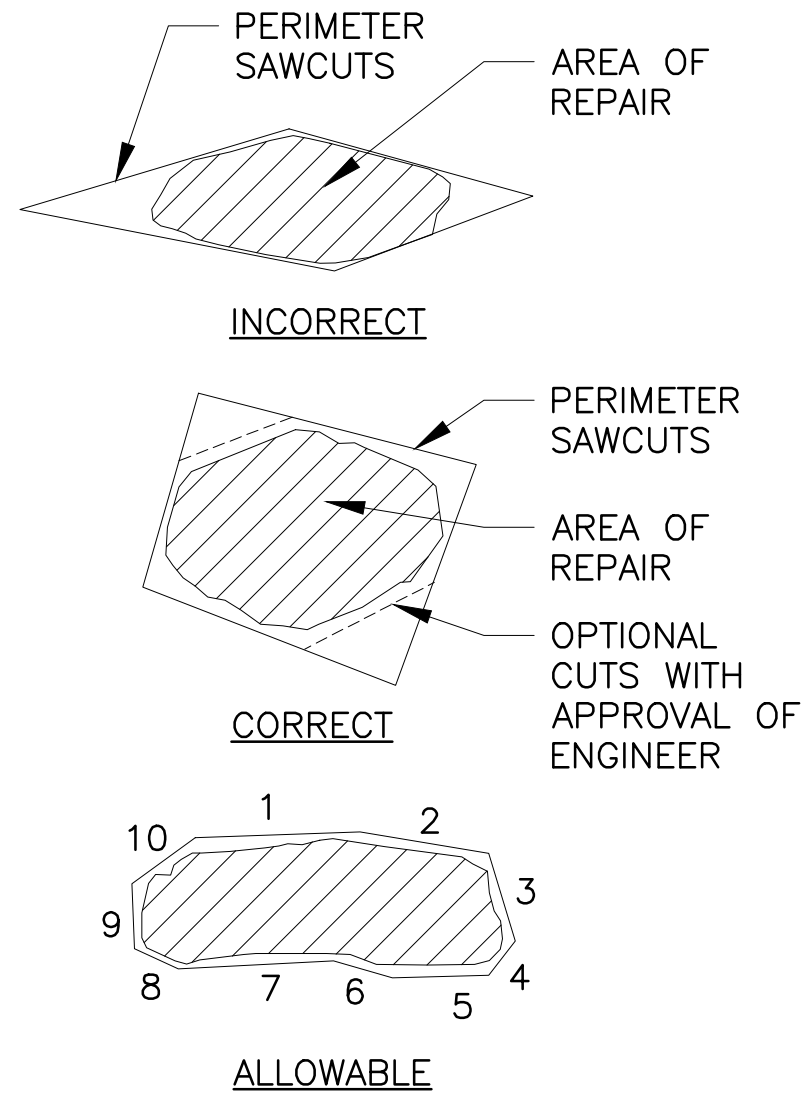
Know what's below.  
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1 **DETAIL OF CONCRETE PATCH AT WALL**  
No scale

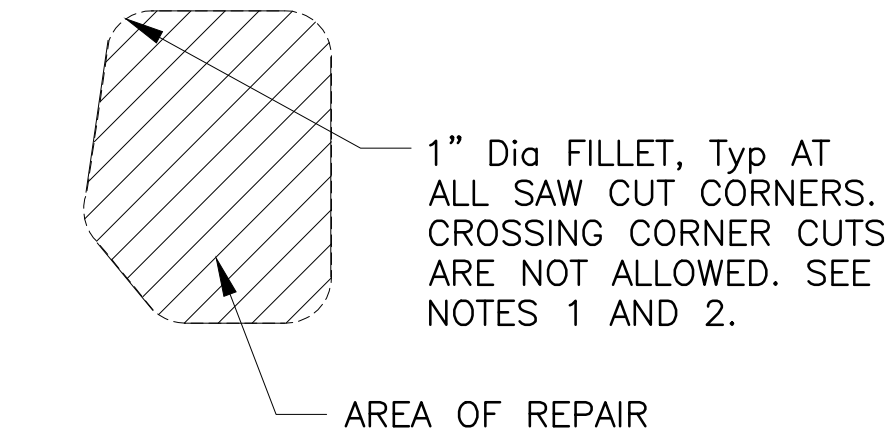


2 **REPAIR AREA PERIMETER SAWCUT SHAPES**  
No scale



NOTE: COORDINATE ALL SAWCUTS AT EACH REPAIR LOCATION. DO NOT SAWCUT BEFORE APPROVAL OF THE ENGINEER.

3 **SAWCUT CORNER SHAPES**  
No scale



NOTES:  
1. CORNER SAW CUTS MUST NOT CROSS. SAW CUT PERIMETERS SHOULD HAVE 1" ROUNDED CORNERS AS SHOWN. SAWCUTS CAN BE STOPPED SHORT OF THE INTERSECTION AND ROUNDED USING A CHIPPING HAMMER OR TAKING 1/2" DEEP CORES AT THE CORNERS.  
2. COORDINATE ALL SAWCUTS AT EACH REPAIR LOCATION. DO NOT SAWCUT BEFORE APPROVAL OF THE ENGINEER.

**LEGEND**

- EXISTING CONCRETE
- PROPOSED CONSTRUCTION
- /// AREA OF CONCRETE REPAIR

TITLE: WALL REPAIR DETAILS No. 2		SHEET 4 OF 4		DATE: 7/26/21	JOB# : 21.356-1	
PREPARED FOR: TOWN OF COLMA PUBLIC WORKS & ENGINEERING DEPARTMENT 1198 EL CAMINO REAL, COLMA, CA 94014 PHONE: (650) 757-8888 FAX: (650) 757-8890		PREPARED BY:  CSG CONSULTANTS, INC. 550 PILGRIM DRIVE FOSTER CITY, CA 94404 PHONE: (650) 522-2500 FAX: (650) 522-2599 EMPLOYEE-OWNED				SCALE: AS SHOWN
				DRAWN: B.F.	NO.	REVISIONS
				DESIGNED: T.W.		
				APPROVED: --		
						DATE

**TOWN OF COLMA**  
**COLMA, CALIFORNIA**

**CONTRACT DOCUMENTS AND SPECIFICATIONS FOR**  
**F STREET RETAINING WALL REPAIR PROJECT**

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## 00 11 16 – NOTICE INVITING BIDS

NOTICE IS HEREBY GIVEN that the Town of Colma ("Town") invites and will receive sealed Bids up to but not later than **2:00 p.m. on Thursday, August 19, 2021** at the office of the Public Works Department, located at 1198 El Camino Real, Colma, CA 94014, for the furnishing to Town of all labor, equipment, materials, tools, services, transportation, permits, utilities, and all other items necessary for F Street Retaining Wall Repair Project (the "Project"). At said time, Bids will be publicly opened and read aloud at the Colma Town Hall Lobby. Bids received after said time shall be returned unopened. Bids shall be valid for a period of 90 calendar days after the Bid opening date.

The various wall repairs consist of:

- Removing the concrete spalling (areas of the wall where the concrete surfacing is chipping away), removing any unsound concrete around the exposed rebar, cleaning and preparing and patching with high pressure concrete; and
- Exposing and cleaning cracks (Any crack over 1/16 inch) and injecting epoxy seal; and
- Excavating behind wall, installing a drainage system that consists of wall and pipe drainage, weep holes to relieve hydrostatic water buildup, permeable backfill, and installing wall and drainpipe.

Bids must be submitted on the Town's Bid Forms. Bidders may obtain a copy of the Contract Documents from <https://www.colma.ca.gov/rfp-and-bids/>. To the extent required by section 20103.7 of the Public Contract Code, upon request from a contractor plan room service, the Town shall provide an electronic copy of the Contract Documents at no charge to the contractor plan room.

It is the responsibility of each prospective bidder to download and print all Bid Documents for review and to verify the completeness of Bid Documents before submitting a bid. Any Addenda will be posted on <https://www.colma.ca.gov/rfp-and-bids/>. It is the responsibility of each prospective bidder to check <https://www.colma.ca.gov/rfp-and-bids/> on a daily basis through the close of bids for any applicable addenda or updates. The Town does not assume any liability or responsibility based on any defective or incomplete copying, excerpting, scanning, faxing, downloading or printing of the Bid Documents. Information on <https://www.colma.ca.gov/rfp-and-bids/> may change without notice to prospective bidders. The Contract Documents shall supersede any information posted or transmitted by <https://www.colma.ca.gov/rfp-and-bids/>.

Each Bid shall be accompanied by cash, a certified or cashier's check, or Bid Bond secured from a surety company satisfactory to the Town, the amount of which shall not be less than ten percent (10%) of the submitted Total Bid Price, made payable to Town of Colma as bid security. The bid security shall be provided as a guarantee that within ten (10) working days after the Town provides the successful bidder the Notice of Award, the successful Bidder will enter into a contract and provide the necessary bonds and certificates of insurance. The bid security will be declared forfeited if the successful Bidder fails to comply within said time. No interest will be paid on funds deposited with Town.

A MANDATORY Pre-Bid Conference is scheduled for August 17, 2021 at 10:00 a.m. to review the Project's existing conditions at the intersection of F Street and El Camino Real. Representatives of the Town and consulting engineers, if any, will be present. Questions asked

by Bidders at the Pre-Bid Conference not specifically addressed within the Contract Documents shall be answered in writing, and shall be sent to all Bidders present at the Pre-Bid Conference. Bids will not be accepted from any bidder who did not attend the mandatory Pre-Bid Conference.

The successful Bidder will be required to furnish a Faithful Performance Bond and a Labor and Material Payment Bond each in an amount equal to one hundred percent (100%) of the Contract Price. Each bond shall be in the forms set forth herein, shall be secured from a surety company that meets all State of California bonding requirements, as defined in California Code of Civil Procedure Section 995.120, and that is a California admitted surety insurer.

Pursuant to Section 22300 of the Public Contract Code of the State of California, the successful Bidder may substitute certain securities for funds withheld by Town to ensure its performance under the contract.

Pursuant to Labor Code Section 1773, Town has obtained the prevailing rate of per diem wages and the prevailing wage rate for holiday and overtime work applicable in San Mateo County from the Director of the Department of Industrial Relations for each craft, classification, or type of worker needed to execute this contract. A copy of these prevailing wage rates may be obtained via the internet at: [www.dir.ca.gov/dlsr/](http://www.dir.ca.gov/dlsr/)

In addition, a copy of the prevailing rate of per diem wages is available at the Town's Public Works Department and shall be made available to interested parties upon request. The successful bidder shall post a copy of the prevailing wage rates at each job site. It shall be mandatory upon the Bidder to whom the Contract is awarded, and upon any subcontractors, to comply with all Labor Code provisions, which include but are not limited to the payment of not less than the said specified prevailing wage rates to all workers employed by them in the execution of the Contract, employment of apprentices, hours of labor and debarment of contractors and subcontractors.

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. No Bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work. If awarded a contract, the Bidder and its subcontractors, of any tier, shall maintain active registration with the Department of Industrial Relations for the duration of the Project. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. In bidding on this Project, it shall be the Bidder's sole responsibility to evaluate and include the cost of complying with all labor compliance requirements under this contract and applicable law in its Bid.

Unless otherwise provided in the Instructions for Bidders, each Bidder shall be a licensed contractor pursuant to sections 7000 et seq. of the Business and Professions Code in the following classification(s) throughout the time it submits its Bid and for the duration of the contract: Class A License.

Substitution requests shall be made within 35 calendar days after the award of the contract. Pursuant to Public Contract Code Section 3400(b), the Town may make findings designating that certain additional materials, methods or services by specific brand or trade name other than those listed in the Standard Specifications be used for the Project. Such findings, if any, as well as the materials, methods or services and their specific brand or trade names that must be used for the Project may be found in the Special Conditions.

Town shall award the contract for the Project to the lowest responsive, responsible Bidder as determined by the Town from the BASE BID. Town reserves the right to reject any or all bids or to waive any irregularities or informalities in any bids or in the bidding process.

For further information, contact Nichol Bowersox, Senior Engineer/Project Manager, at [nicholb@csgengr.com](mailto:nicholb@csgengr.com).

**END OF NOTICE INVITING BIDS**

## **00 21 13 – INSTRUCTIONS TO BIDDERS**

### **ARTICLE 1. SECURING DOCUMENTS**

Bids must be submitted to the Town on the Bid Forms which are a part of the Bid Package for the Project. Bid and Contract Documents may be obtained from <https://www.colma.ca.gov/rfp-and-bids/> in the Notice Inviting Bids. Prospective bidders are encouraged to telephone in advance to determine the availability of Contract Documents. Any charge for the Contract Documents is stated in the Notice Inviting Bids.

The Town may also make the Contract Documents available for review at one or more plan rooms, as indicated in the Notice Inviting Bids. Please Note: Prospective Bidders who choose to review the Contract Documents at a plan room must contact the Town to obtain the required Contract Documents if they decide to submit a bid for the Project.

Any Addenda will be posted on <https://www.colma.ca.gov/rfp-and-bids/>. Failure to acknowledge addenda may make a bid nonresponsive and not eligible for award of the contract.

### **ARTICLE 2. EXAMINATION OF SITE AND CONTRACT DOCUMENTS**

At its own expense and prior to submitting its Bid, each Bidder shall visit the site of the proposed work and fully acquaint itself with the conditions relating to the construction and labor required so that the Bidder may fully understand the work, including but not limited to difficulties and restrictions attending the execution of the work under the contract. Each Bidder shall carefully examine the Drawings, and shall read the Specifications, Contract, and all other documents referenced herein. Each Bidder shall also determine the local conditions which may in any way affect the performance of the work, including local tax structure, contractors' licensing requirements, availability of required insurance, the prevailing wages and other relevant cost factors, shall familiarize itself with all federal, state and local laws, ordinances, rules, regulations and codes affecting the performance of the work, including the cost of permits and licenses required for the work, and shall make such surveys and investigations, including investigations of subsurface or latent physical conditions at the site or where work is to be performed as may be required. Bidders are responsible for consulting the standards referenced in the Contract. The failure or omission of any Bidder to receive or examine any contract documents, forms, instruments, addenda, or other documents, or to visit the site and acquaint itself with conditions there existing shall in no way relieve any Bidder from any obligation with respect to its Bid or to the contract and no relief for error or omission will be given except as required under State law. The submission of a Bid shall be taken as conclusive evidence of compliance with this Article.

### **ARTICLE 3. INTERPRETATION OF DRAWINGS AND DOCUMENTS**

Prospective Bidders unclear as to the true meaning of any part of the Drawings, Specifications or other proposed contract documents may submit to the Engineer of the Town a written request for interpretation. The prospective Bidder submitting the request is responsible for prompt delivery. Interpretation of the Drawings, Specifications or other proposed contract documents will be made only by a written addendum duly issued and a copy of such addenda will be mailed or delivered to each prospective Bidder who has purchased a set of Drawings and Specifications. The Town will not be responsible for any other explanation or interpretations of the proposed documents. If a Prospective Bidders becomes aware of any errors or omissions in any part of the Contract Documents, it is the obligation of the Prospective Bidder to promptly bring it to the attention of the Town.

#### **ARTICLE 4. PRE-BID CONFERENCE**

A mandatory Pre-Bid Conference is scheduled for August 17, 2021 at 10:00 a.m. to review the Project's existing conditions at the intersection of F Street and El Camino Real. Representatives of the Town and consulting engineers, if any, will be present. Questions asked by Bidders at the Pre-Bid Conference not specifically addressed within the Contract Documents shall be answered in writing, and shall be sent to all Bidders present at the Pre-Bid Conference. Bids will not be accepted from any bidder who did not attend the mandatory Pre-Bid Conference.

#### **ARTICLE 5. ADDENDA**

The Town reserves the right to revise the Contract Documents prior to the Bid opening date. Revisions, if any, shall be made by written Addenda. All Addenda issued by the Town shall be included in the Bid and made part of the Contract Documents. Pursuant to Public Contract Code Section 4104.5, if the Town issues an Addendum which includes material changes to the Project less than 72 hours prior to the deadline for submission of Bids, the Town will extend the deadline for submission of Bids. The Town may determine, in its sole discretion, whether an Addendum warrants postponement of the Bid submission date. Each prospective Bidder shall provide Town a name, address, email address, and facsimile number to which Addenda may be sent, as well as a telephone number by which the Town can contact the Bidder. Copies of Addenda will be furnished by email, facsimile, first class mail, express mail or other proper means of delivery without charge to all parties who have obtained a copy of the Contract Documents and provided such current information. Please Note: Bidders are responsible for ensuring that they have received any and all Addenda. To this end, each Bidder should contact the Public Works Department to verify that it has received all Addenda issued, if any, prior to the Bid opening. The Bidder shall indicate the Addenda received prior to bidding in the space provided in the Bid Form. Failure to indicate all Addenda may be sufficient cause for rejecting the Bid.

#### **ARTICLE 6. ALTERNATE BIDS**

If alternate bid items are called for in the Contract Documents, the time required for completion of the alternate bid items has already been factored into the Contract duration and no additional Contract time will be awarded for any of the alternate bid items. The Town may elect to include one or more of the alternate bid items, or to otherwise remove certain work from the Project scope of work. Accordingly, each bidder must ensure that each bid item contains a proportionate share of profit, overhead, and other costs or expenses which will be incurred by the bidder.

#### **ARTICLE 7. COMPLETION OF BID FORMS**

Bids shall only be prepared using copies of the Bid Forms which are included in the Contract Documents. The use of substitute Bid Forms other than clear and correct photocopies of those provided by the Town will not be permitted. Bids shall be executed by an authorized signatory as described in these Instructions to Bidders. In addition, Bidders shall fill in all blank spaces (including inserting "N/A" where applicable), and initial all interlineations, alterations, or erasures to the Bid Forms. Bidders shall neither delete, modify, nor supplement the printed matter on the Bid Forms nor make substitutions thereon. **USE OF BLACK OR BLUE INK, INDELIBLE PENCIL, OR A TYPEWRITER IS REQUIRED.** Deviations in the Bid Forms may result in the Bid being deemed non-responsive.



## **ARTICLE 8. MODIFICATIONS OF BIDS**

Each Bidder shall submit its Bid in strict conformity with the requirements of the Contract Documents. Unauthorized additions, modifications, revisions, conditions, limitations, exclusions or provisions attached to a Bid may render it non-responsive and may cause its rejection. Bidders shall not delete, modify, or supplement the printed matter on the Bid Forms, or make substitutions thereon. Oral, telephonic and electronic modifications will not be considered.

## **ARTICLE 9. SUBCONTRACTORS**

Bidder shall set forth the name, address of the place of business, and contractor license number of each subcontractor who will perform work, labor, furnish materials or render services to the bidder on said contract and each subcontractor licensed by the State of California who, under subcontract to bidder, specially fabricates and installs a portion of the Work described in the Drawings and Specifications in an amount in excess of one half of one percent (0.5%) of the total bid price, and shall indicate the portion of the work to be done by such subcontractor in accordance with Public Contract Code Section 4104.

## **ARTICLE 10. LICENSING REQUIREMENTS**

Pursuant to Business and Professions Code Section 7028.15 and Public Contract Code Section 3300, all bidders must possess proper licenses for performance of this Contract. Subcontractors must possess the appropriate licenses for each specialty subcontracted. Pursuant to Business and Professions Code Section 7028.5, the Town shall consider any bid submitted by a contractor not currently licensed in accordance with state law and pursuant to the requirements found in the Contract Documents to be nonresponsive, and the Town shall reject the Bid. The Town shall have the right to request, and Bidders shall provide within ten (10) calendar days, evidence satisfactory to the Town of all valid license(s) currently held by that Bidder and each of the Bidder's subcontractors, before awarding the Contract.

Notwithstanding anything contained herein, if the Work involves federal funds, the Contractor shall be properly licensed by the time the Contract is awarded, pursuant to the provisions of Public Contract Code section 20103.5.

## **ARTICLE 11. BID GUARANTEE (BOND)**

Each bid shall be accompanied by: (a) cash; (b) a certified or cashier's check made payable to Town of Colma; or (c) a Bid Bond secured from a surety company satisfactory to the Town, the amount of which shall not be less than ten percent (10%) of the Total Bid Price, made payable to Town of Colma as bid security. Personal sureties and unregistered surety companies are unacceptable. The surety insurer shall be California admitted surety insurer, as defined in Code of Civil Procedure Section 995.120. The bid security shall be provided as a guarantee that within ten (10) working days after the Town provides the successful bidder the Notice of Award, the successful bidder will enter into a contract and provide the necessary bonds and certificates of insurance. The bid security will be declared forfeited if the successful bidder fails to comply within said time, and Town may enter into a contract with the next lowest responsive responsible bidder, or may call for new bids. No interest shall be paid on funds deposited with the Town. Town will return the security accompanying the bids of all unsuccessful bidders no later than 60 calendar days after award of the contract.

## **ARTICLE 12. IRAN CONTRACTING ACT OF 2010**

In accordance with Public Contract Code Section 2200 *et seq.*, the Town requires that any person that submits a bid or proposal or otherwise proposes to enter into or renew a contract with the Town with respect to goods or services of one million dollars (\$1,000,000) or more, certify at the time the bid is submitted or the contract is renewed, that the person is not identified on a list created pursuant to subdivision (b) of Public Contract Code Section 2203 as a person engaging in investment activities in Iran described in subdivision (a) of Public Contract Code Section 2202.5, or as a person described in subdivision (b) of Public Contract Code Section 2202.5, as applicable.

The form of such Iran Contracting Certificate is included with the bid package and must be signed and dated under penalty of perjury.

## **ARTICLE 13. NONCOLLUSION DECLARATION**

Bidders on all public works contracts are required to submit a declaration of noncollusion with their bid. This form is included with the bid package and must be signed and dated under penalty of perjury.

## **ARTICLE 14. PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATION**

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work. If awarded a contract, the bidder and its subcontractors, of any tier, shall maintain active registration with the Department of Industrial Relations for the duration of the Project. To this end, Bidder shall sign and submit with its Bid the Public Works Contractor Registration Certification on the form provided, attesting to the facts contained therein. Failure to submit this form may render the bid non-responsive. In addition, each Bidder shall provide the registration number for each listed subcontractor in the space provided in the Designation of Subcontractors form.

## **ARTICLE 15. BIDDER INFORMATION AND EXPERIENCE FORM**

Each Bidder shall complete the questionnaire provided herein and shall submit the questionnaire along with its Bid. Failure to provide all information requested within the questionnaire along with the Bid may cause the bid to be rejected as non-responsive. The Town reserves the right to reject any Bid if an investigation of the information submitted does not satisfy the Engineer that the Bidder is qualified to properly carry out the terms of the contract.

## **ARTICLE 16. WORKERS' COMPENSATION CERTIFICATION**

In accordance with the provisions of Labor Code Section 3700, Contractor shall secure the payment of compensation to its employees. Contractor shall sign and file with the Town the following certificate prior to performing the work under this Contract:

I am aware of the provisions of Section 3700 of the Labor Code, which require every employer to be insured against liability for workers' compensation or to

undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

The form of such Workers' Compensation Certificate is included as part of this document.

#### **ARTICLE 17. SIGNING OF BIDS**

All Bids submitted shall be executed by the Bidder or its authorized representative. Bidders may be asked to provide evidence in the form of an authenticated resolution of its Board of Directors or a Power of Attorney evidencing the capacity of the person signing the Bid to bind the Bidder to each Bid and to any Contract arising therefrom.

If a Bidder is a joint venture or partnership, it may be asked to submit an authenticated Power of Attorney executed by each joint venturer or partner appointing and designating one of the joint venturers or partners as a management sponsor to execute the Bid on behalf of Bidder. Only that joint venturer or partner shall execute the Bid. The Power of Attorney shall also: (1) authorize that particular joint venturer or partner to act for and bind Bidder in all matters relating to the Bid; and (2) provide that each venturer or partner shall be jointly and severally liable for any and all of the duties and obligations of Bidder assumed under the Bid and under any Contract arising therefrom. The Bid shall be executed by the designated joint venturer or partner on behalf of the joint venture or partnership in its legal name.

#### **ARTICLE 18. SUBMISSION OF SEALED BIDS**

Once the Bid and supporting documents have been completed and signed as set forth herein, they shall be placed, along with the Bid Guarantee and other required materials, in a sealed envelope, addressed and delivered or mailed, postage prepaid, to the Engineering Department of the Town before the time and day set for the receipt of bids. The envelope shall bear the title of the work and the name of the bidder. No oral or telephonic bids will be considered. No forms transmitted via the internet, e-mail, facsimile, or any other electronic means will be considered unless specifically authorized by the Town as provided herein. Bids received after the time and day set for the receipt of bids shall be returned to the bidder unopened. The envelope shall also contain the following in the lower left-hand corner thereof:

**Bid of \_\_\_\_\_ (Bidder's Name)**  
**for the F Street Retaining Wall Repair Project**

Only where expressly permitted in the Notice Inviting Bids may bidders submit their bids via electronic transmission pursuant to Public Contract Code sections 1600 and 1601. Any acceptable method(s) of electronic transmission shall be stated in the Notice Inviting Bids. Town may reject any bid not strictly complying with Town's designated methods for delivery.

#### **ARTICLE 19. OPENING OF BIDS**

At the time and place set for the opening and reading of bids, or any time thereafter, each and every bid received prior to the time and day set for the receipt of bids will be publicly opened and read. The Town will leave unopened any Bid received after the specified date and time, and any such unopened Bid will be returned to the bidder. It is the bidder's sole responsibility to ensure that its Bid is received as specified. Bids may be submitted earlier than the date(s) and time(s) indicated.

The public reading of each bid will include the following information:

- A. The name and business location of the bidder.
- B. The nature and amount of the bid security furnished by bidder.
- C. The bid amount.

Bidders or their representatives and other interested persons may be present at the opening of the bids. The Town may, in its sole discretion, elect to postpone the opening of the submitted Bids. The Town reserves the right to reject any or all Bids and to waive any informality or irregularity in any Bid.

#### **ARTICLE 20. WITHDRAWAL OF BID**

Any bid may be withdrawn either personally or by written request, incurring no penalty, at any time prior to the scheduled closing time for receipt of bids. Requests to withdraw bids shall be worded so as not to reveal the amount of the original bid. Withdrawn bids may be resubmitted until the time and day set for the receipt of bids, provided that resubmitted bids are in conformance with the instructions herein.

Bids may be withdrawn after bid opening only by providing written notice to Town within five (5) working days of the bid opening and in compliance with Public Contract Code Section 5100 *et seq.*, or as otherwise may be allowed with the consent of the Town.

#### **ARTICLE 21. BIDDERS INTERESTED IN MORE THAN ONE BID**

No Bidder shall be allowed to make, file or be interested in more than one bid for the same work unless alternate bids are specifically called for. A person, firm or corporation that has submitted a sub-proposal to a Bidder, or that has quoted prices of materials to a Bidder, is not thereby disqualified from submitting a sub-proposal or quoting prices to other bidders. No person, firm, corporation, or other entity may submit a sub-proposal to a Bidder, or quote prices of materials to a Bidder, when also submitting a prime Bid on the same Project.

#### **ARTICLE 22. SUBSTITUTION OF SECURITY**

The Contract Documents call for monthly progress payments based upon the percentage of the Work completed. The Town will retain a percentage of each progress payment as provided by the Contract Documents. At the request and expense of the successful Bidder, the Town will substitute securities for the amount so retained in accordance with Public Contract Code Section 22300.

#### **ARTICLE 23. PREVAILING WAGES**

The Town has obtained from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages in the locality in which this work is to be performed for each craft or type of worker needed to execute the Contract. These rates are available at the Public Works Department of the Town or may be obtained online at <http://www.dir.ca.gov>. Bidders are advised that a copy of these rates must be posted by the successful Bidder at the job site(s).

## **ARTICLE 24. DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS**

In accordance with the provisions of the Labor Code, contractors or subcontractors may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Labor Code Sections 1777.1 or 1777.7. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid to a debarred subcontractor by the Contractor for the Project shall be returned to the Town. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

## **ARTICLE 25. INSURANCE REQUIREMENTS**

Prior to commencing work, the successful bidder shall purchase and maintain insurance as set forth in the General Conditions.

## **ARTICLE 26. PERFORMANCE BOND AND PAYMENT BOND REQUIREMENTS**

The successful bidder will be required to furnish a Labor and Material Payment Bond and a Faithful Performance Bond each in an amount equal to one hundred percent (100%) of the contract price. Each bond shall be secured from a surety company that meets all State of California bonding requirements, as defined in California Code of Civil Procedure Section 995.120 and is admitted by the State of California. Each bond shall be accompanied, upon the request of Town, with all documents required by California Code of Civil Procedure Section 995.660 to the extent required by law. All bonding and insurance requirements shall be completed and submitted to Town within ten (10) working days from the date the Town provides the successful bidder with the Notice of Award.

## **ARTICLE 27. SALES AND OTHER APPLICABLE TAXES, PERMITS, LICENSES AND FEES**

Contractor and its subcontractors performing work under this Contract will be required to pay California sales tax and other applicable taxes, and to pay for permits, licenses and fees required by the agencies with authority in the jurisdiction in which the Work will be located, unless otherwise expressly provided by the Contract Documents.

## **ARTICLE 28. PERMIT AND INSPECTION FEE ALLOWANCE**

Notwithstanding anything contained herein, the Bid Form contains an allowance for the Contractor's cost of acquiring traffic control permits and for construction inspection fees that may be charged to the Contractor by the Agency of Jurisdiction. The allowance is included within the Bid Form to eliminate the need by bidders to research or estimate the costs of traffic control permits and construction inspection fees prior to submitting a bid. The allowance is specifically intended to account for the costs of traffic control permits and construction inspection fees charged by the local Agency of Jurisdiction only. No other costs payable by Contractor to the Agency of Jurisdiction are included within the allowance.

## **ARTICLE 29. FILING OF BID PROTESTS**

Bidders may file a "protest" of a Bid with the Town's Public Works Director. In order for a Bidder's protest to be considered valid, the protest must:

- A. Be filed in writing within five (5) calendar days after the bid opening date;
- B. Clearly identify the specific irregularity or accusation;
- C. Clearly identify the specific Town staff determination or recommendation being protested;
- D. Specify in detail the grounds for protest and the facts supporting the protest; and
- E. Include all relevant, supporting documentation with the protest at time of filing.

If the protest does not comply with each of these requirements, the Town may reject the protest without further review.

If the protest is timely and complies with the above requirements, the Town's Public Works Director, or other designated Town staff member, shall review the protest, any response from the challenged Bidder(s), and all other relevant information. The Public Works Director will provide a written decision to the protestor.

The procedure and time limits set forth in this Article are mandatory and are the sole and exclusive remedy in the event of a Bid protest. Failure to comply with these procedures shall constitute a failure to exhaust administrative remedies and a waiver of any right to further pursue the Bid protest, including filing a Government Code Claim or legal proceedings.

### **ARTICLE 30. BASIS OF AWARD; BALANCED BID**

The Town shall award the Contract to the lowest responsible Bidder submitting a responsive Bid. The lowest Bid will be determined on the basis of the Base Bid and Any Alternate.

The Town may reject any Bid which, in its opinion when compared to other Bids received or to the Town's internal estimates, does not accurately reflect the cost to perform the Work. The Town may reject as non-responsive any Bid which unevenly weights or allocates costs, including but not limited to overhead and profit to one or more particular bid items.

### **ARTICLE 31. AWARD PROCESS**

Once all Bids are opened and reviewed to determine the lowest responsive and responsible Bidder, the Town may award the contract. The apparent successful Bidder should begin to prepare the following documents: (1) the Performance Bond; (2) the Payment Bond; and (3) the required insurance certificates and endorsements. Once the Town notifies the Bidder of the award, the Bidder will have ten (10) working days from the date of this notification to execute the Contract and supply the Town with all of the required documents and certifications. Regardless of whether the Bidder supplies the required documents and certifications in a timely manner, the Contract time will begin to run twenty (20) working days from the date of the notification. Once the Town receives all of the properly drafted and executed documents and certifications from the Bidder, the Town shall issue a Notice to Proceed to that Bidder.

### **ARTICLE 32. EXECUTION OF CONTRACT**

As required herein the Bidder to whom an award is made shall execute the Contract in the amount determined by the Contract Documents. The Town may require appropriate evidence

that the persons executing the Contract are duly empowered to do so. The Contract and bond forms to be executed by the successful Bidder are included within these Specifications and shall not be detached.

### **ARTICLE 33. QUESTIONS**

Questions regarding this Notice Inviting Bids may be directed to Nichol Bowersox, Senior Engineer/Project Manager, email at nicholb@csgengr.com. No other members of the Town's staff or governing body should be contacted about this procurement during the bidding process. Any and all inquiries and comments regarding this Bid must be communicated in writing, unless otherwise instructed by the Town. The Town may, in its sole discretion, disqualify any Bidder who engages in any prohibited communications.

## 00 41 43 – BID FORMS

### 1.1 Bid.

Bids will be received at the Town of Colma, 1198 El Camino Real, Colma, CA 94014, until **2:00 p.m. on Thursday, August 19, 2021.**

**NAME OF BIDDER:** \_\_\_\_\_

The undersigned hereby declare that we have carefully examined the location of the proposed Work, and have read and examined the Contract Documents, including all plans, specifications, and all addenda, if any for the following Project:

### **F STREET RETAINING WALL REPAIR PROJECT**

We hereby propose to furnish all labor, materials, equipment, tools, transportation, and services, and to discharge all duties and obligations necessary and required to perform and complete the Project, as described and in strict conformity with the Drawings, and these Specifications for TOTAL BID PRICE indicated herein.

The undersigned acknowledges receipt, understanding, and full consideration of the following addenda to the Contract Documents:

Addenda No. \_\_\_\_\_

1. Attached is the required Bid Guarantee in the amount of not less than 10% of the Total Bid Price.
2. Attached is the completed Designation of Subcontractors form.
3. Attached is the fully executed Noncollusion Declaration form.
4. Attached is the completed Iran Contracting Act Certification form.
5. Attached is the completed Public Works Contractor Registration Certification form.
6. Attached is the completed Contractor's Certificate Regarding Workers' Compensation form.
7. Attached is the completed Bidder Information and Experience form.



**A. BID SCHEDULE**

<b>NO.</b>	<b>ITEM DESCRIPTION</b>	<b>UNIT OF MEASURE</b>	<b>EST. QTY.</b>	<b>UNIT PRICE (\$)</b>	<b>ITEM COST</b>
1.	Mobilization and Contract Processing Costs	LS	1		
2.	Diversion of Recyclable Waste Materials	LS	1		
3.	Sheeting, Shoring, and Bracing or Equivalent Method	LS	1		
4.	Lead Compliance Plan	LS	1		
5.	Develop Construction Water Supply	LS	1		
6.	Construction Area Signs	LS	1		
7.	Traffic Control System	LS	1		
8.	Temporary Drainage Inlet Protection	EA	1		
9.	Temporary Silt Fence	LF	200		
10.	Street Sweeping	LS	1		
11.	Temporary Concrete Washout	EA	1		
12.	Repair Concrete Spall	SQFT	85		
13.	Structure Excavation (Retaining Wall)	CY	55		
14.	Pervious Backfill Material	CY	55		
15.	Rolled Erosion Control Product (Netting)	SF	975		
16.	Fiber Rolls	LF	230		
17.	Bar Reinforcing Steel (Retaining Wall)	LB	500		
18.	Core Concrete Hole (4" Dia)	LF	15		
19.	Inject Crack (Epoxy)	LF	100		
20.	Concrete at Spall Repair	CY	1		
21.	Clean And Prepare Concete Surface (Revocable)	SQFT	250		
22.					
22.	TOTAL BID ITEMS				

23.					

The costs for any Work shown or required in the Contract Documents, but not specifically identified as a line item are to be included in the related line items and no additional compensation shall be due to Contractor for the performance of the Work.

In case of discrepancy between the Unit Price and the Item Cost set forth for a unit basis item, the unit price shall prevail and shall be utilized as the basis for determining the lowest responsive, responsible Bidder. However, if the amount set forth as a unit price is ambiguous, unintelligible or uncertain for any cause, or is omitted, or is the same amount as the entry in the "Item Cost" column, then the amount set forth in the "Item Cost" column for the item shall prevail and shall be divided by the estimated quantity for the item and the price thus obtained shall be the Unit Price.

For purposes of evaluating Bids, the Town will correct any apparent errors in the extension of unit prices and any apparent errors in the addition of lump sum and extended prices.

The estimated quantities for Unit Price items are for purposes of comparing Bids only and the Town makes no representation that the actual quantities of work performed will not vary from the estimates. Final payment shall be determined by the Engineer from measured quantities of work performed based upon the Unit Price.

**B. TOTAL BID PRICE:**

<b>TOTAL BID PRICE BASED ON BID SCHEDULE TOTAL OF UNIT PRICES FOR F STREET RETAINING WALL REPAIR PROJECT</b>	
\$	<div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div> <div style="text-align: center; padding-top: 5px;">Total Bid Price in Numbers</div>
\$	<div style="border-bottom: 1px solid black; height: 1.2em; width: 100%;"></div> <div style="text-align: center; padding-top: 5px;">Total Bid Price in Written Form</div>
<p>In case of discrepancy between the written price and the numerical price, the written price shall prevail.</p>	

The undersigned agrees that this Bid Form constitutes a firm offer to the Town which cannot be withdrawn for the number of calendar days indicated in the Notice Inviting Bids from and after the Bid opening, or until a Contract for the Work is fully executed by the Town and a third party, whichever is earlier.

If the Contract Documents specify Alternate Bid items, the following Alternate Bid amounts shall be added to or deducted from the Total Bid Price entered above (please check the appropriate box), in the Town's sole discretion. The Town can choose to include any, all, or none of the Alternate Bid items in the Work. If the Town selects any of the Alternate Bid items, the corresponding Alternate Bid prices shall be added to or deducted from Base Bid Price for the Work. The Town can award/select Alternate Bid items at any time(s).

<b>ALTERNATE BIDS</b>	<b>BID PRICE (IN WRITTEN FORM)</b>	<b>BID PRICE (IN NUMBERS)</b>
<b>ALTERNATE #1</b> <input type="checkbox"/> Add <input type="checkbox"/> Deduct		
<b>ALTERNATE #2</b> <input type="checkbox"/> Add <input type="checkbox"/> Deduct		
<b>ALTERNATE #3</b> <input type="checkbox"/> Add <input type="checkbox"/> Deduct		
<b>ALTERNATE #4</b> <input type="checkbox"/> Add <input type="checkbox"/> Deduct		
<b>ALTERNATE #5</b> <input type="checkbox"/> Add <input type="checkbox"/> Deduct		
<b>ALTERNATE #6</b> <input type="checkbox"/> Add <input type="checkbox"/> Deduct		

The successful bidder hereby agrees to sign the contract and furnish the necessary bonds and certificates of insurance within ten (10) working days after the Town provides the successful bidder with the Notice of Award.

Upon receipt of the signed contract and other required documents, the contract will be executed by the Town, after which the Town will prepare a letter giving Contractor Notice to Proceed. The official starting date shall be the date of the Notice to Proceed, unless otherwise specified. The undersigned agrees to begin the Work within ten (10) working days of the date of the Notice to Proceed, unless otherwise specified.

The undersigned has examined the location of the proposed work and is familiar with the Drawings and Specifications and the local conditions at the place where work is to be done.

If awarded the contract, the undersigned agrees that there shall be paid by the undersigned and by all subcontractors to all laborers, workers and mechanics employed in the execution of such contract no less than the prevailing wage rate within San Mateo County for each craft, classification, or type of worker needed to complete the Work contemplated by this contract as established by the Director of the Department of Industrial Relations. A copy of the prevailing

rate of per diem wages are on file at the Town's Administration Office and shall be made available to interested parties upon request.

Enclosed find cash, bidder's bond, or cashier's or certified check No. \_\_\_\_\_ from the \_\_\_\_\_ Bank in the amount of \_\_\_\_\_, which is not less than ten percent (10%) of this bid, payable to Town of Colma as bid security and which is given as a guarantee that the undersigned will enter into a contract and provide the necessary bonds and certificates of insurance if awarded the Work.

The bidder furthermore agrees that in case of bidder's default in executing said contract and furnishing required bonds and certificates of insurance, the cash, bidder's bond, or cashier's or certified check accompanying this proposal and the money payable thereon shall become and shall remain the property of the Town of Colma.

Bidder is an individual \_\_\_\_\_, or corporation \_\_\_\_\_, or partnership \_\_\_\_\_, organized under the laws of the State of \_\_\_\_\_.

Bidder confirms license(s) required by California State Contractor's License Law for the performance of the subject project are in full effect and proper order. The following are the Bidder's applicable license number(s), with their expiration date(s) and class of license(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If the Bidder is a joint venture, each member of the joint venture must include the required licensing information.

Sureties that will furnish the Faithful Performance Bond and the Labor and Material Payment Bond, in the form specified herein, in an amount equal to one hundred percent (100%) of the contract price within ten (10) working days from the date the Town provides the successful bidder the Notice of Award. Sureties must meet all of the State of California bonding requirements, as defined in California Code of Civil Procedure Section 995.120 and must be authorized by the State of California.

The insurance company or companies to provide the insurance required in the contract documents must have a Financial Strength Rating of not less than "A-" and a Financial Size Category of not less than "Class VII" according to the latest Best Key Rating Guide. At the sole discretion of the Town, the Town may waive the Financial Strength Rating and the Financial Size Category classifications for Workers' Compensation insurance.

(signatures continued on next page)

I hereby certify under penalty of perjury under the laws of the State of California that all of the information submitted in connection with this Bid and all of the representations made herein are true and correct.

Executed at \_\_\_\_\_, on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

(Bidders Name – Print or Type)

\_\_\_\_\_  
(Name and Title)

(Corporate Seal)

\_\_\_\_\_  
(Signature)

Names of individual members of firm or names and titles of all officers of corporation and their addresses are listed below:

Name \_\_\_\_\_ Title \_\_\_\_\_

Complete Address \_\_\_\_\_

Phone \_\_\_\_\_ FAX \_\_\_\_\_

Name \_\_\_\_\_ Title \_\_\_\_\_

Complete Address \_\_\_\_\_

Phone \_\_\_\_\_ FAX \_\_\_\_\_

Name \_\_\_\_\_ Title \_\_\_\_\_

Complete Address \_\_\_\_\_

Phone \_\_\_\_\_ FAX \_\_\_\_\_

Name \_\_\_\_\_ Title \_\_\_\_\_

Complete Address \_\_\_\_\_

Phone \_\_\_\_\_ FAX \_\_\_\_\_

1.2 Bid Bond

**[Note: Not required when other form of Bidder's Security, e.g. cash, certified check or cashier's check, accompanies bid.]**

The makers of this bond are, \_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety and are held and firmly bound unto the Town of Colma, hereinafter called the Town, in the penal sum of TEN PERCENT (10%) OF THE TOTAL BID PRICE of the Principal submitted to Town for the work described below, for the payment of which sum in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal has submitted the accompanying bid dated \_\_\_\_\_, 20 \_\_\_\_, for F Street Retaining Wall Repair Project.

If the Principal does not withdraw its Bid within the time specified in the Contract Documents; and if the Principal is awarded the Contract and provides all documents to the Town as required by the Contract Documents; then this obligation shall be null and void. Otherwise, this bond will remain in full force and effect.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents shall in affect its obligation under this bond, and Surety does hereby waive notice of any such changes.

In the event a lawsuit is brought upon this bond by the Town and judgment is recovered, the Surety shall pay all litigation expenses incurred by the Town in such suit, including reasonable attorneys' fees, court costs, expert witness fees and expenses.

By their signatures hereunder, Surety and Principal hereby confirm under penalty of perjury that surety is an admitted surety insurer authorized to do business in the State of California.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their several seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the name and corporate seal of each corporation.

(Corporate Seal)

\_\_\_\_\_  
Contractor/ Principal

By \_\_\_\_\_

Title \_\_\_\_\_

(Corporate Seal)

\_\_\_\_\_  
Surety

By \_\_\_\_\_

Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title \_\_\_\_\_

## Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally  
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")  
appeared \_\_\_\_\_, who proved to me on the basis of satisfactory  
Name(s) of Signer(s)

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature of Notary Public

### OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

#### CAPACITY CLAIMED BY SIGNER

#### DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual  
☐ Corporate Officer

\_\_\_\_\_  
Title(s)

- ☐ Partner(s) ☐ Limited  
☐ General

- ☐ Attorney-In-Fact  
☐ Trustee(s)  
☐ Guardian/Conservator  
☐ Other:

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Title or Type of Document

\_\_\_\_\_  
Number of Pages

\_\_\_\_\_  
Date of Document

\_\_\_\_\_  
Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Contractor/Principal.

## Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally  
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

appeared \_\_\_\_\_, who proved to me on the basis of satisfactory  
Name(s) of Signer(s)  
evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

\_\_\_\_\_  
Signature of Notary Public

### OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

#### CAPACITY CLAIMED BY SIGNER

#### DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual  
☐ Corporate Officer

\_\_\_\_\_  
Title(s)

- ☐ Partner(s) ☐ Limited  
☐ General

- ☐ Attorney-In-Fact  
☐ Trustee(s)  
☐ Guardian/Conservator  
☐ Other:

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Title or Type of Document

\_\_\_\_\_  
Number of Pages

\_\_\_\_\_  
Date of Document

\_\_\_\_\_  
Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for the Attorney-in-Fact. The Power-of-Attorney to local representatives of the bonding company must also be attached.

END OF BID BOND



### 1.3 List of Subcontractors

In compliance with the Subletting and Subcontracting Fair Practices Act Chapter 4 (commencing at Section 4100), Part 1, Division 2 of the Public Contract Code of the State of California and any amendments thereof, Bidder shall set forth below: (a) the name and the location of the place of business, (b) the California contractor license number, (c) the DIR public works contractor registration number unless exempt pursuant to Labor Code Sections 1725.5 and 1771.1, and (d) the portion of the work which will be done by each subcontractor who will perform work or labor or render service to the Bidder in or about the construction of the work or improvement to be performed under this Contract in an amount in excess of one-half of one percent (0.5%) of the Bidder's Total Bid Price. Notwithstanding the foregoing, if the work involves the construction of streets and highways, then the Bidder shall list each subcontractor who will perform work or labor or render service to the Bidder in or about the work in an amount in excess of one-half of one percent (0.5%) of the Bidder's Total Bid Price or \$10,000, whichever is greater. No additional time shall be granted to provide the below requested information.

If a Bidder fails to specify a subcontractor or if a contractor specifies more than one subcontractor for the same portion of work, then the Bidder shall be deemed to have agreed that it is fully qualified to perform that portion of work and that it shall perform that portion itself.

<b>Work to be done by Subcontractor</b>	<b>Name of Subcontractor</b>	<b>Location of Business</b>	<b>CSLB Contractor License No.</b>	<b>DIR Registration Number</b>	<b>% of Work</b>

Work to be done by Subcontractor	Name of Subcontractor	Location of Business	CSLB Contractor License No.	DIR Registration Number	% of Work

(Attach additional sheets if necessary)

Name of Bidder \_\_\_\_\_

Signature \_\_\_\_\_

Name and Title \_\_\_\_\_

Dated \_\_\_\_\_

1.4 Bidder Information and Experience Form

**ARTICLE 1. INFORMATION ABOUT BIDDER**

(Indicate not applicable ("N/A") where appropriate.)

**NOTE:** Where Bidder is a joint venture, pages shall be duplicated and information provided for all parties to the joint venture.

1.0 Name of Bidder: \_\_\_\_\_

2.0 Type, if Entity: \_\_\_\_\_

3.0 Bidder Address: \_\_\_\_\_

\_\_\_\_\_

Facsimile Number

Telephone Number

Email Address

4.0 How many years has Bidder's organization been in business as a Contractor?

\_\_\_\_\_

5.0 How many years has Bidder's organization been in business under its present name? \_\_\_\_\_

5.1 Under what other or former names has Bidder's organization operated? \_\_\_\_\_

6.0 If Bidder's organization is a corporation, answer the following:

6.1 Date of Incorporation: \_\_\_\_\_

6.2 State of Incorporation: \_\_\_\_\_

6.3 President's Name: \_\_\_\_\_

6.4 Vice-President's Name(s): \_\_\_\_\_

\_\_\_\_\_

6.5 Secretary's Name: \_\_\_\_\_

6.6 Treasurer's Name: \_\_\_\_\_

7.0 If an individual or a partnership, answer the following:

7.1 Date of Organization: \_\_\_\_\_

7.2 Name and address of all partners (state whether general or limited partnership):

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8.0 If other than a corporation or partnership, describe organization and name principals:

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9.0 List other states in which Bidder's organization is legally qualified to do business.

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10.0 What type of work does the Bidder normally perform with its own forces?

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11.0 Has Bidder ever failed to complete any work awarded to it? If so, note when, where, and why:

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12.0 Within the last five years, has any officer or partner of Bidder's organization ever been an officer or partner of another organization when it failed to complete a contract? If so, attach a separate sheet of explanation:

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13.0 List Trade References:

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14.0 List Bank References (Bank and Branch Address):

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15.0 Name of Bonding Company and Name and Address of Agent:

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**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

## ARTICLE 2. LIST OF CURRENT PROJECTS (BACKLOG)

[\*\*Duplicate Page if needed for listing additional current projects.\*\*]

Project	Description of Bidder's Work	Completion Date	Cost of Bidder's Work

### ARTICLE 3. LIST OF COMPLETED PROJECTS – LAST THREE YEARS

[\*\*Duplicate Page if needed for listing additional completed projects.\*\*]

Please include only those projects which are similar enough to demonstrate Bidder's ability to perform the required Work.

Project	Description of Bidder's Work	Completion Date	Cost of Bidder's Work

## ARTICLE 4. EXPERIENCE AND TECHNICAL QUALIFICATIONS QUESTIONNAIRE

### ***Personnel:***

The Bidder shall identify the key personnel to be assigned to this project in a management, construction supervision or engineering capacity.

1. List each person's job title, name and percent of time to be allocated to this project:

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2. Summarize each person's specialized education:

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3. List each person's years of construction experience relevant to the project:

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4. Summarize such experience:

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Bidder agrees that personnel named in this Bid will remain on this Project until completion of all relevant Work, unless substituted by personnel of equivalent experience and qualifications approved in advance by the Town.

### ***Changes Occuring Since Prequalification***

If any substantive changes have occurred since Bidder submitted its prequalification package for this Project, Bidder shall list them below. If none are listed, Bidder certifies that no substantive changes have occurred.

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***Additional Bidder's Statements:***

If the Bidder feels that there is additional information which has not been included in the questionnaire above, and which would contribute to the qualification review, it may add that information in a statement here or on an attached sheet, appropriately marked:

---

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**ARTICLE 5. VERIFICATION AND EXECUTION**

These Bid Forms shall be executed only by a duly authorized official of the Bidder:

I declare under penalty of perjury under the laws of the State of California that the foregoing information is true and correct:

Name of Bidder\_\_\_\_\_

Signature\_\_\_\_\_

Name\_\_\_\_\_

Title\_\_\_\_\_

Date\_\_\_\_\_

1.5 Non-Collusion Declaration

The undersigned declares:

I am the \_\_\_\_\_ of \_\_\_\_\_, the party making the foregoing Bid.

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on \_\_\_\_\_ [date], at \_\_\_\_\_ [city], \_\_\_\_\_ [state].

Name of Bidder \_\_\_\_\_

Signature \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

1.6 Iran Contracting Act Certification.  
(Public Contract Code section 2200 et seq.)

As required by California Public Contract Code Section 2204, the Contractor certifies subject to penalty for perjury that the option checked below relating to the Contractor's status in regard to the Iran Contracting Act of 2010 (Public Contract Code Section 2200 *et seq.*) is true and correct:

☐ The Contractor is not:

(1) identified on the current list of person and entities engaged in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203; or

(2) a financial instruction that extends, for 45 days or more, credit in the amount of \$20,000,000 or more to any other person or entity identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203, if that person or entity uses or will use the credit to provide goods or services in the energy sector in Iran.

☐ The Town has exempted the Contractor from the requirements of the Iran Contracting Act of 2010 after making a public finding that, absent the exemption, the Town will be unable to obtain the goods and/or services to be provided pursuant to the Contract.

☐ The amount of the Contract payable to the Contractor for the Project does not exceed \$1,000,000.

Signature: \_\_\_\_\_

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

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

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

Date: \_\_\_\_\_

Note: In accordance with Public Contract Code Section 2205, false certification of this form shall be reported to the California Attorney General and may result in civil penalties equal to the greater of \$250,000 or twice the Contract amount, termination of the Contract and/or ineligibility to bid on contracts for three years.

## 1.7 Public Works Contractor Registration Certification

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. See <http://www.dir.ca.gov/Public-Works/PublicWorks.html> for additional information.

No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work.

Bidder hereby certifies that it is aware of the registration requirements set forth in Labor Code sections 1725.5 and 1771.1 and is currently registered as a contractor with the Department of Industrial Relations.<sup>1</sup>

Name of Bidder:\_\_\_\_\_

DIR Registration Number:\_\_\_\_\_

DIR Registration Expiration:\_\_\_\_\_

Small Project Exemption: \_\_\_\_\_ Yes or \_\_\_\_\_ No

Unless Bidder is exempt pursuant to the small project exemption, Bidder further acknowledges:

1. Bidder shall maintain a current DIR registration for the duration of the project.
2. Bidder shall include the requirements of Labor Code sections 1725.5 and 1771.1 in its contract with subcontractors and ensure that all subcontractors are registered at the time of bid opening and maintain registration status for the duration of the project.
3. Failure to submit this form or comply with any of the above requirements may result in a finding that the bid is non-responsive.

Name of Bidder\_\_\_\_\_

Signature\_\_\_\_\_

Name and Title\_\_\_\_\_

Dated\_\_\_\_\_

<sup>1</sup> If the Project is exempt from the contractor registration requirements pursuant to the small project exemption under Labor Code Sections 1725.5 and 1771.1, please mark "Yes" in response to "Small Project Exemption."

<Month> <Year>

Pipeline Project XXXX

1.8 Contractor's Certificate Regarding Workers' Compensation.

I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Contract.

Name of Bidder \_\_\_\_\_

Signature \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Dated \_\_\_\_\_

## 00 52 13 – CONTRACT

This CONTRACT, No. \_\_\_\_\_ is made and entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between Town of Colma, sometimes hereinafter called "Town," and \_\_\_\_\_, sometimes hereinafter called "Contractor."

WITNESSETH: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other as follows:

a. **SCOPE OF WORK.** The Contractor shall perform all Work within the time stipulated in the Contract, and shall provide all labor, materials, equipment, tools, utility services, and transportation to complete all of the Work required in strict compliance with the Contract Documents as specified in Section (e), below, for the following Project:

### F STREET RETAINING WALL REPAIR PROJECT

The Contractor and its surety shall be liable to the Town for any damages arising as a result of the Contractor's failure to comply with this obligation.

b. **TIME FOR COMPLETION.** Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the Town's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents within 40 calendar days from the commencement date stated in the Notice to Proceed. By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

c. **CONTRACT PRICE.** The Town shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_). Payment shall be made as set forth in the General Conditions.

d. **LIQUIDATED DAMAGES.** In accordance with Government Code section 53069.85, it is agreed that the Contractor will pay the Town the sum set forth in Section 00 73 13, Article 1.11 for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees the Town may deduct that amount from any money due or that may become due the Contractor under the Contract. This Article does not exclude recovery of other damages specified in the Contract Documents.

e. **COMPONENT PARTS OF THE CONTRACT.** The "Contract Documents" include the following:

- Notice Inviting Bids
- Instructions to Bidders
- Bid Form
- Bid Bond
- Designation of Subcontractors

Information Required of Bidders  
Non-Collusion Declaration Form  
Iran Contracting Act Certification  
Public Works Contractor Registration Certification  
Performance Bond  
Payment (Labor and Materials) Bond  
General Conditions  
Special Conditions  
Technical Specifications  
Addenda  
Plans and Drawings  
Standard Specifications for Public Works Construction "Greenbook", latest edition,  
Except Sections 1-9  
Applicable Local Agency Standards and Specifications, as last revised  
Approved and fully executed change orders  
Any other documents contained in or incorporated into the Contract

The Contractor shall complete the Work in strict accordance with all of the Contract Documents.

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. This Contract shall supersede any prior agreement of the parties.

f. **PROVISIONS REQUIRED BY LAW AND CONTRACTOR COMPLIANCE.** Each and every provision of law required to be included in these Contract Documents shall be deemed to be included in these Contract Documents. The Contractor shall comply with all requirements of applicable federal, state and local laws, rules and regulations, including, but not limited to, the provisions of the California Labor Code and California Public Contract Code which are applicable to this Work.

g. **INDEMNIFICATION.** Contractor shall provide indemnification and defense as set forth in the General Conditions.

h. **PREVAILING WAGES.** Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at the Town's Administrative Office or may be obtained online at <http://www.dir.ca.gov> and which must be posted at the job site.

**[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]**

IN WITNESS WHEREOF, this Contract has been duly executed by the above-named parties,  
on the day and year above written.

TOWN OF COLMA

[INSERT NAME OF CONTRACTOR]

By: \_\_\_\_\_  
[INSERT NAME]  
[INSERT TITLE]

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

Its: \_\_\_\_\_

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

ATTEST:

By: \_\_\_\_\_  
Town Clerk

**(CONTRACTOR'S SIGNATURE MUST BE  
NOTARIZED AND CORPORATE  
SEAL AFFIXED, IF APPLICABLE)**

**END OF CONTRACT**



# Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally  
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

appeared \_\_\_\_\_, who proved to me on the basis of satisfactory  
Name(s) of Signer(s)  
evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature of Notary Public

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### CAPACITY CLAIMED BY SIGNER

### DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual  
☐ Corporate Officer

\_\_\_\_\_  
Title(s)

- ☐ Partner(s) ☐ Limited  
☐ General

- ☐ Attorney-In-Fact  
☐ Trustee(s)  
☐ Guardian/Conservator  
☐ Other:

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Title or Type of Document

\_\_\_\_\_  
Number of Pages

\_\_\_\_\_  
Date of Document

\_\_\_\_\_  
Signer(s) Other Than Named Above

## 00 61 13 – BOND FORMS

### 1.1 Performance Bond.

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the Town of Colma, (hereinafter referred to as "Town") has awarded to \_\_\_\_\_, (hereinafter referred to as the "Contractor") an agreement for **Contract No.** \_\_\_\_\_, (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated \_\_\_\_\_, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, \_\_\_\_\_, the undersigned Contractor and \_\_\_\_\_ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the Town in the sum of \_\_\_\_\_ DOLLARS, (\$\_\_\_\_\_), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one (1) year guarantee of all materials and workmanship; and shall indemnify and save harmless the Town, its officials, officers, employees, and authorized volunteers, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees including reasonable attorney's fees, incurred by Town in enforcing such obligation.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by Town, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the Town from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the Town's rights or the Contractor or Surety's

obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure Section 337.15.

Whenever Contractor shall be, and is declared by the Town to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the Town's option:

- i. Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or
- ii. Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the Town, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the Town under the Contract and any modification thereto, less any amount previously paid by the Town to the Contractor and any other set offs pursuant to the Contract Documents.
- iii. Permit the Town to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the Town under the Contract and any modification thereto, less any amount previously paid by the Town to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the Town may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if the Town, when declaring the Contractor in default, notifies Surety of the Town's objection to Contractor's further participation in the completion of the Project.

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

By their signatures hereunder, Surety and Contractor hereby confirm under penalty of perjury that surety is an admitted surety insurer authorized to do business in the State of California.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Corporate Seal)

\_\_\_\_\_  
Contractor/ Principal

By \_\_\_\_\_

Title \_\_\_\_\_

(Corporate Seal)

\_\_\_\_\_  
Surety

By \_\_\_\_\_  
Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title \_\_\_\_\_

The rate of premium on this bond is \_\_\_\_\_ per thousand. The total amount of premium charges is \$\_\_\_\_\_.  
(The above must be filled in by corporate attorney.)

**THIS IS A REQUIRED FORM**

Any claims under this bond may be addressed to:

(Name and Address of Surety)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Name and Address of Agent or Representative for service of process in California, if different from above)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Telephone number of Surety and Agent or Representative for service of process in California)

\_\_\_\_\_

## Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally  
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

appeared \_\_\_\_\_, who proved to me on the basis of satisfactory  
Name(s) of Signer(s)  
evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

\_\_\_\_\_  
Signature of Notary Public

### OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

#### CAPACITY CLAIMED BY SIGNER

#### DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual  
☐ Corporate Officer

\_\_\_\_\_  
Title(s)

- ☐ Partner(s) ☐ Limited  
☐ General

- ☐ Attorney-In-Fact  
☐ Trustee(s)  
☐ Guardian/Conservator  
☐ Other:

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Title or Type of Document

\_\_\_\_\_  
Number of Pages

\_\_\_\_\_  
Date of Document

\_\_\_\_\_  
Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Contractor/Principal.

## Notary Acknowledgment

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STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

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Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

appeared \_\_\_\_\_, who proved to me on the basis of satisfactory  
Name(s) of Signer(s)  
evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature of Notary Public \_\_\_\_\_

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Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Title or Type of Document

\_\_\_\_\_  
Number of Pages

\_\_\_\_\_  
Date of Document

\_\_\_\_\_  
Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for the Attorney-in-Fact. The Power-of Attorney to local representatives of the bonding company must also be attached.

**END OF PERFORMANCE BOND**

1.2 Payment Bond (Labor and Materials).

KNOW ALL MEN BY THESE PRESENTS That

WHEREAS, the Town of Colma (hereinafter designated as the "Town"), by action taken or a resolution passed \_\_\_\_\_, 20\_\_\_\_, has awarded to \_\_\_\_\_ hereinafter designated as the "Principal," a contract for the work described as follows: **Contract No.** \_\_\_\_\_ (the "Project"); and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and \_\_\_\_\_ as Surety, are held and firmly bound unto the Town in the penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Civil Code Section 9100, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Revenue and Taxation Code Section 18663, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by the Town in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Civil Code Section 9100 so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of

recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or Town and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Civil Code Section 9100, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned, including but not limited to the provisions of sections 2819 and 2845 of the California Civil Code.

By their signatures hereunder, Surety and Principal hereby confirm under penalty of perjury that surety is an admitted surety insurer authorized to do business in the State of California.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Corporate Seal)

\_\_\_\_\_  
Contractor/ Principal

By \_\_\_\_\_

Title \_\_\_\_\_

(Corporate Seal)

\_\_\_\_\_  
Surety

By \_\_\_\_\_  
Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title \_\_\_\_\_



## Notary Acknowledgment

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STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally  
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

appeared \_\_\_\_\_, who proved to me on the basis of satisfactory  
Name(s) of Signer(s)  
evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

\_\_\_\_\_  
Signature of Notary Public

### OPTIONAL

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#### CAPACITY CLAIMED BY SIGNER

#### DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual  
☐ Corporate Officer

\_\_\_\_\_  
Title(s)

- ☐ Partner(s) ☐ Limited  
☐ General

- ☐ Attorney-In-Fact  
☐ Trustee(s)  
☐ Guardian/Conservator  
☐ Other:

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Title or Type of Document

\_\_\_\_\_  
Number of Pages

\_\_\_\_\_  
Date of Document

\_\_\_\_\_  
Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Contractor/Principal.



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COUNTY OF \_\_\_\_\_

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Name(s) of Signer(s)  
evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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☐ Other:

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Title or Type of Document

\_\_\_\_\_  
Number of Pages

\_\_\_\_\_  
Date of Document

\_\_\_\_\_  
Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for the Attorney-in-Fact. The Power-of-Attorney to local representatives of the bonding company must also be attached.

END OF PAYMENT BOND

## 00 72 13 – GENERAL CONDITIONS

### ARTICLE 1. DEFINED TERMS

Whenever used in the Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined below, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

- A. Act of God -- An earthquake of magnitude of 3.5 or higher on the Richter scale or a tidal wave.
- B. Addenda -- Written or graphic instruments issued prior to the submission of Bids which clarify, correct, or change the Contract Documents.
- C. Additional Work -- New or unforeseen work will be classified as “Additional Work” when the Town’s Representative determines that it is not covered by the Contract.
- D. Applicable Laws -- The laws, statutes, ordinances, rules, codes, regulations, permits, and licenses of any kind, issued by local, state or federal governmental authorities or private authorities with jurisdiction (including utilities), to the extent they apply to the Work.
- E. Bid -- The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices and other terms for the Work to be performed.
- F. Bidder -- The individual or entity who submits a Bid directly to the Town.
- G. Change Order (“CO”) -- A document that authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Contract, in accordance with the Contract Documents and in the form contained in the Contract Documents.
- H. Change Order Request (“COR”) -- A request made by the Contractor for an adjustment in the Contract Price and/or Contract Times as the result of a Contractor-claimed change to the Work. This term may also be referred to as a Change Order Proposal (“COP”), or Request for Change (“RFC”).
- I. Town -- The Town of Colma.
- J. Town’s Representative -- The individual or entity as identified in the Special Conditions to act as the Town’s Representative.
- K. Claim -- A demand or assertion by the Town or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
- L. Contract -- The entire integrated written agreement between the Town and Contractor concerning the Work. “Contract” may be used interchangeably with

“Agreement” in the Contract Documents. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral, and includes all Contract Documents.

- M. Contract Documents -- The documents listed in Section 00 52 13, Article 5. Some documents provided by the Town to the Bidders and Contractor, including but not limited to reports and drawings of subsurface and physical conditions are not Contract Documents.
- N. Contract Price -- Amount to be paid by the Town to the Contractor as full compensation for the performance of the Contract and completion of the Work, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs.
- O. Contract Times -- The number of days or the dates stated in the Contract Documents to: achieve defined Milestones, if any; and to complete the Work so that it is ready for final payment.
- P. Contractor -- The individual or entity with which the Town has contracted for performance of the Work.
- Q. Contractor's Designated On-Site Representative -- The Contractor's Designated On-Site Representative will be as identified in Section 00 72 13, Article 3 and shall not be changed without prior written consent of the Town.
- R. Daily Rate -- The Daily Rate stipulated in the Contract Documents as full compensation to the Contractor due to the Town's unreasonable delay to the Project that was not contemplated by the parties.
- S. Day -- A calendar day of 24 hours measured from midnight to the next midnight.
- T. Defective Work -- Work that is unsatisfactory, faulty, or deficient; or that does not conform to the Contract Documents; or that does not meet the requirements of any inspection, reference standard, test, or approval referenced in the Contract Documents.
- U. Demobilization -- The complete dismantling and removal by the Contractor of all of the Contractor's temporary facilities, equipment, and personnel at the Site.
- V. Drawings -- That part of the Contract Documents prepared by of the Engineer of Record which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
- W. Effective Date of the Contract -- The date indicated in the Contract on which it becomes effective, but if no such date is indicated, it means the date on which the Contract is signed and delivered by the last of the two parties to sign and deliver.
- X. Engineer, whenever not qualified, shall mean the Public Works Director of the Town, acting either directly or through properly authorized agents, such agents acting severally within the scope of the particular duties entrusted to them. On all questions

concerning the acceptance of materials, machinery, the classifications of material, the execution of work, conflicting interest of the contractors performing related work and the determination of costs, the decision of the Engineer, duly authorized by the Town, shall be binding and final upon both parties.

Y. Engineer of Record -- The individual, partnership, corporation, joint venture, or other legal entity named as such in Section 00 73 13, Article 1.1. or any succeeding entity designated by the Town.

Z. Green Book -- The current edition of the Standard Specifications for Public Works Construction.

AA. Hazardous Waste -- The term "Hazardous Waste" shall have the meaning provided in Section 104 of the Solid Waste Disposal Act (42 U.S.C. § 6903) as amended from time to time or, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a class I, class II, or class III disposal site in accordance with provisions of existing law, whichever is more restrictive.

BB. Holiday -- The Holidays occur on:

New Year's Day - January 1  
President's Day -- Third Monday in February  
Memorial Day - Last Monday in May  
Independence Day - July 4  
Labor Day - First Monday in September  
Veteran's Day - November 11  
Thanksgiving Day - Fourth Thursday in November  
Friday after Thanksgiving  
Christmas Eve -- December 24  
Christmas Day - December 25  
Day After Christmas -- December 26  
New Year's Eve -- December 31

If any Holiday listed above falls on a Saturday, Saturday and the preceding Friday are both Holidays. If the Holiday should fall on a Sunday, Sunday and the following Monday are both Holidays.

CC. Notice of Award -- The written notice by the Town to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, the Town will sign and deliver the Contract.

DD. Notice of Completion -- The form which may be executed by the Town and recorded by the county where the Project is located constituting final acceptance of the Project.

EE. Notice to Proceed -- A written notice given by the Town to Contractor fixing the date on which the Contractor may proceed with the Work and when Contract Times will commence to run.

FF. Project -- The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

- GG. Recyclable Waste Materials -- Materials removed from the Site which are required to be diverted to a recycling center rather than an area landfill. Recyclable Waste Materials include asphalt, concrete, brick, concrete block, and rock.
- HH. Schedule of Submittals -- A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to facilitate scheduled performance of related construction activities.
- II. Shop Drawings -- All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
- JJ. Specifications -- That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
- KK. Stop Payment Notice -- A written notice as defined in Civil Code section 8044.
- LL. Subcontractor -- An individual or entity other than a Contractor having a contract with any other entity than the Town for performance of any portion of the Work at the Site.
- MM. Submittal -- Written and graphic information and physical samples prepared and supplied by the Contractor demonstrating various portions of the Work.
- NN. Successful Bidder -- The Bidder submitting a responsive Bid to whom the Town makes an award.
- OO. Supplier -- A manufacturer, fabricator, supplier, distributor, material man, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment used in the performance of the Work or to be incorporated in the Work.
- PP. Underground Facilities -- All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
- QQ. Unit Price Work -- Work to be paid for on the basis of unit prices as provided by the Contractor in its bid or as adjusted in accordance with the Contract Documents.
- RR. Warranty -- A written guarantee provided to the Town by the Contractor that the Work will remain free of defects and suitable for its intended use for the period required by the Contract Documents or the longest period permitted by the law of this State, whichever is longer.
- SS. Work -- The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to

produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

## **ARTICLE 2. CONTRACT DOCUMENTS**

- A. **Contract Documents.** The Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all.
- B. **Interpretations.** The Contract Documents are intended to be fully cooperative and complementary. If the Contractor observes that any documents are in conflict, the Contractor shall promptly notify the Engineer in writing. In case of conflicts between the Contract Documents, the order of precedence shall be as follows:
1. Change Orders
  2. Addenda
  3. Special Conditions
  4. Technical Specifications
  5. Plans (Contract Drawings)
  6. Contract
  7. General Conditions
  8. Instructions to Bidders
  9. Notice Inviting Bids
  10. Contractor's Bid Forms
  11. Standard Specifications for Public Works Construction (Sections 1-9 Excluded)
  12. Applicable Local Agency Standards and Specifications
  13. Standard Drawings
  14. Reference Documents

With reference to the Drawings, the order of precedence shall be as follows:

1. Figures govern over scaled dimensions
  2. Detail drawings govern over general drawings
  3. Addenda or Change Order drawings govern over Contract Drawings
  4. Contract Drawings govern over Standard Drawings
  5. Contract Drawings govern over Shop Drawings
- C. **Conflicts in Contract Documents.** Notwithstanding the orders of precedence established above, in the event of conflicts, the higher standard, higher quality, and most expensive shall always apply.
- D. **Organization of Contract Documents.** Organization of the Contract Documents into divisions, sections, and articles, and arrangement of drawings shall not control the Contractor in dividing Project Work among subcontractors or in establishing the extent of Work to be performed by any trade.

## **ARTICLE 3. PRECONSTRUCTION AND CONSTRUCTION COMMUNICATION**

Before any Work at the site is started, a conference attended by the Town, Contractor, Town's Representative, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to herein, procedures



for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

At this conference the Town and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

#### **ARTICLE 4. CONTRACT DOCUMENTS: COPIES & MAINTENANCE**

Contractor will be furnished, free of charge, **five (5)** copies of the Contract Documents. Additional copies may be obtained at cost of reproduction.

Contractor shall maintain a clean, undamaged set of Contract Documents, including submittals, at the Project site.

#### **ARTICLE 5. EXAMINATION OF DRAWINGS, SPECIFICATIONS AND SITE OF WORK**

- A. **Examination of Contract Documents.** Before commencing any portion of the Work, Contractor shall again carefully examine all applicable Contract Documents, the Project site, and other information given to Contractor as to materials and methods of construction and other Project requirements. Contractor shall immediately notify the Engineer of any potential error, inconsistency, ambiguity, conflict, or lack of detail or explanation. If Contractor performs, permits, or causes the performance of any Work which is in error, inconsistent or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all resulting costs, including, without limitation, the cost of correction. In no case shall the Contractor or any subcontractor proceed with Work if uncertain as to the applicable requirements.
- B. **Additional Instructions.** After notification of any error, inconsistency, ambiguity, conflict, or lack of detail or explanation, the Engineer will provide any required additional instructions, by means of drawings or other written direction, necessary for proper execution of Work.
- C. **Quality of Parts, Construction and Finish.** All parts of the Work shall be of the best quality of their respective kinds and the Contractor must use all diligence to inform itself fully as to the required construction and finish.
- D. **Contractor's Variation from Contract Document Requirements.** If it is found that the Contractor has varied from the requirements of the Contract Documents including the requirement to comply with all applicable laws, ordinances, rules and regulations, the Engineer may at any time, before or after completion of the Work, order the improper Work removed, remade or replaced by the Contractor at the Contractor's expense.

#### **ARTICLE 6. MOBILIZATION**

- A. When a bid item is included in the Bid Form for mobilization, the costs of Work in advance of construction operations and not directly attributable to any specific bid item will be included in the progress estimate ("Initial Mobilization"). When no bid

item is provided for "Initial Mobilization," payment for such costs will be deemed to be included in the other items of the Work.

- B. Payment for Initial Mobilization based on the lump sum provided in the Bid Form, which shall constitute full compensation for all such Work. No payment for Initial Mobilization will be made until all of the listed items have been completed to the satisfaction of the Engineer. The scope of the Work included under Initial Mobilization shall include, but shall not be limited to, the following principal items:
1. Obtaining and paying for all bonds, insurance, and permits.
  2. Moving on to the Project site of all Contractor's plant and equipment required for the first month's operations.
  3. Installing temporary construction power, wiring, and lighting facilities, as applicable.
  4. Establishing fire protection system, as applicable.
  5. Developing and installing a construction water supply, if applicable.
  6. Providing and maintaining the field office trailers for the Contractor, if necessary, and the Engineer (if specified), complete, with all specified furnishings and utility services.
  7. Providing on-site sanitary facilities and potable water facilities as specified per Cal-OSHA and these Contract Documents.
  8. Furnishing, installing, and maintaining all storage buildings or sheds required for temporary storage of products, equipment, or materials that have not yet been installed in the Work. All such storage shall meet manufacturer's specified storage requirements, and the specific provisions of the specifications, including temperature and humidity control, if recommended by the manufacturer, and for all security.
  9. Arranging for and erection of Contractor's work and storage yard.
  10. Posting all OSHA required notices and establishment of safety programs per Cal-OSHA.
  11. Full-time presence of Contractor's superintendent at the job site as required herein.
  12. Submittal of Construction Schedule as required by the Contract Documents.

## **ARTICLE 7. EXISTENCE OF UTILITIES AT THE WORK SITE**

- A. The Town has endeavored to determine the existence of utilities at the Project site from the records of the owners of known utilities in the vicinity of the Project. The positions of these utilities as derived from such records are shown on the Plans.

- B. Unless indicated otherwise on the Plans and Specifications, no excavations were made to verify the locations shown for underground utilities. The service connections to these utilities are not shown on the Plans. Water service connections may be shown on the Plans showing general locations of such connections. It shall be the responsibility of the Contractor to determine the exact location of all service connections. The Contractor shall make its own investigations, including exploratory excavations, to determine the locations and type of service connections, prior to commencing Work which could result in damage to such utilities. The Contractor shall immediately notify the Town in writing of any utility discovered in a different position than shown on the Plans or which is not shown on the Plans.
- C. If applicable, all water meters, water valves, fire hydrants, electrical utility vaults, telephone vaults, gas utility valves, and other subsurface structures shall be relocated or adjusted to final grade by the Contractor. Locations of existing utilities shown on the Plans are approximate and may not be complete. The Contractor shall be responsible for coordinating its Work with all utility companies during the construction of the Work.
- D. Notwithstanding the above, pursuant to section 4215 of the Government Code, the Town has the responsibility to identify, with reasonable accuracy, main or trunkline facilities on the plans and specifications. In the event that main or trunkline utility facilities are not identified with reasonable accuracy in the plans and specifications made a part of the invitation for Bids, the Town shall assume the responsibility for their timely removal, relocation, or protection.
- E. Contractor, except in an emergency, shall contact the appropriate regional notification center, **California Underground Service Alert** at 811 or 1-800-227-2600 or on-line at [www.digalert.org](http://www.digalert.org) at least two working days prior to commencing any excavation if the excavation will be performed in an area which is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the Town, and obtain an inquiry identification number from that notification center. No excavation shall be commenced or carried out by the Contractor unless such an inquiry identification number has been assigned to the Contractor or any subcontractor of the Contractor and the Town has been given the identification number by the Contractor.

## **ARTICLE 8. SOILS INVESTIGATIONS**

- A. Reports and Drawings. The Special Conditions identify:
  - 1. those reports known to the Town of explorations and tests of subsurface conditions at or contiguous to the site; and
  - 2. those drawings known to the Town of physical conditions relating to existing surface or subsurface structures at the site (except Underground Facilities).
- B. Limited Reliance by Contractor on Technical Data Authorized. Contractor may rely upon the accuracy of the “technical data” contained in such reports and drawings, which were expressly not created or obtained to evaluate or assist in the evaluation of constructability, and are not Contract Documents. Contractor shall make its own

interpretation of the “technical data” and shall be solely responsible for any such interpretations. Except for reliance on the accuracy of such “technical data,” Contractor may not rely upon or make any claim against the Town, Town’s Representative, or Engineer of Record, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor’s purposes, including without limitation any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions, conclusions and information contained in such reports or shown or indicated in such drawings; or
3. any Contractor interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions, or information.

## **ARTICLE 9. CONTRACTOR’S SUPERVISION**

Contractor shall continuously keep at the Project site, a competent and experienced full-time Project superintendent acceptable to the Town. Superintendent must be able to proficiently speak, read and write in English and shall have the authority to make decisions on behalf of the Contractor. Contractor shall continuously provide efficient supervision of the Project.

## **ARTICLE 10. WORKERS**

- A. Contractor shall at all times enforce strict discipline and good order among its employees. Contractor shall not employ on the Project any unfit person or any one not skilled in the Work assigned to him or her.
- B. Any person in the employ of the Contractor whom the Town may deem incompetent or unfit shall be dismissed from the Work and shall not be employed on this Project.

## **ARTICLE 11. INDEPENDENT CONTRACTORS**

Contractor shall be an independent contractor for the Town and not an employee. Contractor understands and agrees that it and all of its employees shall not be considered officers, employees, or agents of Town and are not entitled to benefits of any kind normally provided employees of Town, including but not limited to, state unemployment compensation or workers’ compensation. Contractor assumes full responsibility for the acts and omissions of its employees or agents related to the Work.

## **ARTICLE 12. SUBCONTRACTS**

- A. Contractor agrees to bind every subcontractor to the terms of the Contract Documents as far as such terms are applicable to subcontractor’s portion of the Work. Contractor shall be as fully responsible to the Town for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by its subcontractors, as Contractor is for acts and omissions of persons directly employed by Contractor. Nothing contained in these Contract Documents shall create any contractual relationship between any subcontractor and the Town.

- B. The Town reserves the right to accept all subcontractors. The Town's acceptance of any subcontractor under this Contract shall not in any way relieve Contractor of its obligations in the Contract Documents.
- C. Prior to substituting any subcontractor listed in the Bid Forms, Contractor must comply with the requirements of the Subletting and Subcontracting Fair Practices Act pursuant to California Public Contract Code section 4100 et seq.

### **ARTICLE 13. VERIFICATION OF EMPLOYMENT ELIGIBILITY**

By executing this Contract, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subcontractors, sub-subcontractors and consultants to comply with the same. Each person executing this Contract on behalf of Contractor verifies that he or she is a duly authorized officer of Contractor and that any of the following shall be grounds for the Town to terminate the Contract for cause: (1) failure of the Contractor or its subcontractors, sub-subcontractors or consultants to meet any of the requirements provided for in this Article; (2) any misrepresentation or material omission concerning compliance with such requirements; or (3) failure to immediately remove from the Work any person found not to be in compliance with such requirements.

### **ARTICLE 14. REQUESTS FOR SUBSTITUTION**

- A. For the purposes of this provision, the term "substitution" shall mean the substitution of any material, method or service substantially equal to or better in every respect to that indicated in the Standard Specifications or otherwise referenced herein.
- B. Pursuant to Public Contract Code section 3400(b), the Town may make a finding that is described in the Notice Inviting Bids that designates certain products, things, or services by specific brand or trade name.
- C. Unless specifically designated in the Special Conditions, whenever any material, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such specifications shall be deemed to be used for the purpose of facilitating the description of the material, process, or article desired and shall be deemed to be followed by the words "or equal." Contractor may, unless otherwise stated, offer for substitution any material, process, or article which may be substantially equal to or better in every respect to that so indicated or specified in the Contract Documents. However, the Town has adopted uniform standards for certain materials, processes, and articles.
- D. The Contractor shall submit substitution requests, together with substantiating data, for substitution of any "or equal" material, process, or article no later than thirty-five (35) calendar days after award of Contract. Provisions regarding submission of substitution requests shall not in any way authorize an extension of time for the performance of this Contract. If a substitution request is rejected by the Town, the Contractor shall provide the material, method or service specified herein. The Town shall not be responsible for any costs incurred by the Contractor associated with substitution requests. The burden of proof as to the equality of any material,

process, or article shall rest with the Contractor. The Engineer has the complete and sole discretion to determine if a material, process, or article is substantially equal to or better than that specified and to approve or reject all substitution requests.

- E. Substantiating data as described above shall include, at a minimum, the following information:
  - 1. A signed affidavit from the Contractor stating that the material, process, or article proposed as a substitution is substantially equal to or better than that specified in every way except as may be listed on the affidavit.
  - 2. Illustrations, specifications, catalog cut sheets, and any other relevant data required to prove that the material, process, or article is substantially equal to or better than that specified.
  - 3. A statement of the cost implications of the substitution being requested, indicating whether and why the proposed substitution will reduce or increase the amount of the contract.
  - 4. Information detailing the durability and lifecycle costs of the proposed substitution.
- F. Failure to submit all the required substantiating data detailed above in a timely manner so that the substitution request can be adequately reviewed may result in rejection of the substitution request. The Engineer is not obligated to review multiple submittals related the same substitution request resulting from the Contractor's failure to initially submit a complete package.
- G. Time limitations within this Article shall be strictly complied with and in no case will an extension of time for completion of the contract be granted because of Contractor's failure to provide substitution requests at the time and in the manner described herein.
- H. The Contractor shall bear the costs of all Town work associated with the review of substitution requests.
- I. If substitution requests approved by the Engineer require that Contractor furnish materials, methods or services more expensive than that specified, the increased costs shall be borne by Contractor.

## **ARTICLE 15. SHOP DRAWINGS**

- A. Contractor shall check and verify all field measurements and shall submit with such promptness as to provide adequate time for review and cause no delay in its own Work or in that of any other contractor, subcontractor, or worker on the Project, six (6) copies of all shop drawings, calculations, schedules, and materials list, and all other provisions required by the Contract Documents. Contractor shall sign all submittals affirming that submittals have been reviewed and approved by Contractor prior to submission to Engineer. Each signed submittal shall affirm that the submittal meets all the requirements of the Contract Documents except as specifically and clearly noted and listed on the transmittal letter of the submittal.

- B. Contractor shall make any corrections required by the Engineer, and file with the Engineer six (6) corrected copies each, and furnish such other copies as may be needed for completion of the Work. Engineer's acceptance of shop drawings shall not relieve Contractor from responsibility for deviations from the Contract Documents unless Contractor has, in writing, called Engineer's attention to such deviations at time of submission and has secured the Engineer's written acceptance. Engineer's acceptance of shop drawings shall not relieve Contractor from responsibility for errors in shop drawings.

## **ARTICLE 16. SUBMITTALS**

- A. Contractor shall furnish to the Engineer for approval, prior to purchasing or commencing any Work, a log of all samples, material lists and certifications, mix designs, schedules, and other submittals, as required in the Contract Documents. The log shall indicate whether samples will be provided in accordance with other provisions of this Contract.
- B. Contractor will provide samples and submittals, together with catalogs and supporting data required by the Engineer, to the Engineer within a reasonable time period to provide for adequate review and avoid delays in the Work.
- C. These requirements shall not authorize any extension of time for performance of this Contract. Engineer will check and approve such samples, but only for conformance with design concept of work and for compliance with information given in the Contract Documents. Work shall be in accordance with approved samples and submittals.

## **ARTICLE 17. MATERIALS**

- A. Except as otherwise specifically stated in the Contract Documents, Contractor shall provide and pay for all materials, labor, tools, equipment, lights, power, transportation, superintendence, temporary constructions of every nature, and all other services and facilities of every nature whatsoever necessary to execute and complete this Contract within specified time.
- B. Unless otherwise specified, all materials shall be new and the best of their respective kinds and grades as noted and/or specified, and workmanship shall be of good quality.
- C. Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of the Work and shall be stored properly and protected as required by the Contract Documents. Contractor shall be entirely responsible for damage or loss by weather or other causes to materials or Work.
- D. No materials, supplies, or equipment for Work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in the Work and agrees upon completion of all work to deliver the Project, to the Town free from any claims, liens, or charges.

- E. Materials shall be stored on the Project site in such manner so as not to interfere with any operations of the Town or any independent contractor.
- F. Contractor shall verify all measurements, dimensions, elevations, and quantities before ordering any materials or performing any Work, and the Town shall not be liable for Contractor's failure to do so. No additional compensation, over and above payment for the actual quantities at the prices set out in the Bid Form, will be allowed because of differences between actual measurements, dimension, elevations and quantities and those indicated on the Plans and in the Specifications. Any difference therein shall be submitted to the Engineer for consideration before proceeding with the Work.

## **ARTICLE 18. PERMITS AND LICENSES**

- A. Town will apply and pay for the review of necessary encroachment permits for Work within the public rights-of-way. Contractor shall obtain all other necessary permits and licenses for the construction of the Project, including encroachment permits, and shall pay all fees required by law and shall comply with all laws, ordinances, rules and regulations relating to the Work and to the preservation of public health and safety. Before acceptance of the Project, the Contractor shall submit all licenses, permits, certificates of inspection and required approvals to the Town.
- B. The Bid Form contains an allowance for the Contractor's cost of acquiring traffic control permits and for construction inspection fees that may be charged to the Contractor by the Agency of Jurisdiction. The allowance is included within the Bid Form to eliminate the need by bidders to research or estimate the costs of traffic control permits and construction inspection fees prior to submitting a bid. The allowance is specifically intended to account for the costs of traffic control permits and construction inspection fees charged by the local Agency of Jurisdiction only. No other costs payable by Contractor to the Agency of Jurisdiction are included within the allowance. Payment by Town to Contractor under the Permit and Inspection Allowance Bid Item shall be made based on actual cost receipts only and in accordance with the provisions of these specifications.

## **ARTICLE 19. TRENCHES**

- A. **Trenches Five Feet or More in Depth.** Contractor shall submit to the Engineer at the preconstruction meeting, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from hazards of caving ground during the excavation of any trench or trenches five feet or more in depth. If such plan varies from shoring system standards established by the Construction Safety Orders of the California Code of Regulations, Department of Industrial Relations, the plan shall be prepared by a California registered civil or structural engineer. The plan shall not be less effective than the shoring, bracing, sloping, or other provisions of the Construction Safety Orders, as defined in the California Code of Regulations. The Contractor shall designate in writing the "competent person" as defined in Title 8, California Code of Regulations, who shall be present at the Work Site each day that trenching/excavation is in progress. The "competent person" shall prepare and provide daily trenching/excavation inspection reports to the Engineer.



Contractor shall also submit a copy of its annual California Occupational Safety and Health Administration (Cal/OSHA) trench/excavation permit.

- B. Excavations Deeper than Four Feet.** If the Work involves excavating trenches or other excavations that extend deeper than four feet below the surface, Contractor shall promptly, and before the excavation is further disturbed, notify the Town in writing of any of the following conditions:
1. Material that the Contractor believes may be material that is hazardous waste, as defined in section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
  2. Subsurface or latent physical conditions at the site differing from those indicated.
  3. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract

The Town shall promptly investigate the conditions, and if it finds that the conditions do so materially differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the Work, shall issue a change order under the procedures described in the Contract Documents.

In the event that a dispute arises between the Town and the Contractor as to whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the parties.

## **ARTICLE 20. TRAFFIC CONTROL**

- A.** Traffic control plan(s) for the Work may be required by the Agency(s) of Jurisdiction. Traffic control plans, if required, shall be prepared at Contractor's expense, and traffic control shall be performed at Contractor's expense in accordance with the requirements of the Agency(s) of Jurisdiction. The Permit and Inspection Allowance included within the Bid Form includes the cost of required traffic control permit(s) and construction inspection by the Agency(s) of Jurisdiction only. The Permit and Inspection Allowance does not include costs for preparation of any required traffic control plans, implementation of any traffic control requirements or for any traffic signal services that may be required. Costs for traffic control plans, implementation of traffic control, or traffic signal services required by the Agency(s) of Jurisdiction shall be included in the Contractor's Bid.
- B.** All warning signs and safety devices used by the Contractor to perform the Work shall conform to the requirements contained in the State of California, Department of

Transportation's current edition of "Manual of Traffic Controls for Construction and Maintenance Work Zones" or to the requirements of the local agency. The Contractor shall also be responsible for all traffic control required by the agency having jurisdiction over the project on the intersecting streets. Contractor must submit a traffic control plan to the agency having jurisdiction over the project for approval prior to starting work.

- C. The Contractor's representative on the site responsible for traffic control shall produce evidence that he/she has completed training acceptable to the California Department of Transportation for safety through construction zones. All of the streets in which the Work will occur shall remain open to traffic and one lane of traffic maintained at all times unless otherwise directed by the agency of jurisdiction. Businesses and residences adjacent to the Work shall be notified forty-eight (48) hours in advance of closing of driveways. The Contractor shall make every effort to minimize the amount of public parking temporarily eliminated due to construction in areas fronting businesses. No stockpiles of pipe or other material will be allowed in traveled right-of-ways after working hours unless otherwise approved by the Engineer.

## **ARTICLE 21. DIVERSION OF RECYCLABLE WASTE MATERIALS**

In compliance with the applicable Town's waste reduction and recycling efforts, Contractor shall divert all Recyclable Waste Materials to appropriate recycling centers as required for compliance with the local jurisdiction's waste diversion ordinances. Contractor will be required to submit weight tickets and written proof of diversion with its monthly progress payment requests. Contractor shall complete and execute any certification forms required by Town or other applicable agencies to document Contractor's compliance with these diversion requirements. All costs incurred for these waste diversion efforts shall be the responsibility of the Contractor.

## **ARTICLE 22. REMOVAL OF HAZARDOUS MATERIALS**

Should Contractor encounter material reasonably believed to be polychlorinated biphenyl (PCB) or other toxic wastes and hazardous materials which have not been rendered harmless at the Project site, the Contractor shall immediately stop work at the affected Project site and shall report the condition to the Town in writing. The Town shall contract for any services required to directly remove and/or abate PCBs and other toxic wastes and hazardous materials, if required by the Project site(s), and shall not require the Contractor to subcontract for such services. The Work in the affected area shall not thereafter be resumed except by written agreement of the Town and Contractor.

## **ARTICLE 23. SANITARY FACILITIES**

Contractor shall provide sanitary temporary toilet buildings and hand washing facilities for the use of all workers. All toilets and hand washing facilities shall comply with all applicable federal, state and local laws, codes, ordinances, and regulations. Toilets shall be kept supplied with toilet paper and shall have workable door fasteners. Toilets and hand washing facilities shall be serviced no less than once weekly and shall be present in a quantity of not less than 1 per 20 workers as required by Cal/OSHA regulations. The toilets and hand washing facilities shall be maintained in a sanitary condition at all times. Use of toilet and hand washing facilities in the

Work under construction shall not be permitted. Any other Sanitary Facilities required by Cal/OSHA shall be the responsibility of the Contractor.

#### **ARTICLE 24. AIR POLLUTION CONTROL**

Contractor shall comply with all air pollution control rules, regulations, ordinances and statutes. All containers of paint, thinner, curing compound, solvent or liquid asphalt shall be labeled to indicate that the contents fully comply with the applicable material requirements.

#### **ARTICLE 25. LAYOUT AND FIELD ENGINEERING**

All field engineering required for laying out the Work and establishing grades for earthwork operations shall be furnished by the Contractor at its expense.

#### **ARTICLE 26. TESTS AND INSPECTIONS**

- A. If the Contract Documents, the Engineer, or any instructions, laws, ordinances, or public authority requires any part of the Work to be tested or Approved, Contractor shall provide the Engineer at least two (2) working days' notice of its readiness for observation or inspection. If inspection is by a public authority other than the Town, Contractor shall promptly inform the Town of the date fixed for such inspection. Required certificates of inspection (or similar) shall be secured by Contractor. Costs for Town testing and Town inspection shall be paid by the Town. Costs of tests for Work found not to be in compliance shall be paid by the Contractor.
- B. If any Work is done or covered up without the required testing or approval, the Contractor shall uncover or deconstruct the Work, and the Work shall be redone after completion of the testing at the Contractor's cost in compliance with the Contract Documents.
- C. Where inspection and testing are to be conducted by an independent laboratory or agency, materials or samples of materials to be inspected or tested shall be selected by such laboratory or agency, or by the Town, and not by Contractor. All tests or inspections of materials shall be made in accordance with the commonly recognized standards of national organizations.
- D. In advance of manufacture of materials to be supplied by Contractor which must be tested or inspected, Contractor shall notify the Town so that the Town may arrange for testing at the source of supply. Any materials which have not satisfactorily passed such testing and inspection shall not be incorporated into the Work.
- E. If the manufacture of materials to be inspected or tested will occur in a plant or location greater than sixty (60) miles from the Town, the Contractor shall pay for any excessive or unusual costs associated with such testing or inspection, including but not limited to excessive travel time, standby time and required lodging.
- F. Reexamination of Work may be ordered by the Town. If so ordered, Work must be uncovered or deconstructed by Contractor. If Work is found to be in accordance with the Contract Documents, the Town shall pay the costs of reexamination and reconstruction. If such work is found not to be in accordance with the Contract Documents, Contractor shall pay all costs.

## **ARTICLE 27. PROTECTION OF WORK AND PROPERTY**

- A. The Contractor shall be responsible for all damages to persons or property that occurs as a result of the Work. Contractor shall be responsible for the proper care and protection of all materials delivered and Work performed until completion and final Acceptance by the Town. All Work shall be solely at the Contractor's risk. Contractor shall adequately protect adjacent property from settlement or loss of lateral support as necessary. Contractor shall comply with all applicable safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the Project site where Work is being performed. Contractor shall erect and properly maintain at all times, as required by field conditions and progress of work, all necessary safeguards, signs, barriers, lights, and watchmen for protection of workers and the public, and shall post danger signs warning against hazards created in the course of construction.
- B. In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from the Engineer, is hereby permitted to act to prevent such threatened loss or injury; and Contractor shall so act, without appeal, if so authorized or instructed by the Engineer or the Town. Any compensation claimed by Contractor on account of emergency work shall be determined by and agreed upon by the Town and the Contractor.

## **ARTICLE 28. CONTRACTOR'S MEANS AND METHODS**

Contractor is solely responsible for the means and methods utilized to perform the Work. In no case shall the Contractor's means and methods deviate from commonly used industry standards.

## **ARTICLE 29. AUTHORIZED REPRESENTATIVES**

The Town shall designate representatives, who shall have the right to be present at the Project site at all times. The Town may designate an inspector who shall have the right to observe all of the Contractor's Work. The inspector shall not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. Contractor shall provide safe and proper facilities for such access.

## **ARTICLE 30. HOURS OF WORK**

- A. As provided in Article 3 (commencing at section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, Contractor stipulates that eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the Contractor or by any subcontractor on any subcontract under this Contract upon the Work or upon any part of the Work contemplated by this Contract is limited and restricted to eight (8) hours during any one calendar day and 40 hours during any one calendar week, except as hereinafter provided. Notwithstanding the provisions herein above set forth, work performed by employees of Contractor in excess of eight (8) hours per day, and 40 hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

- B. The Contractor and every subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed in connection with the Work or any part of the Work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of the Town and to the Division of Labor Law Enforcement, Department of Industrial Relations of the State of California.
- C. The Contractor shall pay to the Town a penalty of twenty-five dollars (\$25.00) for each worker employed in the execution of this Contract by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and 40 hours in any one calendar week in violation of the provisions of Article 3 (commencing at section 1810), Chapter 1, Part 7, Division 2 of the Labor Code.
- D. Any work necessary to be performed after regular working hours, or on Saturdays and Sundays or other holidays, shall be performed without additional expense to the Town.
- E. Town will provide inspection during normal working hours from 7:00 a.m. to 3:30 p.m. Monday through Friday. Inspection before or after this time will be charged to the Contractor as reimbursable inspection time. Inspections on weekends requires two days' notice for review and approval. Upon written request and approval the 8.5 hour working day may be changed to other limits subject to city/county ordinance.
- F. It shall be unlawful for any person to operate, permit, use, or cause to operate any of the following at the Project site, other than between the hours of 7:00 a.m. to 5:00 p.m., Monday through Friday, with no Work allowed on the Town-observed holidays, unless otherwise approved by the Town:
  - 1. Powered Vehicles
  - 2. Construction Equipment
  - 3. Loading and Unloading Vehicles
  - 4. Domestic Power Tools

### **ARTICLE 31. PAYROLL RECORDS; LABOR COMPLIANCE**

- A. Pursuant to Labor Code section 1776, Contractor and all subcontractors shall maintain weekly certified payroll records, showing the names, addresses, Social Security numbers, work classifications, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by them in connection with the Work under this Contract. Contractor shall certify under penalty of perjury that records maintained and submitted by Contractor are true and accurate. Contractor shall also require subcontractor(s) to certify weekly payroll records under penalty of perjury.
- B. In accordance with Labor Code section 1771.4, the Contractor and each subcontractor shall furnish the certified payroll records directly to the Department of

Industrial Relations ("DIR") on the specified interval and format prescribed by the DIR, which may include electronic submission. Contractor shall comply with all requirements and regulations from the DIR relating to labor compliance monitoring and enforcement. The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

- C. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor's performance of Work, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay subject to any applicable liquidated damages and shall not be compensable by the Town. Contractor shall defend, indemnify and hold the Town, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.
- D. The payroll records described herein shall be certified and submitted by the Contractor at a time designated by the Town. The Contractor shall also provide the following:
  - 1. A certified copy of the employee's payroll records shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
  - 2. A certified copy of all payroll records described herein shall be made available for inspection or furnished upon request of the DIR.
- E. Unless submitted electronically, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement ("DLSE") of the DIR or shall contain the same information as the forms provided by the DLSE.
- F. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency, the Town, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor awarded the Contract or performing the contract shall not be marked or obliterated.
- G. In the event of noncompliance with the requirements of this Article, the Contractor shall have ten (10) calendar days in which to comply subsequent to receipt of written notice specifying in what respects the Contractor must comply with this Article. Should noncompliance still be evident after such 10-day period, the Contractor shall pay a penalty of one hundred dollars (\$100.00) to the Town for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payment then due.

- H. The responsibility for compliance with this Article shall rest upon the Contractor.

## **ARTICLE 32. PREVAILING RATES OF WAGES**

- A. The Contractor is aware of the requirements of Labor Code sections 1720 *et seq.* and 1770 *et seq.*, as well as California Code of Regulations, Title 8, Section 16000 *et seq.* ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since this Project involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. The Contractor shall obtain a copy of the prevailing rates of per diem wages at the commencement of this Contract from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at [www.dir.ca.gov](http://www.dir.ca.gov). In the alternative, the Contractor may view a copy of the prevailing rate of per diem wages which are on file at the Town's Administration Office and shall be made available to interested parties upon request. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification, or type of worker needed to perform work on the Project available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the Project site. Contractor shall defend, indemnify and hold the Town, its officials, officers, employees and authorized volunteers free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or allege failure to comply with the Prevailing Wage Laws.
- B. The Contractor shall forfeit as a penalty to the Town not more than Two Hundred Dollars (\$200.00), pursuant to Labor Code section 1775, for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate as determined by the Director of the Department of Industrial Relations for such work or craft in which such worker is employed for any public work done under the Contract by it or by any subcontractor under it. The difference between such prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.
- C. Contractor shall post, at appropriate conspicuous points on the Project site, a schedule showing all determined general prevailing wage rates and all authorized deductions, if any, from unpaid wages actually earned.

## **ARTICLE 33. PUBLIC WORKS CONTRACTOR REGISTRATION**

Pursuant to Labor Code sections 1725.5 and 1771.1, the Contractor and its subcontractors must be registered with the Department of Industrial Relations prior to the execution of a contract to perform public works. By entering into this Contract, Contractor represents that it is aware of the registration requirement and is currently registered with the DIR. Contractor shall maintain a current registration for the duration of the Project. Contractor shall further include the requirements of Labor Code sections 1725.5 and 1771.1 in any subcontract and ensure that all subcontractors are registered at the time this Contract is entered into and maintain registration for the duration of the Project. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work

performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

#### **ARTICLE 34. EMPLOYMENT OF APPRENTICES**

- A. Contractor and all subcontractors shall comply with the requirements of Labor Code sections 1777.5 and 1777.6 in the employment of apprentices.
- B. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.
- C. Knowing violations of Labor Code section 1777.5 will result in forfeiture not to exceed one hundred dollars (\$100.00) for each calendar day of non-compliance pursuant to Labor Code section 1777.7.
- D. The responsibility for compliance with this Article shall rest upon the Contractor.

#### **ARTICLE 35. NONDISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY**

Pursuant to Labor Code section 1735 and other applicable provisions of law, the Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, or any other classifications protected by law on this Project. The Contractor will take affirmative action to insure that employees are treated during employment or training without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, or any other classifications protected by law.

Employment Eligibility; Contractor. By executing this Contract, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of the Contractor. Contractor also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Contract, and shall not violate any such law at any time during the term of the Contract. Contractor shall avoid any violation of any such law during the term of this Contract by participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some other legally acceptable method. Contractor shall maintain records of each such verification, and shall make them available to the Town or its representatives for inspection and copy at any time during normal business hours. The Town shall not be responsible for any costs or expenses related to Contractor's compliance with the requirements provided for or referred to herein.



Employment Eligibility; Subcontractors, Sub-subcontractors and Consultants. To the same extent and under the same conditions as Contractor, Contractor shall require all of its subcontractors, sub-subcontractors and consultants performing any part of the Work or of this Contract to make the same verifications and comply with all requirements and restrictions provided for herein.

Employment Eligibility; Failure to Comply. Each person executing this Contract on behalf of Contractor verifies that he or she is a duly authorized officer of Contractor, and understands that any of the following shall be grounds for the Town to terminate the Contract for cause: (1) failure of Contractor or its subcontractors, sub-subcontractors or consultants to meet any of the requirements provided for herein; (2) any misrepresentation or material omission concerning compliance with such requirements; or (3) failure to immediately remove from the Work any person found not to be in compliance with such requirements.

### **ARTICLE 36. DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS**

Contractors or subcontractors may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Labor Code section 1777.1 or 1777.7. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid, or may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the Town. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the project.

### **ARTICLE 37. LABOR/EMPLOYMENT SAFETY**

The Contractor shall comply with all applicable laws and regulations of the federal, state, and local government, including Cal/OSHA requirements and requirements for verification of employees' legal right to work in the United States.

The Contractor shall maintain emergency first aid treatment for his employees which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 *et seq.*), and California Code of Regulations, Title 8, Industrial Relations Division 1, Department of Industrial Relations, Chapter 4. The Contractor shall ensure the availability of emergency medical services for its employees in accordance with California Code of Regulations, Title 8, Section 1512.

The Contractor shall submit the Illness and Injury Prevention Program and a Project site specific safety program to the Town prior to beginning Work at the Project site. Contractor shall maintain a confined space program that meets or exceeds the Town Standards. Contractor shall adhere to the Town's lock out tag out program.

### **ARTICLE 38. INSURANCE**

The Contractor shall obtain, and at all times during performance of the Work of Contract, maintain all of the insurance described in this Article. Contractor shall not commence Work under this Contract until it has provided evidence satisfactory to the Town that it has secured all insurance required hereunder. Contractor shall not allow any subcontractor to commence work

on any subcontract until it has provided evidence satisfactory to the Town that the subcontractor has secured all insurance required under this Article. Failure to provide and maintain all required insurance shall be grounds for the Town to terminate this Contract for cause. Contractor shall furnish Town with original certificates of insurance and endorsements effective coverage required by this Contract on forms satisfactory to the Town. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms acceptable to the Town. All certificates and endorsements must be received and approved by the Town before Work commences.

- A. **Additional Insureds; Waiver of Subrogation.** The Town, its officials, officers, employees, agents and authorized volunteers shall be named as Additional Insureds on Contractor's All Risk policy and on Contractor's and its subcontractors' policies of Commercial General Liability and Automobile Liability insurance using, for Contractor's policy/ies of Commercial General Liability insurance, ISO CG forms 20 10 and 20 37 (or endorsements providing the exact same coverage, including completed operations), and, for subcontractors' policies of Commercial General Liability insurance, ISO CG form 20 38 (or endorsements providing the exact same coverage). Notwithstanding the minimum limits set forth in this Contract for any type of insurance coverage, all available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as Additional Insureds hereunder. Contractor and its insurance carriers shall provide a Waiver of Subrogation in favor of those parties.
- B. **Workers' Compensation Insurance.** The Contractor shall provide workers' compensation insurance for all of the employees engaged in Work under this Contract, on or at the Site, and, in case of any sublet Work, the Contractor shall require the subcontractor similarly to provide workers' compensation insurance for all the latter's employees as prescribed by State law. Any class of employee or employees not covered by a subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in work under this Contract, on or at the Site, is not protected under the Workers' Compensation Statutes, the Contractor shall provide or shall cause a subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected. The Contractor is required to secure payment of compensation to his employees in accordance with the provisions of section 3700 of the Labor Code. The Contractor shall file with the Town certificates of his insurance protecting workers. Company or companies providing insurance coverage shall be acceptable to the Town, if in the form and coverage as set forth in the Contract Documents.
- C. **Employer's Liability Insurance.** Contractor shall provide Employer's Liability Insurance, including Occupational Disease, in the amount of at least one million dollars (\$1,000,000.00) per person per accident. Contractor shall provide Town with a certificate of Employer's Liability Insurance. Such insurance shall comply with the provisions of the Contract Documents. The policy shall be endorsed, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement and contain a Waiver of Subrogation in favor of the Town.
- D. **Commercial General Liability Insurance.** Contractor shall provide "occurrence" form Commercial General Liability insurance coverage at least as broad as the most current ISO CGL Form 00 01, including but not limited to, premises liability,

contractual liability, products/completed operations, personal and advertising injury which may arise from or out of Contractor's operations, use, and management of the Site, or the performance of its obligations hereunder. The policy shall not contain any exclusion contrary to this Contract including but not limited to endorsements or provisions limiting coverage for (1) contractual liability (including but not limited to ISO CG 24 26 or 21 39); or (2) cross-liability for claims or suits against one insured against another. Policy limits shall not be less than \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Defense costs shall be paid in addition to the limits.

1. Such policy shall comply with all the requirements of this Article. The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Contractor from liability in excess of such coverage, nor shall it limit Contractor's indemnification obligations to the Town, and shall not preclude the Town from taking such other actions available to the Town under other provisions of the Contract Documents or law.
2. All general liability policies provided pursuant to the provisions of this Article shall comply with the provisions of the Contract Documents.
3. All general liability policies shall be written to apply to all bodily injury, including death, property damage, personal injury, owned and non-owned equipment, blanket contractual liability, completed operations liability, explosion, collapse, under-ground excavation, removal of lateral support, and other covered loss, however occasioned, occurring during the policy term, and shall specifically insure the performance by Contractor of that part of the indemnification contained in these General Conditions relating to liability for injury to or death of persons and damage to property.
4. If the coverage contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any aggregate limit has been paid or reserved, the Town may require additional coverage to be purchased by Contractor to restore the required limits. Contractor may combine primary, umbrella, and as broad as possible excess liability coverage to achieve the total limits indicated above. Any umbrella or excess liability policy shall include the additional insured endorsement described in the Contract Documents.
5. All policies of general liability insurance shall permit and Contractor does hereby waive any right of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss.

**E. Automobile Liability Insurance.** Contractor shall provide "occurrence" form Automobile Liability Insurance at least as broad as ISO CA 00 01 (Any Auto) in the amount of, at least, one million dollars (\$1,000,000) per accident for bodily injury and

property damage. Such insurance shall provide coverage with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by Contractor or for which Contractor is responsible, in a form and with insurance companies acceptable to the Town. All policies of automobile insurance shall permit and Contractor does hereby waive any right of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss.

**F. Builder's Risk ["All Risk"]**

1. It is the Contractor's responsibility to maintain or cause to be maintained Builder's Risk ["All Risk"] extended coverage insurance on all work, material, equipment, appliances, tools, and structures that are or will become part of the Work and subject to loss or damage by fire, and vandalism and malicious mischief, in an amount to cover 100% of the replacement cost. The Town accepts no responsibility for the Work until the Work is formally accepted by the Town. The Contractor shall provide a certificate evidencing this coverage before commencing performance of the Work.
2. The named insureds shall be Contractor, all Subcontractors of any tier (excluding those solely responsible for design work), suppliers, and Town, its elected officials, officers, employees, agents and authorized volunteers, as their interests may appear. Contractor shall not be required to maintain property insurance for any portion of the Work following acceptance by Town.
3. Policy shall be provided for replacement value on an "all risk" basis. There shall be no coinsurance penalty provision in any such policy. Policy must include: (1) coverage for any ensuing loss from faulty workmanship, nonconforming work, omission or deficiency in design or specifications; (2) coverage against machinery accidents and operational testing; (3) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the Project; (4) transit coverage, including ocean marine coverage (unless insured by the supplier), with sub-limits sufficient to insure the full replacement value of any key equipment item; and (5) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the Site. Such insurance shall be on a form acceptable to Town to ensure adequacy and sublimit.
4. In addition, the policy shall meet the following requirements:
  - a. Insurance policies shall be so conditioned as to cover the performance of any extra work performed under the Contract.
  - b. Coverage shall include all materials stored on site and in transit.
  - c. Coverage shall include Contractor's tools and equipment.
  - d. Insurance shall include boiler, machinery and material hoist coverage.

- G. **Contractor's Pollution Liability Coverage.** Contractor shall provide pollution liability insurance in an amount not less than \$1,000,000 per occurrence and \$2,000,000 aggregate.
- H. Contractor shall require all tiers of sub-contractors working under this Contract to provide the insurance required under this Article unless otherwise agreed to in writing by Town. Contractor shall make certain that any and all subcontractors hired by Contractor are insured in accordance with this Contract. If any subcontractor's coverage does not comply with the foregoing provisions, Contractor shall indemnify and hold the Town harmless from any damage, loss, cost, or expense, including attorneys' fees, incurred by the Town as a result thereof.

### **ARTICLE 39. FORM AND PROOF OF CARRIAGE OF INSURANCE**

- A. Any insurance carrier providing insurance coverage required by the Contract Documents shall be admitted to and authorized to do business in the State of California unless waived, in writing, by the Town's Risk Manager. Carrier(s) shall have an A.M. Best rating of not less than an A:VII. Insurance deductibles or self-insured retentions must be declared by the Contractor. At the election of the Town the Contractor shall either 1) reduce or eliminate such deductibles or self-insured retentions, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses. If umbrella or excess liability coverage is used to meet any required limit(s) specified herein, the Contractor shall provide a "follow form" endorsement satisfactory to the Town indicating that such coverage is subject to the same terms and conditions as the underlying liability policy.
- B. Each insurance policy required by this Contract shall be endorsed to state that: (1) coverage shall not be suspended, voided, reduced or cancelled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Town; and (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the Town, its officials, officers, agents, employees, and volunteers.
- C. The Certificate(s) and policies of insurance shall contain or shall be endorsed to contain the covenant of the insurance carrier(s) that it shall provide no less than thirty (30) days written notice be given to the Town prior to any material modification or cancellation of such insurance. In the event of a material modification or cancellation of coverage, the Town may terminate the Contract or stop the Work in accordance with the Contract Documents, unless the Town receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. Contractor shall not take possession, or use the Site, or commence operations under this Contract until the Town has been furnished original Certificate(s) of Insurance and certified original copies of endorsements or policies of insurance including all endorsements and any and all other attachments as required in this Article. The original endorsements for each policy and the Certificate of Insurance shall be signed by an individual authorized by the insurance carrier to do so on its behalf.

- D. The Certificate(s) of Insurance, policies and endorsements shall so covenant and shall be construed as primary, and the Town's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.
- E. Town reserves the right to adjust the monetary limits of insurance coverages during the term of this Contract including any extension thereof if, in the Town's reasonable judgment, the amount or type of insurance carried by the Contractor becomes inadequate.
- F. Contractor shall report to the Town, in addition to the Contractor's insurer, any and all insurance claims submitted by the Contractor in connection with the Work under this Contract.

#### **ARTICLE 40. TIME FOR COMPLETION AND LIQUIDATED DAMAGES**

- A. **Time for Completion/Liquidated Damages.** Time is of the essence in the completion of the Work. Work shall be commenced within ten (10) Days of the date stated in the Town's Notice to Proceed and shall be completed by Contractor in the time specified in the Contract Documents. The Town is under no obligation to consider early completion of the Project; and the Contract completion date shall not be amended by the Town's receipt or acceptance of the Contractor's proposed earlier completion date. Furthermore, Contractor shall not, under any circumstances, receive additional compensation from the Town (including but not limited to indirect, general, administrative or other forms of overhead costs) for the period between the time of earlier completion proposed by the Contractor and the Contract completion date. If the Work is not completed as stated in the Contract Documents, it is understood that the Town will suffer damage. In accordance with Government Code section 53069.85, being impractical and infeasible to determine the amount of actual damage, it is agreed that Contractor shall pay to the Town as fixed and liquidated damages, and not as a penalty, the sum stipulated in the Contract for each calendar day of delay until the Work is fully completed. Contractor and its surety shall be liable for any liquidated damages. Any money due or to become due the Contractor may be retained to cover liquidated damages.
- B. **Inclement Weather.** Contractor shall abide by the Engineer's determination of what constitutes inclement weather. Time extensions for inclement weather shall only be granted when the Work stopped during inclement weather is on the critical path of the Project schedule.
- C. **Extension of Time.** Contractor shall not be charged liquidated damages because of any delays in completion of the Work due to unforeseeable causes beyond the control and without the fault or negligence of Contractor (or its subcontractors or suppliers). Contractor shall within five (5) Days of identifying any such delay notify the Town in writing of causes of delay. The Town shall ascertain the facts and extent of delay and grant extension of time for completing the Work when, in its judgment, the facts justify such an extension. Time extensions to the Project shall be requested by the Contractor as they occur and without delay. No delay claims shall be permitted unless the event or occurrence delays the completion of the Project beyond the Contract completion date.

- D. **No Damages for Reasonable Delay.** The Town's liability to Contractor for delays for which the Town is responsible shall be limited to only an extension of time unless such delays were unreasonable under the circumstances. In no case shall the Town be liable for any costs which are borne by the Contractor in the regular course of business, including, but not limited to, home office overhead and other ongoing costs. Damages caused by unreasonable Town delay, including delays caused by items that are the responsibility of the Town pursuant to Government Code section 4215, shall be based on actual costs only, no proportions or formulas shall be used to calculate any delay damages.

#### **ARTICLE 41. COST BREAKDOWN AND PERIODIC ESTIMATES**

Contractor shall furnish on forms Approved by the Town:

- A. Within ten (10) Days of Notice to Proceed with the Contract, a detailed estimate giving a complete breakdown of the Contract price, if the Contract amount is a lump sum.
- B. A monthly itemized estimate of Work done for the purpose of making progress payments. In order for the Town to consider and evaluate each progress payment application, the Contractor shall submit a detailed measurement of Work performed and a progress estimate of the value thereof before the tenth (10th) Day of the following month.
- C. Contractor shall submit, with each of its payment requests, an adjusted list of actual quantities, verified by the Engineer, for unit price items listed, if any, in the Bid Form.
- D. Following the Town's Acceptance of the Work, the Contractor shall submit to the Town a written statement of the final quantities of unit price items for inclusion in the final payment request.
- E. The Town shall have the right to adjust any estimate of quantity and to subsequently correct any error made in any estimate for payment.

Contractor shall certify under penalty of perjury, that all cost breakdowns and periodic estimates accurately reflect the Work on the Project.

#### **ARTICLE 42. PROGRESS ESTIMATES AND PAYMENT**

- A. By the tenth (10th) Day of the following calendar month, Contractor shall submit to Engineer a payment request which shall set forth in detail the value of the Work done for the period beginning with the date work was first commenced and ending on the end of the calendar month for which the payment request is prepared. Contractor shall include any amount earned for authorized extra work. From the total thus computed, a deduction shall be made in the amount of five percent (5%) for retention, except where the Town has adopted a finding that the Work done under the Contract is substantially complex, and then the amount withheld as retention shall be the percentage specified in the Notice Inviting Bids. From the remainder a further deduction may be made in accordance with Section B below. The amount computed, less the amount withheld for retention and any amounts withheld as set forth below, shall be the amount of the Contractor's payment request.

- B. The Town may withhold a sufficient amount or amounts of any payment or payments otherwise due to Contractor, as in his judgment may be necessary to cover:
1. Payments which may be past due and payable for just claims against Contractor or any subcontractors for labor or materials furnished in and about the performance of work on the Project under this Contract.
  2. Defective work not remedied.
  3. Failure of Contractor to make proper payments to his subcontractor or for material or labor.
  4. Completion of the Contract if there is a reasonable doubt that the Work can be completed for balance then unpaid.
  5. Damage to another contractor or a third party.
  6. Amounts which may be due the Town for claims against Contractor.
  7. Failure of Contractor to keep the record ("as-built") drawings up to date.
  8. Failure to provide update on construction schedule as required herein.
  9. Site cleanup.
  10. Failure to comply with Contract Documents.
  11. Liquidated damages.
  12. Legally permitted penalties.
- C. The Town may apply such withheld amount or amounts to payment of such claims or obligations at its discretion with the exception of subsections (B)(1), (3), and (5) of this Article, which must be retained or applied in accordance with applicable law. In so doing, the Town shall be deemed the agent of Contractor and any payment so made by the Town shall be considered as a payment made under contract by the Town to Contractor and the Town shall not be liable to Contractor for such payments made in good faith. Such payments may be made without prior judicial determination of claim or obligations. The Town will render Contractor a proper accounting of such funds disbursed on behalf of Contractor.
- D. Upon receipt, the Engineer shall review the payment request to determine whether it is undisputed and suitable for payment. If the payment request is determined to be unsuitable for payment, it shall be returned to Contractor as soon as practicable but not later than seven (7) Days after receipt, accompanied by a document setting forth in writing the reasons why the payment request is not proper. The Town shall make the progress payment within 30 calendar days after the receipt of an undisputed and properly submitted payment request from Contractor, provided that a release of liens and claims has been received from the Contractor pursuant to Civil Code section 8132. The number of days available to the Town to make a payment without



incurring interest pursuant to this paragraph shall be reduced by the number of days by which the Engineer exceeds the seven (7) Day requirement.

- E. A payment request shall be considered properly executed if funds are available for payment of the payment request and payment is not delayed due to an audit inquiry by the financial officer of the Town.

#### **ARTICLE 43. SECURITIES FOR MONEY WITHHELD**

Pursuant to section 22300 of the Public Contract Code of the State of California, Contractor may request the Town to make retention payments directly to an escrow agent or may substitute securities for any money withheld by the Town to ensure performance under the contract. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with the Town or with a state or federally chartered bank as the escrow agent who shall return such securities to Contractor upon satisfactory completion of the contract. Deposit of securities with an escrow agent shall be subject to a written agreement substantially in the form provided in section 22300 of the Public Contract Code.

#### **ARTICLE 44. CHANGES AND EXTRA WORK.**

##### **A. Contract Change Orders.**

1. The Town, without invalidating the Contract, may order changes in the Work consisting of additions, deletions or other revisions, and the Contract Price and Contract Time shall be adjusted accordingly. Except as otherwise provided herein, all such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents. A Change Order signed by the Contractor indicates the Contractor's agreement therewith, including any adjustment in the Contract Price or the Contract Time, and the full and final settlement of all costs (direct, indirect and overhead) related to the Work authorized by the Change Order.
2. Contractor shall promptly execute changes in the Work as directed in writing by the Town even when the parties have not reached agreement on whether the change increases the scope of Work or affects the Contract Price or Contract Time. All claims for additional compensation to the Contractor shall be presented in writing. No claim will be considered after the Work in question has been done unless a written Change Order has been issued or a timely written notice of claim has been made by Contractor.
3. Whenever any change is made as provided for herein, such change shall be considered and treated as though originally included in the Contract, and shall be subject to all terms, conditions, and provisions of the original Contract.
4. Contractor shall not be entitled to claim or bring suit for damages, whether for loss of profits or otherwise, on account of any decrease or omission of any item or portion of Work to be done.
5. No dispute, disagreement, or failure of the parties to reach agreement on the terms of the Change Order shall relieve the Contractor from the obligation to

proceed with performance of the work, including Additional Work, promptly and expeditiously.

6. Contractor shall make available to the Town any of the Contractor's documents related to the Project immediately upon request of the Town, as set forth in Article 52.
7. Any alterations, extensions of time, Additional Work, or any other changes may be made without securing consent of the Contractor's surety or sureties.

## **B. Contract Price Change.**

### **1. Process for Determining Adjustments in Contract Price.**

- a. Owner Initiated Change. The Contractor must submit a complete cost proposal, including any change in the Contract Price or Contract Time, within seven (7) Days after receipt of a scope of a proposed change order initiated by the Town, unless the Town requests that proposals be submitted in less than seven (7) Days.
- b. Contractor Initiated Change. The Contractor must give written notice of a proposed change order required for compliance with the Contract Documents within seven (7) Days of discovery of the facts giving rise to the proposed change order.
- c. Whenever possible, any changes to the Contract amount shall be in a lump sum mutually agreed to by the Contractor and the Town.
- d. Price quotations from the Contractor shall be accompanied by sufficiently detailed supporting documentation to permit verification by the Town, including but not limited to estimates and quotations from subcontractors or material suppliers, as the Town may reasonably request. Contractor shall certify the accuracy of all Change Order Requests under penalty of perjury.
- e. If the Contractor fails to submit a complete cost proposal within the seven (7) Day period (or as requested), the Town has the right to order the Contractor in writing to commence the Work immediately on a time and materials basis and/or issue a lump sum change to the Contract Price and/or Contract Time in accordance with the Town's estimate. If the change is issued based on the Town's estimate, the Contractor will waive its right to dispute the action unless within fifteen (15) Days following completion of the added/deleted work, the Contractor presents written proof that the Town's estimate was in error.

### **2. Unit Price Change Orders.**

- a. When the actual quantity of a Unit Price item varies from the Bid Form, compensation for the change in quantity will be calculated by multiplying the actual quantity by the Unit Price. This calculation may result in either an additive or deductive Final Change Order pursuant to the Contract Documents.

- b. No Mark up for Overhead and Profit. Because the Contract Unit Prices provided in the Bid Form include Overhead and Profit as determined by Contractor at the time of Bid submission, no mark up or deduction for Overhead and Profit will be included in Unit Price Change Orders.
  - c. Bid items included on the Bid Form may be deducted from the Work in their entirety without any negotiated extra costs.
  - d. Contractor acknowledges that unit quantities are estimates and agrees that the estimated unit quantities listed on the Bid Form will be adjusted to reflect the actual unit quantities which may result in an adjustment to the Contract Unit Prices. Such an adjustment will be made by execution of a final additive or deductive Change Order following Contractor's completion of the Work. Upon notification, Contractor's failure to respond within seven (7) Days will result in Town's issuance of a unit quantity adjustment to the Contract Unit Prices and/or Contract Time in accordance with the Contract Documents.
  - e. The Town or Contractor may make a Claim for an adjustment in the Unit Price in accordance with the Contract Documents if:
    - i. the quantity of any item of Unit Price Work performed by Contractor differs by twenty-five percent (25%) or more from the estimated quantity of such item indicated in the Contract; and
    - ii. there is no corresponding adjustment with respect to any other item of Work; and
    - iii. Contractor believes that Contractor is entitled to an increase in Unit Price as a result of having incurred additional expense or the Town believes that the Town is entitled to a decrease in Unit Price and the parties are unable to agree as to the amount of any such increase or decrease..
3. Lump Sum Change Orders. Contractor shall incorporate the provisions of this Section into all agreements with Subcontractors. Compensation for Lump Sum Change Orders shall be limited to expenditures necessitated specifically by the Additional Work, and shall be according to the following:
- a. Overview. The Contractor will submit a properly itemized Lump Sum Change Order Proposal covering the Additional Work and/or the work to be deleted. This proposal will be itemized for the various components of the Additional Work and segregated by labor, material, and equipment in a detailed format satisfactory to the Town. The Town will require itemized change orders on all change order proposals from the Contractor, subcontractors, and sub-subcontractors regardless of tier. Details to be submitted will include detailed line item estimates showing detailed materials quantity take-offs, material prices by item and related labor hour pricing information and extensions (by line item or by drawing as applicable).
  - b. Labor. The costs of labor will be the actual cost for wages prevailing locally for each craft or type of worker at the time the Additional Work is done, plus

employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from Federal, State or local laws, as well as assessment or benefits required by lawful collective bargaining agreements. The use of a labor classification which would increase the Additional Work cost will not be permitted unless the Contractor establishes the necessity for such new classifications. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.

Estimated labor hours must only include hours for those workmen and working foremen directly involved in performing the change order work. Supervision above the level of working foremen (such as general foremen, superintendent, project manager, etc.) is considered to be included in the markup percentages as outlined below. Note that no separate allowances for warranty expense will be allowed as a direct cost of a change order. Costs attributed to warranty expenses will be considered to be covered by the markup.

- c. Labor Burden. Labor burden allowable in change orders shall be defined as employer's net actual cost of payroll taxes (FICA, Medicare, SUTA, FUTA), net actual cost for employer's cost of union benefits (or other usual and customary fringe benefits if the employees are not union employees), and net actual cost to employer for worker's compensation insurance taking into consideration adjustments for experience modifiers, premium discounts, dividends, rebates, expense constants, assigned risk pool costs, net cost reductions due to policies with deductibles for self-insured losses, assigned risk rebates, etc. Contractor shall reduce their standard payroll tax percentages to properly reflect the effective cost reduction due to the estimated impact of the annual maximum wages subject to payroll taxes. An estimated percentage for labor burden may be used for pricing change orders. However, the percentage used for labor burden to price change orders will be examined at the conclusion of the Project and an adjustment to the approved change orders will be processed if it is determined that the actual labor burden percentage should have been more or less than the estimated percentage used.
- d. Materials. The cost of materials reported shall be at invoice or lowest current price at which such materials are locally available in the quantities involved, plus sales tax, freight, and delivery. Materials costs shall be based upon supplier or manufacturer's invoice. If invoices or other satisfactory evidence of cost are not furnished within fifteen (15) Days of delivery, then the Town shall determine the materials cost, at its sole discretion. Estimated material change order costs shall reflect the Contractor's reasonably anticipated net actual cost for the purchase of the material needed for the change order work. Estimated material costs shall reflect cost reductions available to the Contractor due to "non-cash" discounts, trade discounts, free material credits, and/or volume rebates. "Cash" discounts (i.e., prompt payment discounts of 2% or less) available on material purchased for change order work shall be credited to the Town if the Contractor is provided the Town funds in time for Contractor to take advantage of any such "cash" discounts. The portion of

any "cash" discounts greater than 2% will not be considered "non-cash" discount for purposes of this provision. Price quotations from material suppliers must be itemized with unit prices for each specific item to be purchased. "Lot pricing" quotations will not be considered sufficient substantiating detail.

- e. Tool and Equipment Use. Costs for the use of small tools, which are tools that have a replacement value of \$1,000 or less, shall be considered included in the Overhead and Profit mark-ups established below. Allowable change order estimated costs may include appropriate amounts for rental of major equipment specifically needed to perform the change order work (defined as tools and equipment with an individual purchase cost of more than \$750). For Contractor owned equipment, the "bare" equipment rental rates allowed to be used for pricing change order proposals shall be 75% of the monthly rate listed in the most current publication of The AED Green Book divided by 176 to arrive at a maximum hourly rate to be applied to the hours the equipment is used performing the change order work. Further, for Contractor owned equipment, the aggregate equipment rent charges for any single piece of equipment used in all change order work shall be limited to 50% of the fair market value of the piece of equipment when the first change order is priced involving usage of the piece of equipment. Fuel necessary to operate the equipment will be considered as a separate direct cost associated with the change order work.
- f. Maximum Markup Percentage Allowable on Self-Performed Work. With respect to pricing change orders, the maximum markup percentage to be paid to any Contractor or subcontractor (regardless of tier) on self-performed work shall be a single markup percentage not-to-exceed fifteen percent (15%) of the net direct cost of (1) direct labor and allowable labor burden costs applicable to the change in the Work; (2) the net cost of material and installed equipment incorporated into the change in the Work, and (3) net rental cost of major equipment and related fuel costs necessary to complete the change in the Work. The markup computed using the above formula shall be considered to be allocated 2/3 to cover applicable overhead costs directly attributable to the field overhead costs related to processing, supervising and performing, the change order work, and the remaining 1/3 to cover home office overhead costs and profit
- g. Maximum Markup Percentages Allowable on Work Performed by Lower Tier Subcontractors. With respect to pricing the portion of change order proposals involving Work performed by lower tier contractors, the maximum markup percentage allowable to the Contractor or subcontractor supervising the lower tier subcontractor's work shall not exceed five percent (5%) of the net of all approved change order work performed by all subcontractors combined for any particular change order proposal. The markup computed using the above formula shall be considered to be allocated 2/3 to cover applicable overhead costs directly attributable to the field overhead costs related to processing, supervising and performing the change order work, and the remaining 1/3 to cover home office overhead costs and profit.

- h. No Markup on Bonds and Liability Insurance Costs. Change order cost adjustments due to increases or decreases in bond or insurance costs (if applicable) shall not be subject to any markup.
  - i. Direct and Indirect Costs Covered by Markup Percentages. As a further clarification, the agreed upon markup percentage set forth above is intended to cover the Contractor's profit and all indirect costs associated with the change order work. Items intended to be covered by the markup percentage include, but are not limited to: home office expenses, branch office and field office overhead expense of any kind, project management, superintendents, general foremen, estimating, engineering, coordinating, expediting, purchasing, detailing, legal, accounting, data processing or other administrative expenses, shop drawings, permits, auto insurance and umbrella insurance, pick-up truck costs, and warranty expense costs. The cost for the use of small tools is also to be considered covered by the markup percentage established above. Small tools shall be defined as tools and equipment (power or non-power) with an individual purchase cost of less than \$750.
  - j. Deduct Change Orders and Net Deduct Changes. The application of the markup percentages referenced above will apply to both additive and deductive change orders. In the case of a deductive change order, the credit will be computed by applying the sliding scale percentages as outlined above so that a deductive change order would be computed in the same manner as an additive change order. In those instances where a change involves both additive and deductive work, the additions and deductions will be netted and the markup percentage adjustments will be applied to the net amount.
  - k. Contingency. In no event will any lump sum or percentage amounts for "contingency" be allowed to be added as a separate line item in change order estimates. Unknowns attributable to labor hours will be accounted for when estimating labor hours anticipated performing the work. Unknowns attributable to material scrap and waste will be estimated as part of material costs.
  - l. Insurance and Bonds. In the event the Contractor has been required to furnish insurance and/or bonds as part of the base contract price, a final contract change order will be processed to account for the Contractor's net increase or decrease in insurance costs and/or bond premium costs associated with change orders to Contractor's base Contract Price.
4. Time and Materials Change Orders.
- a. General. The term Time and Materials means the sum of all costs reasonably and necessarily incurred and paid by Contractor for labor, materials, and equipment in the proper performance of Additional Work. Except as otherwise may be agreed to in writing by the Town, such costs shall be in amounts no higher than those prevailing in the locality of the Project, and shall include only the following items.

b. Timely and Final Documentation.

- i. T&M Daily Sheets. Contractor must submit timesheets, materials invoices, records of equipment hours, and records of rental equipment hours to the Town's Representative for an approval signature **each day** Additional Work is performed. Failure to get the Town's Representative's approval signature each Day shall result in a waiver of Contractor's right to claim these costs. The Town's Representative's signature on time sheets only serves as verification that the Work was performed and is not indicative of Town's agreement to Contractor's entitlement to the cost.
  - ii. T&M Daily Summary Sheets. All documentation of incurred costs ("T&M Daily Summary Sheets") shall be submitted by Contractor within **three (3) Days** of incurring the cost for labor, material, equipment, and special services as Additional Work is performed. Contractor's actual costs shall be presented in a summary table in an electronic spreadsheet file by labor, material, equipment, and special services. Each T&M Daily Summary Sheet shall include Contractor's actual costs incurred for the Additional Work performed that day and a cumulative total of Contractor's actual costs incurred for the Additional Work. Contractor's failure to provide a T&M Daily Summary Sheet showing a total cost summary within three (3) Days but within five (5) Days of performance of the Work will result in the Contractor's otherwise allowable overhead and profit being reduced by 50% for that portion of Additional Work which was not documented in a timely manner. Contractor's failure to submit the T&M Daily Summary Sheet within five (5) Days of performance of the Work will result in a total waiver of Contractor's right to claim these costs.
  - iii. T&M Total Cost Summary Sheet. Contractor shall submit a T&M Total Cost Summary Sheet, which shall include total actual costs, within **seven (7) Days** following completion of Town approved Additional Work. Contractor's total actual cost shall be presented in a summary table in an electronic spreadsheet file by labor, material, equipment, and special services. Contractor's failure to submit the T&M Total Cost Summary Sheet within seven (7) Days of completion of the Additional Work will result in Contractor's waiver for any reimbursement of any costs associated with the T&M Summary Sheets or the performance of the Additional Work.
- c. Labor. The Contractor will be paid the cost of labor for the workers used in the actual and direct performance of the Work. The cost of labor will be the sum of the actual wages paid (which shall include any employer payments to or on behalf of the workers for health and welfare, pension, vacation, and similar purposes) substantiated by timesheets and certified payroll for wages prevailing for each craft or type of workers performing the Additional Work at the time the Additional Work is done, and the labor surcharge set forth in the Department of Transportation publication entitled *Labor Surcharge and Equipment Rental Rates*, which is in effect on the date upon which the Work is accomplished and which is a part of the Contract. The labor surcharge shall constitute full compensation for all payments imposed by Federal, State,

or local laws and for all other payments made to, or on behalf of, the workers, other than actual wages.

- i. Equipment Operator Exception. Labor costs for equipment operators and helpers shall be paid only when such costs are not included in the invoice for equipment rental.
  - ii. Foreman Exception. The labor costs for foremen shall be proportioned to all of their assigned work and only that applicable to the Additional Work shall be paid. Indirect labor costs, including, without limitation, the superintendent, project manager, and other labor identified in the Contract Documents will be considered Overhead.
- d. Materials. The cost of materials reported shall be itemized at invoice or lowest current price at which materials are locally available and delivered to the Project site in the quantities involved, plus the cost of sales tax, freight, delivery, and storage.
- i. Trade discounts available to the purchaser shall be credited to the Town notwithstanding the fact that such discounts may not have been taken by Contractor.
  - ii. For materials secured by other than a direct purchase and direct billing to the purchaser, the cost shall be deemed to be the price paid to the actual supplier as determined by the Town's Representative.
  - iii. Payment for materials from sources owned wholly or in part by the purchaser shall not exceed the price paid by the purchaser for similar materials from said sources on Additional Work items or the current wholesale price for such materials delivered to the Project site, whichever price is lower.
  - iv. If, in the opinion of the Town's Representative, the cost of materials is excessive, or Contractor does not furnish satisfactory evidence of the cost of such materials, then the cost shall be deemed to be the lowest current wholesale price for the total quantity concerned delivered to the Project site less trade discounts.
  - v. The Town reserves the right to furnish materials for the Additional Work and no Claim shall be allowed by Contractor for costs of such materials or Indirect Costs or profit on Town furnished materials.
- e. Equipment.
- i. Rental Time. The rental time to be paid for equipment on the Project site shall be the time the equipment is in productive operation on the Additional Work being performed and, in addition, shall include the time required to move the equipment to the location of the Additional Work and return it to the original location or to another location requiring no more time than that required to return it to its original location; except that



moving time will not be paid if the equipment is used on other than the Additional Work, even though located at the site of the Additional Work.

(a) Rental Time Not Allowed. Rental time will not be allowed while equipment is inoperative due to breakdowns.

(b) Computation Method. The following shall be used in computing the rental time of equipment on the Project site.

(i) When hourly rates are paid, any part of an hour less than 30 minutes of operation shall be considered to be 1/2-hour of operation, and any part of an hour in excess of 30 minutes will be considered one hour of operation.

(ii) When daily rates are paid, any part of a day less than 4 hours operation shall be considered to be 1/2-day of operation, and any part of an hour in excess of 4 hours will be considered one day of operation.

ii. Rental Rates. Contractor will be paid for the use of equipment at the lesser of (i) the actual rental rate, or (ii) the rental rate listed for that equipment in the California Department of Transportation publication entitled *Labor Surcharge and Equipment Rental Rates*, which is in effect on the date upon which the Contract was executed. Such rental rates will be used to compute payments for equipment whether the equipment is under Contractor's control through direct ownership, leasing, renting, or another method of acquisition. The rental rate to be applied for use of each item of equipment shall be the rate (i.e., daily, monthly) resulting in the least total cost to the Town for the total period of use. If it is deemed necessary by Contractor to use equipment not listed in the publication, an equitable rental rate for the equipment will be established by the Town's Representative. Contractor may furnish cost data which might assist the Town's Representative in the establishment of the rental rate.

iii. Contractor-Owned Equipment.

(a) For Contractor-owned equipment, the allowed equipment rental rate will be limited to the monthly equipment rental rate using a utilization rate of 173 hours per month.

(b) For Contractor-owned equipment, the rental time to be paid for equipment on the Site shall be the time the equipment is in productive operation, unless, in the instance of standby time, the equipment could be actively used by Contractor on another project, then Town shall pay for the entirety of the time the equipment is on Site. It shall be Contractor's burden to demonstrate to the Town that the equipment could be actively used on another project.

- iv. All equipment shall, in the opinion of the Town's Representative, be in good working condition and suitable for the purpose for which the equipment is to be used.
  - v. Before construction equipment is used on the Additional Work, Contractor shall plainly stencil or stamp an identifying number thereon at a conspicuous location, and shall furnish to the Town's Representative, in duplicate, a description of the equipment and its identifying number and the scheduled Additional Work activities planned.
  - vi. Unless otherwise specified, manufacturer's rating and manufacturer approved modifications shall be used to classify equipment for the determination of applicable rental rates. Equipment which has no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer.
- f. Special Services. Special work or services are defined as that Additional Work characterized by extraordinary complexity, sophistication, or innovation or a combination of the foregoing attributes which are unique to the construction industry.
- i. Invoices for Special Services. When the Town's Representative and Contractor determine that a special service is required which cannot be performed by the forces of Contractor or those of any of its Subcontractors, the special service may be performed by an entity especially skilled in the Additional Work. Invoices for special services based upon the current fair market value thereof may be accepted without complete itemization of labor, material, and equipment rental costs, after validation of market values by the Town's Representative.
  - ii. Discount and Allowance. All invoices for special services will be adjusted by deducting all trade discounts offered or available, whether the discounts were taken or not. In lieu of Overhead and Profit specified herein, a total allowance not to exceed fifteen percent (15%) for Overhead and Profit will be added to invoices for Special Services.
  - iii. When the Town determines, in its sole discretion, that competitive bidding is necessary for certain special services, Contractor shall solicit competitive bids for those special services.
- g. Excluded Costs. The term Time and Material shall not include any of the following costs or any other home or field office overhead costs, all of which are to be considered administrative costs covered by Contractor's allowance for Overhead and Profit.
- i. Overhead Cost. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, timekeepers, clerks, and other personnel employed by Contractor

whether at the Site or in Contractor's principal office or any branch office, material yard, or shop for general administration of the Additional Work;

- ii. Office Expenses. Expenses of Contractor's principal and branch offices;
  - iii. Capital Expenses. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Additional Work and charges against Contractor for delinquent payments;
  - iv. Negligence. Costs due to the negligence of Contractor or any Subcontractor or Supplier, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including without limitation the correction of Defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property;
  - v. Other. Other overhead or general expense costs of any kind and the cost of any item not specifically and expressly included in the Contract Documents;
  - vi. Small Tools. Cost of small tools valued at less than \$1,000 and that remain the property of Contractor;
  - vii. Administrative Costs. Costs associated with the preparation of Change Orders (whether or not ultimately authorized), cost estimates, or the preparation or filing of Claims;
  - viii. Anticipated Lost Profits. Expenses of Contractor associated with anticipated lost profits or lost revenues, lost income or earnings, lost interest on earnings, or unpaid retention;
  - ix. Home Office Overhead. Costs derived from the computation of a "home office overhead" rate by application of the *Eichleay, Allegheny*, burden fluctuation, or other similar methods;
  - x. Special Consultants and Attorneys. Costs of special consultants or attorneys, whether or not in the direct employ of Contractor, employed for services specifically related to the resolution of a Claim, dispute, or other matter arising out of or relating to the performance of the Additional Work.
- h. Overhead, Profit and Other Charges. The mark-up for overhead (including supervision) and profit on work added to the Contract shall be according to the following:
- i. "Net Cost" is defined as consisting of costs of labor, materials, and tools and equipment only excluding overhead and profit. The costs of applicable insurance and bond premium will be reimbursed to the Contractor and subcontractors at cost only, without mark-up. Contractor shall provide Town with documentation of the costs, including, but not limited to, payroll records, invoices, and such other information as Town may reasonably request.

- ii. For Work performed by the Contractor's forces, the added cost for overhead and profit shall not exceed fifteen percent (15%) of the Net Cost of the Work.
  - iii. For Work performed by a subcontractor, the added cost for overhead and profit shall not exceed fifteen percent (15%) of the subcontractor's Net Cost of the Work to which the Contractor may add five percent (5%) of the subcontractor's Net Cost.
  - iv. For Work performed by a sub-subcontractor, the added cost for overhead and profit shall not exceed fifteen percent (15%) of the sub-subcontractor's Net Cost for Work to which the subcontractor and general contractor may each add an additional five percent (5%) of the Net Cost of the lower tier subcontractor.
  - v. No additional mark-up will be allowed for lower tier subcontractors, and in no case shall the added cost for overhead and profit payable by Town exceed twenty-five percent (25%) of the Net Cost as defined herein, of the party that performs the Work.
5. All of the following costs are included in the markups for overhead and profit described above, and Contractor shall not receive any additional compensation for: Submittals, drawings, field drawings, Shop Drawings, including submissions of drawings; field inspection; General Superintendence; General administration and preparation of cost proposals, schedule analysis, Change Orders, and other supporting documentation; computer services; reproduction services; Salaries of project engineer, superintendent, timekeeper, storekeeper, and secretaries; Janitorial services; Small tools, incidentals and consumables; Temporary On-Site facilities (Offices, Telephones, High Speed Internet Access, Plumbing, Electrical Power, Lighting; Platforms, Fencing, Water), Jobsite and Home office overhead or other expenses; vehicles and fuel used for work otherwise included in the Contract Documents; Surveying; Estimating; Protection of Work; Handling and disposal fees; Final Cleanup; Other Incidental Work; Related Warranties; insurance and bond premiums.
  6. For added or deducted Work by subcontractors, the Contractor shall furnish to the Town the subcontractor's signed detailed record of the cost of labor, material and equipment, including the subcontractor markup for overhead and profit. The same requirement shall apply to sub-subcontractors
  7. For added or deducted work furnished by a vendor or supplier, the Contractor shall furnish to the Town a detailed record of the cost to the Contractor, signed by such vendor or supplier.
  8. Any change in the Work involving both additions and deletions shall indicate a net total cost, including subcontracts and materials. Allowance for overhead and profit, as specified herein, shall be applied if the net total cost is an increase in the Contract Price; overhead and profit allowances shall not be applied if the net total cost is a deduction to the Contract Price. The estimated cost of deductions

shall be based on labor and material prices on the date the Contract was executed.

9. Contractor shall not reserve a right to assert impact costs, extended job site costs, extended overhead, constructive acceleration and/or actual acceleration beyond what is stated in the Change Order for Work. No claims shall be allowed for impact, extended overhead costs, constructive acceleration and/or actual acceleration due to a multiplicity of changes and/or clarifications. The Contractor may not change or modify the Town's change order form in an attempt to reserve additional rights.
10. If the Town disagrees with the proposal submitted by Contractor, it will notify the Contractor and the Town will provide its opinion of the appropriate price and/or time extension. If the Contractor agrees with the Town, a Change Order will be issued by the Town. If no agreement can be reached, the Town shall have the right to issue a unilateral Change Order setting forth its determination of the reasonable additions or savings in costs and time attributable to the extra or deleted work. Such determination shall become final and binding if the Contractor fails to submit a claim in writing to the Town within fifteen (15) Days of the issuance of the unilateral Change Order, disputing the terms of the unilateral Change Order, and providing such supporting documentation for its position as the Town may require.

#### **C. Change of Contract Times.**

1. The Contract Times may only be changed by a Change Order.
2. All changes in the Contract Price and/or adjustments to the Contract Times related to each change shall be included in Contractor's COR pursuant to this Article. No cost or time will be allowed for cumulative effects of multiple changes. All Change Orders must state that the Contract Time is not changed or is either increased or decreased by a specific number of days. Failure to include a change to time shall waive any change to the time unless the parties mutually agree in writing to postpone a determination of the change to time resulting from the Change Order.
3. Notice of the amount of the request for adjustment in the Contract Times with supporting data shall be delivered within seven (7) Days after such start of occurrence, unless Town's Representative allows an additional period of time to ascertain more accurate data in support of the request. No extension of time or additional compensation shall be given for a delay if the Contractor failed to give notice in the manner and within the time prescribed.
4. Town may elect, at Town's sole discretion, to grant an extension in Contract Times, without Contractor's request, because of delays or other factors.
5. Use of Float and Critical Path.
  - a. Float is for the benefit of the Project. Float shall not be considered for the exclusive use or benefit of either the Town or the Contractor.

- b. Contractor shall not be entitled to compensation, and Town will not compensate Contractor, for delays which impact early completion. Any difference in time between the Contractor's early completion and the Contract Time shall be considered a part of the Project float.
- 6. Contractor's entitlement to an extension of the Contract Times is limited to a Town-caused extension of the critical path, reduced by the Contractor's concurrent delays, and established by a proper time impact analysis. No time extension shall be allowed unless, and then only to the extent that, the Town-caused delay extends the critical path beyond the previously approved Contract Time. If approved, the increase in time required to complete the Work shall be added to the Contract Time.
  - a. Contractor shall not be entitled to an adjustment in the Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.
  - b. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, pandemic, abnormal weather conditions (as determined by the Town), Acts of God, acts or failures to act of utility owners not under the control of Town, or other causes not the fault of and beyond control of Town and Contractor, then Contractor shall be entitled to a time extension when the Work stopped is on the critical path. Such a non-compensable adjustment shall be Contractor's sole and exclusive remedy for such delays. Contractor must submit a timely request in accordance with the requirements of this Article.
  - c. Utility-Related Delays.
    - i. Contractor shall immediately notify in writing the utility owner and Town's Representative of its construction schedule and any subsequent changes in the construction schedule which will affect the time available for protection, removal, or relocation of utilities. Requests for extensions of time arising out of utility relocation or repair delays shall be filed in accordance with this Article.
    - ii. Contractor shall not be entitled to damages or additional payment for delays attributable to utility relocations or alterations if correctly located, as noted in the Contract Documents or by the Underground Service Alert survey.
- 7. Content for Requests for Contract Extension. Contractor's justification for entitlement shall be clear and complete citing specific Contract Document references and reasons on which Contractor's entitlement is based. At a minimum, each request for a time extension must include:
  - a. Each request for an extension of Contract Time must identify the impacting event, in narrative form, providing a description of the delay event and sufficient justification as to why the Contractor is entitled to a time extension.

Contractor must demonstrate that the delay arises from unforeseeable causes beyond the control and without the fault or negligence of both Contractor and any Subcontractors or Suppliers, or any other persons or organizations employed by any of them or for whose acts any of them may be liable, and that such causes in fact lead to performance or completion of the Work, or specified part in question, beyond the corresponding Contract Times, despite Contractor's reasonable and diligent actions to guard against those effects.

- b. Each request for an extension of Contract Time must include a time impact analysis in CPM format, using the Contemporaneous Impacted As-Planned Schedule Analysis to calculate the impact of the delay event.

8. No Damages for Reasonable Delay.

- a. Town's liability to Contractor for delays for which Town is responsible shall be limited to only an extension of time unless such delays were unreasonable under the circumstances. In no case shall Town be liable for any costs which are borne by the Contractor in the regular course of business, including, but not limited to, home office overhead and other ongoing costs.
  - b. Damages caused by unreasonable Town delay that impact the critical path, including delays caused by items that are the responsibility of the Town pursuant to Government Code section 4215, shall be compensated at the Daily Rate established in the Special Conditions. No other calculations, proportions or formulas shall be used to calculate any delay damages.
  - c. Town and Town's Representative, and the officers, members, partners, employees, agents, consultants, or subcontractors of each of them, shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.
9. Contractor's failure, neglect, or refusal to comply with the requirements of the Contract Documents, or any portion thereof, shall bar Contractor's request for extensions of the Contract Times. Such failure, neglect, or refusal prejudices Town's and Town's Representative's ability to recognize and mitigate delay, and such failure, neglect, or refusal prevent the timely analysis of requests for extensions of Contract Times, and whether such extensions may be warranted. Contractor hereby waives all rights to extensions of Contract Times due to delays or accelerations that result from or occur during periods of time for which Contractor fails, neglects, or refuses to fully comply with the requirements of this Article.

**ARTICLE 45. FINAL ACCEPTANCE AND PAYMENT**

- A. The acceptance of the Work on behalf of the Town will be made by the Engineer. Such acceptance by the Town shall not constitute a waiver of defects. When the

Work has been accepted there shall be paid to Contractor a sum equal to the contract price less any amounts previously paid Contractor and less any amounts withheld by the Town from Contractor under the terms of the contract. The final five percent (5%), or the percentage specified in the notice inviting bids where the Town has adopted a finding of substantially complete, shall not become due and payable until five (5) calendar days shall have elapsed after the expiration of the period within which all claims may be filed under the provisions of Civil Code section 9356. If the Contractor has placed securities with the Town as described herein, the Contractor shall be paid a sum equal to one hundred percent (100%) of the contract price less any amounts due the Town under the terms of the Contract.

- B. Unless Contractor advises the Town in writing prior to acceptance of the final five percent (5%) or the percentage specified in the notice inviting bids where the Town has adopted a finding of substantially complete, or the return of securities held as described herein, said acceptance shall operate as a release to the Town of all claims and all liability to Contractor for all things done or furnished in connection with this work and for every act of negligence of the Town and for all other claims relating to or arising out of this work. If Contractor advises the Town in writing prior to acceptance of final payment or return of the securities that there is a dispute regarding the amount due the Contractor, the Town may pay the undisputed amount contingent upon the Contractor furnishing a release of all undisputed claims against the Town with the disputed claims in stated amounts being specifically excluded by Contractor from the operation of the release. No payments, however, final or otherwise, shall operate to release Contractor or its sureties from the Faithful Performance Bond, Labor and Material Payment Bond, or from any other obligation under this contract.
- C. In case of suspension of the contract any unpaid balance shall be and become the sole and absolute property of the Town to the extent necessary to repay the Town any excess in the cost of the Work above the contract price.
- D. Final payment shall be made no later than 60 days after the date of acceptance of the Work by the Town or the date of occupation, beneficial use and enjoyment of the Work by the Town including any operation only for testing, start-up or commissioning accompanied by cessation of labor on the Work, provided that a release of liens and claims has been received from the Contractor pursuant to Civil Code section 8136. In the event of a dispute between the Town and the Contractor, the Town may withhold from the final payment an amount not to exceed 150% of the disputed amount.
- E. Within ten (10) calendar days from the time that all or any portion of the retention proceeds are received by Contractor, Contractor shall pay each of its subcontractors from whom retention has been withheld each subcontractor's share of the retention received. However, if a retention payment received by Contractor is specifically designated for a particular subcontractor, payment of the retention shall be made to the designated subcontractor if the payment is consistent with the terms of the subcontract.



## **ARTICLE 46. OCCUPANCY**

The Town reserves the right to occupy or utilize any portion of the Work at any time before completion, and such occupancy or use shall not constitute acceptance of any part of Work covered by this Contract. This use shall not relieve the Contractor of its responsibilities under the Contract.

## **ARTICLE 47. INDEMNIFICATION**

To the fullest extent permitted by law, Contractor shall immediately defend (with counsel of the Town's choosing), indemnify and hold harmless the Town, officials, officers, agents, employees, and representatives, and each of them from and against:

- A. Any and all claims, demands, causes of action, costs, expenses, injuries, losses or liabilities, in law or in equity, of every kind or nature whatsoever, but not limited to, injury to or death, including wrongful death, of any person, and damages to or destruction of property of any person, arising out of, related to, or in any manner directly or indirectly connected with the Work or this Contract, including claims made by subcontractors for nonpayment, including without limitation the payment of all consequential damages and attorney's fees and other related costs and expenses, however caused, regardless of whether the allegations are false, fraudulent, or groundless, and regardless of any negligence of the Town or its officers, employees, or authorized volunteers (including passive negligence), except the sole negligence or willful misconduct or active negligence of the Town or its officials, officers, employees, or authorized volunteers.
- B. Contractor's defense and indemnity obligation herein includes, but is not limited to damages, fines, penalties, attorney's fees and costs arising from claims under the Americans with Disabilities Act (ADA) or other federal or state disability access or discrimination laws arising from Contractor's Work during the course of construction of the improvements or after the Work is complete, as the result of defects or negligence in Contractor's construction of the improvements.
- C. Any and all actions, proceedings, damages, costs, expenses, fines, penalties or liabilities, in law or equity, of every kind or nature whatsoever, arising out of, resulting from, or on account of the violation of any governmental law or regulation, compliance with which is the responsibility of Contractor;
- D. Any and all losses, expenses, damages (including damages to the Work itself), attorney's fees, and other costs, including all costs of defense which any of them may incur with respect to the failure, neglect, or refusal of Contractor to faithfully perform the Work and all of Contractor's obligations under the agreement. Such costs, expenses, and damages shall include all costs, including attorney's fees, incurred by the indemnified parties in any lawsuit to which they are a party.

Contractor shall immediately defend, at Contractor's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the Town, its officials, officers, agents, employees and representatives. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against the Town, its officials, officers, employees, agents, employees and representatives, in any such

suit, action or other legal proceeding. Contractor shall reimburse the Town, its officials, officers, agents, employees and representatives for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The only limitations on this provision shall be those imposed by Civil Code section 2782.

#### **ARTICLE 48. PROCEDURE FOR RESOLVING DISPUTES**

Contractor shall timely comply with all notices and requests for changes to the Contract Time or Contract Price, including but not limited to all requirements of Article 44, Changes and Extra Work, as a prerequisite to filing any claim governed by this Article. The failure to timely submit a notice of delay or notice of change, or to timely request a change to the Contract Price or Contract Time, or to timely provide any other notice or request required herein shall constitute a waiver of the right to further pursue the claim under the Contract or at law.

- A. **Intent.** Effective January 1, 1991, Section 20104 et seq., of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Article is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code. This Article shall be construed to be consistent with said statutes.
- B. **Claims.** For purposes of this Article, "Claim" means a separate demand by the Contractor, after a change order duly requested in accordance with Article 44 "Changes and Extra Work" has been denied by the Town, for (A) a time extension, (B) payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract, or (C) an amount the payment of which is disputed by the Town. Claims governed by this Article may not be filed unless and until the Contractor completes all procedures for giving notice of delay or change and for the requesting of a time extension or change order, including but not necessarily limited to the procedures contained in Article 44, Changes and Extra Work, and Contractor's request for a change has been denied in whole or in part. Claims governed by this Article must be filed no later than the date of final payment. The claim shall be submitted in writing to the Town and shall include on its first page the following in 16 point capital font: "THIS IS A CLAIM." Furthermore, the claim shall include the documents necessary to substantiate the claim. Nothing herein is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims, including all requirements pertaining to compensation or payment for extra Work, disputed Work, and/or changed conditions. Failure to follow such contractual requirements shall bar any claims or subsequent lawsuits for compensation or payment thereon.
- C. **Supporting Documentation.** The Contractor shall submit all claims in the following format:
  - 1. Summary of claim merit and price, reference Contract Document provisions pursuant to which the claim is made
  - 2. List of documents relating to claim:

- a. Specifications
    - b. Drawings
    - c. Clarifications (Requests for Information)
    - d. Schedules
    - e. Other
  3. Chronology of events and correspondence
  4. Analysis of claim merit
  5. Analysis of claim cost
  6. Time impact analysis in CPM format
  7. If Contractor's claim is based in whole or in part on an allegation of errors or omissions in the Drawings or Specifications for the Project, Contractor shall provide a summary of the percentage of the claim subject to design errors or omissions and shall obtain a certificate of merit in support of the claim of design errors and omissions.
- D. Town's Response.** Upon receipt of a claim pursuant to this Article, Town shall conduct a reasonable review of the claim and, within a period not to exceed 45 Days, shall provide the Contractor a written statement identifying what portion of the claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the claim will be processed and made within 60 Days after the Town issues its written statement.
1. If the Town needs approval from its governing body to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the claim, and the Town's governing body does not meet within the 45 Days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the Town shall have up to three Days following the next duly publicly noticed meeting of the Town's governing body after the 45-Day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.
  2. Within 30 Days of receipt of a claim, the Town may request in writing additional documentation supporting the claim or relating to defenses or claims the Town may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of Town and the Contractor. The Town's written response to the claim, as further documented, shall be submitted to the Contractor within 30 Days (if the claim is less than \$15,000, within 15 Days) after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.

- E. **Meet and Confer.** If the Contractor disputes the Town's written response, or the Town fails to respond within the time prescribed, the Contractor may so notify the Town, in writing, either within 15 Days of receipt of the Town's response or within 15 Days of the Town's failure to respond within the time prescribed, respectively, and demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, the Town shall schedule a meet and confer conference within 30 Days for settlement of the dispute.
- F. **Mediation.** Within 10 business Days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the Town shall provide the Contractor a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 Days after the Town issues its written statement. Any disputed portion of the claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with the Town and the Contractor sharing the associated costs equally. The Town and Contractor shall mutually agree to a mediator within 10 business Days after the disputed portion of the claim has been identified in writing, unless the parties agree to select a mediator at a later time.
1. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.
  2. For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.
  3. Unless otherwise agreed to by the Town and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Public Contract Code Section 20104.4 to mediate after litigation has been commenced.
  4. The mediation shall be held no earlier than the date the Contractor completes the Work or the date that the Contractor last performs Work, whichever is earlier. All unresolved claims shall be considered jointly in a single mediation, unless a new unrelated claim arises after mediation is completed.
- G. **Procedures After Mediation.** If following the mediation, the claim or any portion remains in dispute, the Contractor must file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code prior to initiating litigation. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits his or her written claim pursuant to subdivision (a) until the time the claim is denied, including any period of time utilized by the meet and confer conference.

H. **Civil Actions.** The following procedures are established for all civil actions filed to resolve claims of \$375,000 or less:

1. Within 60 Days, but no earlier than 30 Days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of this Contract. The mediation process shall provide for the selection within 15 Days by both parties of a disinterested third person as mediator, shall be commenced within 30 Days of the submittal, and shall be concluded within 15 Days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.
2. If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

I. **Government Code Claims.** In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra Work, disputed Work, construction claims and/or changed conditions, the Contractor must comply with the claim procedures set forth in Government Code Sections 900, et seq. prior to filing any lawsuit against the Town. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra Work, disputed Work, construction claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if the prerequisite contractual requirements are not satisfied, no action against the Town may be filed. **A Government Code claim must be filed no earlier than the date the Work is completed or the date the Contractor last performs Work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved claims unless a new unrelated claim arises after the Government Code claim is submitted.**

J. **Non-Waiver.** The Town's failure to respond to a claim from the Contractor within the time periods described in this Article or to otherwise meet the time requirements of this Article shall result in the claim being deemed rejected in its entirety.

## **ARTICLE 49. TOWN'S RIGHT TO TERMINATE CONTRACT**

A. **Termination for Cause by the Town:**

1. In the sole estimation of the Town, if the Contractor refuses or fails to prosecute the Work or any separable part thereof with such diligence as will insure its completion within the time specified by the Contract Documents, or any extension thereof, or fails to complete such Work within such time, or if the Contractor should be adjudged a bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or the Contractor or any of its subcontractors should violate any of the provisions of this Contract, the Town may serve written notice upon the Contractor and its Surety of the Town's intention to terminate this Contract. This notice of intent to terminate shall contain the reasons for such intention to terminate this Contract, and a statement to the effect that the Contractor's right to perform this Contract shall cease and terminate upon the expiration of ten (10) calendar days unless such violations have ceased and arrangements satisfactory to the Town have been made for correction of said violations.
2. In the event that the Town serves such written notice of termination upon the Contractor and the Surety, the Surety shall have the right to take over and perform the Contract. If the Surety does not: (1) give the Town written notice of Surety's intention to take over and commence performance of the Contract within 15 calendar days of the Town's service of said notice of intent to terminate upon Surety; and (2) actually commence performance of the Contract within 30 calendar days of the Town's service of said notice upon Surety; then the Town may take over the Work and prosecute the same to completion by separate contract or by any other method it may deem advisable for the account and at the expense of the Contractor.
3. In the event that the Town elects to obtain an alternative performance of the Contract as specified above: (1) the Town may, without liability for so doing, take possession of and utilize in completion of the Work such materials, appliances, plants and other property belonging to the Contractor that are on the site and reasonably necessary for such completion (A special lien to secure the claims of the Town in the event of such suspension is hereby created against any property of Contractor taken into the possession of the Town under the terms hereof and such lien may be enforced by sale of such property under the direction of the Town without notice to Contractor. The proceeds of the sale after deducting all expenses thereof and connected therewith shall be credited to Contractor. If the net credits shall be in excess of the claims of the Town against Contractor, the balance will be paid to Contractor or Contractor's legal representatives.); and (2) Surety shall be liable to the Town for any cost or other damage to the Town necessitated by the Town securing an alternate performance pursuant to this Article.

**B. Termination for Convenience by the Town:**

1. The Town may terminate performance of the Work called for by the Contract Documents in whole or, from time to time, in part, if the Town determines that a termination is in the Town's interest.

2. The Contractor shall terminate all or any part of the Work upon delivery to the Contractor of a Notice of Termination specifying that the termination is for the convenience of the Town, the extent of termination, and the Effective Date of such termination.
3. After receipt of Notice of Termination, and except as directed by the Town's Representative, the Contractor shall, regardless of any delay in determining or adjusting any amounts due under this Termination for Convenience clause, immediately proceed with the following obligations:
  - a. Stop Work as specified in the Notice.
  - b. Complete any Work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents.
  - c. Leave the property upon which the Contractor was working and upon which the facility (or facilities) forming the basis of the Contract Document is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety.
  - d. Terminate all subcontracts to the extent that they relate to the portions of the Work terminated.
  - e. Place no further subcontracts or orders, except as necessary to complete the continued portion of the Contract.
  - f. Submit to the Town's Representative, within ten (10) calendar days from the Effective Date of the Notice of Termination, all of the usual documentation called for by the Contract Documents to substantiate all costs incurred by the Contractor for labor, materials and equipment through the Effective Date of the Notice of Termination. Any documentation substantiating costs incurred by the Contractor solely as a result of the Town's exercise of its right to terminate this Contract pursuant to this clause, which costs the contractor is authorized under the Contract documents to incur, shall: (1) be submitted to and received by the Engineer no later than 30 calendar days after the Effective Date of the Notice of Termination; (2) describe the costs incurred with particularity; and (3) be conspicuously identified as "Termination Costs occasioned by the Town's Termination for Convenience."
4. Termination of the Contract shall not relieve Surety of its obligation for any just claims arising out of or relating to the Work performed.
5. In the event that the Town exercises its right to terminate this Contract pursuant to this clause, the Town shall pay the Contractor, upon the Contractor's submission of the documentation required by this clause and other applicable provisions of the Contract Documents, the following amounts:
  - a. All actual reimbursable costs incurred according to the provisions of this Contract.

- b. A reasonable allowance for profit on the cost of the Work performed, provided Contractor establishes to the satisfaction of the Town's Representative that it is reasonably probable that Contractor would have made a profit had the Contract been completed and provided further, that the profit allowed shall in no event exceed fifteen (15%) percent of the costs.
  - c. A reasonable allowance for Contractor's administrative costs in determining the amount payable due to termination of the Contract under this Article.
- C. Notwithstanding any other provision of this Article, when immediate action is necessary to protect life and safety or to reduce significant exposure or liability, the Town may immediately order Contractor to cease Work on the Project until such safety or liability issues are addressed to the satisfaction of the Town or the Contract is terminated.
- D. Town shall not be liable for any costs other than the charges or portions thereof which are specified herein. Contractor shall not be entitled to payment for unperformed Work including, without limitation, any overhead and profit on the portion of the Work that is terminated and shall not be entitled to damages or compensation of any kind or nature for termination of Work.

#### **ARTICLE 50. WARRANTY AND GUARANTEE OF WORK**

- A. Contractor hereby warrants that materials and Work shall be completed in conformance with the Contract Documents and that the materials and Work provided will fulfill the requirements of this Warranty. Contractor hereby agrees to repair or replace, at the discretion of the Town, any or all Work that may prove to be defective in its workmanship, materials furnished, methods of installation or fail to conform to the Contract Document requirements together with any other Work which may be damaged or displaced by such defect(s) within a period of one (1) year from the date of the Notice of Completion of the Project without any expense whatever to the Town, ordinary wear and tear and unusual abuse and neglect excepted. Contractor shall be required to promptly repair or replace defective equipment or materials, at Contractor's option. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor.
- B. For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one (1) year period, commencing with the date of acceptance of such corrected Work. The reinstatement of the one (1) year warranty shall apply only to that portion of work that was corrected. Contractor shall perform such tests as Town may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Contract. In the event of Contractor's failure to comply with the above-mentioned conditions within ten (10) calendar days after being notified in writing of required repairs, to the reasonable satisfaction of the Town, the Town shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the Town for any expenses incurred hereunder immediately upon demand.



- C. In addition to the warranty set forth in this Article, Contractor shall obtain for Town all warranties that would be given in normal commercial practice and assign to Town any and all manufacturer's or installer's warranties for equipment or materials not manufactured by Contractor and provided as part of the Work, to the extent that such third-party warranties are assignable and extend beyond the warranty period set forth in this Article. Contractor shall furnish the Town with all warranty and guarantee documents prior to final Acceptance of the Project by the Town as required.
- D. When specifically indicated in the Contract Documents or when directed by the Engineer, the Town may furnish materials or products to the Contractor for installation. In the event any act or failure to act by Contractor shall cause a warranty applicable to any materials or products purchased by the Town for installation by the Contractor to be voided or reduced, Contractor shall indemnify Town from and against any cost, expense, or other liability arising therefrom, and shall be responsible to the Town for the cost of any repairs, replacement or other costs that would have been covered by the warranty but for such act or failure to act by Contractor.
- E. The Contractor shall remedy at its expense any damage to Town-owned or controlled real or personal property.
- F. The Town shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage. The Contractor shall within ten (10) calendar days after being notified commence and perform with due diligence all necessary Work. If the Contractor fails to promptly remedy any defect, or damage; the Town shall have the right to replace, repair or otherwise remedy the defect, or damage at the Contractor's expense.
- G. In the event of any emergency constituting an immediate hazard to health, safety, property, or licensees, when caused by Work of the Contractor not in accordance with the Contract requirements, the Town may undertake at Contractor's expense, and without prior notice, all Work necessary to correct such condition.
- H. Acceptance of Defective Work.
  - 1. If, instead of requiring correction or removal and replacement of Defective Work, the Town prefers to accept it, Town may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Town's evaluation of and determination to accept such Defective Work and for the diminished value of the Work.
  - 2. If any acceptance of defective work occurs prior to release of the Project Retention, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Town shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work and all costs incurred by Town.

3. If the Project Retention is held in an escrow account as permitted by the Contract Documents, Contractor will promptly alert the escrow holder, in writing, of the amount of Retention to be paid to Town.
  4. If the acceptance of Defective Work occurs after release of the Project Retention, an appropriate amount will be paid by Contractor to Town.
- I. Town May Correct Defective Work.
1. If Contractor fails within a reasonable time after written notice from Town's Representative to correct Defective Work, or to remove and replace rejected Work as required by Town, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Town may, after seven (7) Days' written notice to Contractor, correct, or remedy any such deficiency.
  2. In connection with such corrective or remedial action, Town may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Town has paid Contractor but which are stored elsewhere. Contractor shall allow Town and Town's Representative, and the agents, employees, other contractors, and consultants of each of them, access to the Site to enable Town to exercise the rights and remedies to correct the Defective Work.
  3. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Town correcting the Defective Work will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions into the Contract Documents with respect to the Work; and Town shall be entitled to an appropriate decrease in the Contract Price.
  4. Such claims, costs, losses and damages will include, but not be limited to, all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Defective Work.
  5. If the Change Order is executed after all payments under the Contract have been paid by Town and the Project Retention is held in an escrow account as permitted by the Contract Documents, Contractor will promptly alert the escrow holder, in writing, of the amount of Retention to be paid to Town.
  6. If the Change Order is executed after release of the Project Retention, an appropriate amount will be paid by Contractor to Town.
  7. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to Town correcting Defective work.

- J. Nothing in the Warranty or in the Contract Documents shall be construed to limit the rights and remedies available to Town at law or in equity, including, but not limited to, Code of Civil Procedure section 337.15.

#### **ARTICLE 51. DOCUMENT RETENTION & EXAMINATION**

- A. In accordance with Government Code section 8546.7, records of both the Town and the Contractor shall be subject to examination and audit by the State Auditor General for a period of three (3) years after final payment.
- B. Contractor shall make available to the Town any of the Contractor's other documents related to the Project immediately upon request of the Town.
- C. In addition to the State Auditor rights above, the Town shall have the right to examine and audit all books, estimates, records, contracts, documents, bid documents, subcontracts, and other data of the Contractor (including computations and projections) related to negotiating, pricing, or performing the modification in order to evaluate the accuracy and completeness of the cost or pricing data at no additional cost to the Town, for a period of four (4) years after final payment.

#### **ARTICLE 52. SEPARATE CONTRACTS**

- A. The Town reserves the right to let other contracts in connection with this Work or on the Project site. Contractor shall permit other contractors reasonable access and storage of their materials and execution of their work and shall properly connect and coordinate its Work with theirs.
- B. To ensure proper execution of its subsequent Work, Contractor shall immediately inspect work already in place and shall at once report to the Engineer any problems with the Work in place or discrepancies with the Contract Documents.
- C. Contractor shall ascertain to its own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by the Town in prosecution of the Project to the end that Contractor may perform this Contract in the light of such other contracts, if any. Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy at site of the Project. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on the Project. If simultaneous execution of any contract for the Project is likely to cause interference with performance of some other contract or contracts, the Engineer shall decide which Contractor shall cease Work temporarily and which contractor shall continue or whether work can be coordinated so that contractors may proceed simultaneously. The Town shall not be responsible for any damages suffered or for extra costs incurred by Contractor resulting directly or indirectly from award, performance, or attempted performance of any other contract or contracts on the Project site.

#### **ARTICLE 53. NOTICE AND SERVICE THEREOF**

All notices shall be in writing and either served by personal delivery or mailed to the other party as designated in the Bid Forms. Written notice to the Contractor shall be addressed to Contractor's principal place of business unless Contractor designates another address in writing for service of notice. Notice to Town shall be addressed to the Town as designated in the

Notice Inviting Bids unless Town designates another address in writing for service of notice. Notice shall be effective upon receipt or five (5) calendar days after being sent by first class mail, whichever is earlier. Notice given by facsimile shall not be effective unless acknowledged in writing by the receiving party.

#### **ARTICLE 54. NOTICE OF THIRD PARTY CLAIMS**

Pursuant to Public Contract Code section 9201, the Town shall provide the Contractor with timely notification of the receipt of any third-party claims relating to the Contract. The Town is entitled to recover reasonable costs incurred in providing such notification.

#### **ARTICLE 55. STATE LICENSE BOARD NOTICE**

Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

#### **ARTICLE 56. INTEGRATION**

- A. **Oral Modifications Ineffective.** No oral order, objection, direction, claim or notice by any party or person shall affect or modify any of the terms or obligations contained in the Contract Documents.
- B. **Contract Documents Represent Entire Contract.** The Contract Documents represent the entire agreement of the Town and Contractor.

#### **ARTICLE 57. ASSIGNMENT OF CONTRACT**

Contractor shall not assign, transfer, convey, sublet or otherwise dispose of the rights or title of interest of any or all of this contract without the prior written consent of the Town. Any assignment or change of Contractor's name or legal entity without the written consent of the Town shall be void. Any assignment of money due or to become due under this Contract shall be subject to a prior lien for services rendered or Material supplied for performance of Work called for under the Contract Documents in favor of all persons, firms, or corporations rendering such services or supplying such Materials to the extent that claims are filed pursuant to the Civil Code, the Code of Civil Procedure or the Government Code.

#### **ARTICLE 58. CHANGE IN NAME AND NATURE OF CONTRACTOR'S LEGAL ENTITY**

Should a change be contemplated in the name or nature of the Contractor's legal entity, the Contractor shall first notify the Town in order that proper steps may be taken to have the change reflected on the Contract and all related documents. No change of Contractor's name or nature will affect Town's rights under the Contract, including but not limited to the bonds.

#### **ARTICLE 59. ASSIGNMENT OF ANTITRUST ACTIONS**

Pursuant to Public Contract Code section 7103.5, in entering into a public works contract or

subcontract to supply goods, services, or materials pursuant to a public works contract, Contractor or subcontractor offers and agrees to assign to the Town all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 USC, Section 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from the purchase of goods, services, or materials pursuant to this contract or any subcontract. This assignment shall be made and become effective at the time the Town tenders final payment to the Contractor, without further acknowledgment by the parties.

#### **ARTICLE 60. PROHIBITED INTERESTS**

No Town official or representative who is authorized in such capacity and on behalf of the Town to negotiate, supervise, make, accept, or approve, or to take part in negotiating, supervising, making, accepting or approving any engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the project, shall be or become directly or indirectly interested financially in the Contract.

#### **ARTICLE 61. CONTROLLING LAW**

Notwithstanding any subcontract or other contract with any subcontractor, supplier, or other person or organization performing any part of the Work, this Contract shall be governed by the law of the State of California excluding any choice of law provisions.

#### **ARTICLE 62. JURISDICTION; VENUE**

Contractor and any subcontractor, supplier, or other person or organization performing any part of the Work agrees that any action or suits at law or in equity arising out of or related to the bidding, award, or performance of the Work shall be maintained in the Superior Court of San Mateo County, California, and expressly consent to the jurisdiction of said court, regardless of residence or domicile, and agree that said court shall be a proper venue for any such action.

#### **ARTICLE 63. LAWS AND REGULATIONS**

- A. Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on conduct of work as indicated and specified. If Contractor observes that drawings and specifications are at variance therewith, it shall promptly notify the Engineer in writing and any necessary changes shall be adjusted as provided for in this Contract for changes in work. If Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Engineer, it shall bear all costs arising therefrom.
- B. Contractor shall be responsible for familiarity with the Americans with Disabilities Act ("ADA") (42 U.S.C. § 12101 et seq.). The Work will be performed in compliance with ADA regulations.

#### **ARTICLE 64. PATENTS**

Contractor shall hold and save the Town, officials, officers, employees, and authorized volunteers harmless from liability of any nature or kind of claim therefrom including costs and expenses for or on account of any patented or unpatented invention, article or appliance manufactured, furnished or used by Contractor in the performance of this contract.

#### **ARTICLE 65. OWNERSHIP OF CONTRACT DOCUMENTS**

All Contract Documents furnished by the Town are Town property. They are not to be used by Contractor or any subcontractor on other work nor shall Contractor claim any right to such documents. With exception of one complete set of Contract Documents, all documents shall be returned to the Town on request at completion of the Work.

#### **ARTICLE 66. NOTICE OF TAXABLE POSSESSORY INTEREST**

In accordance with Revenue and Taxation Code section 107.6, the Contract Documents may create a possessory interest subject to personal property taxation for which Contractor will be responsible.

#### **ARTICLE 67. SURVIVAL OF OBLIGATIONS**

All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

#### **END OF GENERAL CONDITIONS**

## 00 73 13 – SPECIAL CONDITIONS

### 1.1 Engineer of Record.

- A. For purposes of this Project, the Engineer of Record or Engineer shall be: City Engineer Cyrus Kianpour.

### 1.2 Location of the Project.

- A. The Project is located F Street in the Town of Colma.
- B. The general location of the Project is shown on Town Drawing No. \_\_\_\_\_.

### 1.3 Shared Cost Savings for Reductions in Contract Price; Value Engineering.

[NOT USED.]

### 1.4 Status of the Project Area and Rights-of-Way.

- A. Town, at its expense, will provide all rights-of-way or permits, or both, covering the crossing of private property and public and private rights-of-way necessary for the permanent Work; provided, however, Contractor shall, at its expense, obtain any bonds or insurance policies or pay any fees and enter into any agreements required by a controlling authority, e.g., Caltrans or Union Pacific Railroad Company, before Contractor enters upon any property or right-of-way under the jurisdiction of any such controlling authority for the purpose of performing Work.
- B. Town has acquired or is negotiating to acquire any rights-of-way, or both, necessary for the permanent Work.
- C. If such permits are required, all operations of Contractor shall conform to the restrictions, regulations, and requirements set forth in said permits, copies of which will be included in the Contract Documents.
- D. Contractor may be required, as a condition for receiving final payment, to obtain, and provide Town's Representative with copies of, executed damage releases from the owners of public and private property whose property has been damaged by the Work. The damage releases will be on a form provided by Town.
- E. Contractor shall, also, as a condition for receiving final payment, obtain, and provide Town's Representative with copies of, executed damage releases from the owners of certain public and private property or areas which have been crossed by the Work or otherwise affected by the Work. The damage releases will be on a form provided by Town.

### 1.5 Site Data.

[NOT USED.]

1.6 Pre-Purchased or Pre-Negotiated Material.

[NOT USED.]

1.7 Designation of Town's Representative.

A. Unless otherwise modified by Town, Town's Representative shall be Public Works Director Brad Donohue.

1.8 Modification of Hours of Work.

[NOT USED.]

1.9 Project Retention

In accordance with Public Contract Code § 7201, Town will withhold 5% of each progress payment as retention on the Project.

1.10 Reverse Liquidated Damages Due to Unreasonable Town Delay.

A. In compliance with the provisions of California Public Contract Code § 7102, the Contractor will be compensated for damages incurred due to delays in completing the Work due solely to the fault of the Town, where such delay is unreasonable under the circumstances and not contemplated by the parties and such delay is not the result of Additional Work. The Contractor and Town agree that determining actual damages is impracticable and extremely difficult. As such, the Contractor shall be entitled to the appropriate time extension and to payment of liquidated damages in the sum of **\$1,000** per Day of delay in excess of the time specified for the Completion of the Work. Such amount shall constitute the only payment allowed and shall necessarily include all overhead (direct or indirect), all profit, all administrative costs, all bond costs, all labor, materials, equipment and rental costs, and any other costs, expenses and fees incurred or sustained as a result of such delay. The Contractor expressly agrees to be limited solely to the liquidated damages for all such delays as defined in this subsection.

1.11 Liquidated Damages Due to Contractor Delay.

A. Time is of the essence. Should Contractor fail to complete all or any part of the Work within the time specified in the Contract Documents, Town will suffer damage, the amount of which is difficult, if not impossible, to ascertain and, pursuant to the authority of Government Code section 53069.85, Town shall therefore be entitled to **\$1,000** per Day as liquidated damages for each Day or part thereof that actual completion extends beyond the time specified.

B. Liquidated damages may be deducted from progress payments due Contractor, Project retention or may be collected directly from Contractor, or from Contractor's surety. These provisions for liquidated damages shall not prevent Town, in case of Contractor's default, from terminating the Contractor.



1.12 Utility Outages – Notices to Residents.

- A. Should Contractor's operations require interruption of any utility service, Contractor shall notify Town at least ten (10) Days prior to the scheduled outage. Contractor will notify all impacted residents on a form provided by Town at least seven (7) Days prior to the scheduled outage.
- B. Contractor shall be responsible for providing, at its cost, any temporary utility or facilities necessitated by the utility outage.

1.13 Schedule Constraints.

NOT USED.

1.14 Noise Restrictions

- A. Contractor shall use only such equipment on the Work and in such state of repair so that the emission of sound therefrom is within the noise tolerance level of that equipment as established by Cal/OSHA.
- B. Contractor shall comply with the most restrictive of the following: (1) local sound control and noise level rules, regulations and ordinances and (2) the requirements contained in these Contract Documents, including hours of operation requirements.
- C. No internal combustion engine shall be operated on the Project without a muffler of the type recommended by the manufacturer. Should any muffler or other control device sustain damage or be determined to be ineffective or defective, the Contractor shall promptly remove the equipment and shall not return said equipment to the job until the device is repaired or replaced. Said noise and vibration level requirements shall apply to all equipment on the job or related to the job, including but not limited to, trucks, transit mixers or transit equipment that may or may not be owned by the Contractor.

1.15 Safety Programs.

- A. In addition to all other safety requirements of the Contract Documents, Contractor must comply with CalOSHA safety programs at all times during the completion of the Work.
- B. Town has considered these Safety Programs when determining the Contract Times and no additional time or compensation will be added to the Contract due to these Programs.

1.16 Coordination with Other Contractors.

NOT USED.

**END OF SPECIAL CONDITIONS**

## **01 00 00 – GENERAL REQUIREMENTS**

### **PART 1 -- GENERAL**

#### **1.1 DESCRIPTION**

- A. To be added

#### **1.2 RELATED REQUIREMENTS SPECIFIED ELSEWHERE**

### **PART 2 -- PRODUCTS (NOT USED)**

### **PART 3 -- EXECUTION**

#### **3.1 LAYOUT OF WORK AND QUANTITY SURVEYS**

- A. General. The Contractor shall utilize a properly licensed surveyor to perform all layout surveys required for the control and completion of the Work, and all necessary surveys to compute quantities of Work performed.

Town and/or the Engineer of Record has established primary control to be used by the Contractor for establishing lines and grades required for the Work.

Primary control consists of benchmarks and horizontal control points in the vicinity of the Work. A listing and identification of the primary control is provided on the Drawings. Before beginning any layout work or construction activity, the Contractor shall check and verify primary control, and shall advise the Town Representative of any discrepancies.

- B. Quantity surveys. The Contractor shall perform such surveys and computations as are necessary to determine quantities of Work performed or placed during each progress payment period, and shall perform all surveys necessary for the Town Representative to determine final quantities of Work in place. The Town Representative will determine final quantities based upon the survey data provided by the Contractor, and the design lines and grades. If requested by the Town Representative, the Contractor shall provide an electronic copy of data used for quantity computations.

All surveys performed for measurement of final quantities of Work and material shall be subject to approval of Town's Representative. Unless waived by Town's Representative in each specific case, quantity surveys made by the Contractor shall be made in the presence of Town's Representative.

- C. Surveying

- 1. Accuracy. Degree of accuracy shall be an order high enough to satisfy tolerances specified for the Work and the following:

- (a) Right-of-way and alignment of tangents and curves shall be within 0.1 foot.
  - (b) Structure points shall be set within 0.01 foot, except where operational function of the special features or installation of metalwork and equipment require closer tolerances. When formwork has been placed and is ready for concrete, the Contractor shall check the formwork for conformance with the drawings and to ensure that the forms are sufficiently within the tolerance limits for the completed work.
  - (c) Cross-section points shall be located within 0.1 foot, horizontally and vertically.
  - (d) Aerial Mapping shall meet National Mapping Standards for 2-foot contour intervals.
- D. Records. Survey data shall be recorded in accordance with recognized professional surveying standards. Original field notes, computations, and other surveying data shall be recorded on electronic data collectors or in standard field books and must be of sufficient quality to enable the Contractor to prepare accurate record drawings as required by the Contract Documents.
- E. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required for surveys for the layout of work and quantity surveys shall be included in the Schedule of Pay Items for items of work requiring the surveys. No additional compensation shall be made to the Contractor for this Work.

### 3.2 SCHEDULE

- A. Estimated Schedule. Within 14 Days after the issuance of the Notice to Proceed, Contractor shall prepare a Project schedule and shall submit this to the Engineer for Approval. The receipt or Approval of any schedules by the Engineer or the Town shall not in any way relieve the Contractor of its obligations under the Contract Documents. The Contractor is fully responsible to determine and provide for any and all staffing and resources at levels which allow for good quality and timely completion of the Project. Contractor's failure to incorporate all elements of Work required for the performance of the Contract or any inaccuracy in the schedule shall not excuse the Contractor from performing all Work required for a completed Project within the specified Contract time period. If the required schedule is not received by the time the first payment under the Contract is due, Contractor shall not be paid until the schedule is received, reviewed and accepted by the Engineer.
- B. Schedule Contents. The schedule shall indicate the beginning and completion dates of all phases of construction; critical path for all critical, sequential time related activities; and "float time" for all "slack" or "gaps" in the non-critical activities. The schedule shall clearly identify all staffing and other resources which in the Contractor's judgment are needed to complete the Project within the time specified for completion. The overall Project Schedule duration shall be within the Contract time.
- C. Schedule Updates. Contractor shall continuously update its construction schedule. Contractor shall submit an updated and accurate construction schedule to the

Engineer monthly when requested to do so by Engineer. Contractor shall also submit schedules showing a three week detailed look-ahead at bi-weekly meetings conducted with the Town. The Engineer may withhold progress payments or other amounts due under the Contract Documents if Contractor fails to submit an updated and accurate construction schedule.

### 3.3 TEMPORARY FIELD OFFICE

NOT USED.

### 3.4 PROTECTION OF WORK AND PROPERTY

- A. All traffic detector loops, fences, walls, culverts, property line monuments, or other obstructions (except property line monuments within five (5) feet of the centerline of the mains) which are removed, damaged, or destroyed in the course of the Work, shall be replaced or repaired to the original condition. If Contractor provides the Town with reasonable notice of the need for such repair or replacement, it shall be performed by the Town. If the Contractor fails to provide the Town with reasonable notice, the repair or replacement shall be performed by and at the expense of the Contractor to the satisfaction of the Town, whether or not those obstructions have been shown on the Plans, unless otherwise stated herein. It is then the Contractor's responsibility to employ at its expense a Licensed Land Surveyor to restore all property line monuments located more than five (5) feet from the centerline of the mains, which are destroyed or obliterated. Property line monuments located within five (5) feet of the centerline of the mains will be replaced by the Town at no expense to the Contractor, provided the Town is notified at least 48 hours before the property line monuments are damaged.
- B. Contractor shall provide such heat, covering, and enclosures as are necessary to protect all Work, materials, equipment, appliances, and tools against damage by weather conditions.
- C. Contractor shall take adequate precautions to protect existing sidewalks, curbs, pavements, utilities, and other adjoining property and structures, and to avoid damage thereto, and Contractor shall repair any damage thereto caused by the Work operations. Contractor shall:
  - 1. Enclose the working area with a substantial barricade, and arrange work to cause minimum amount of inconvenience and danger to the public.
  - 2. Provide substantial barricades around any shrubs or trees indicated to be preserved.
  - 3. Deliver materials to the Project site over a route designated by the Engineer.
  - 4. Provide any and all dust control required and follow the Applicable air quality regulations as appropriate. If the Contractor does not comply, the Town shall have the immediate authority to provide dust control and deduct the cost from payments to the Contractor.

5. Confine Contractor's apparatus, the storage of materials, and the operations of its workers to limits required by law, ordinances, permits, or directions of the Engineer. Contractor shall not unreasonably encumber the Project site with its materials.
  6. Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by a civil engineer or land surveyor acceptable to the Town, at no cost to the Town.
  7. Ensure that existing facilities, fences and other structures are all adequately protected and that, upon completion of all Work, all facilities that may have been damaged are restored to a condition acceptable to the Town.
  8. Preserve and protect from injury all buildings, pole lines and all direction, warning and mileage signs that have been placed within the right-of-way.
  9. At the completion of work each day, leave the Project site in a clean, safe condition.
  10. Comply with any stage construction and traffic control plans. Access to residences and businesses shall be maintained at all times, unless otherwise permitted in writing by the Town.
- D. These precautionary measures will apply continuously and not be limited to normal working hours. Full compensation for the Work involved in the preservation of life, safety and property as above specified shall be considered as included in the prices paid for the various contract items of Work, and no additional allowance will be made therefore.
- E. Should damage to persons or property occur as a result of the Work, Contractor shall be responsible for proper investigation, documentation, including video or photography, to adequately memorialize and make a record of what transpired. The Town shall be entitled to inspect and copy any such documentation, video, or photographs.

### 3.5 SITE CONDITIONS SURVEYS

#### A. Work Included.

Contractor shall conduct thorough pre-construction and post-construction site condition surveys of the entire project area. Site Conditions surveys shall include written documentation of the conditions found, as well as photographs and video recordings of the area within at least 80 feet of any construction area and staging area. The written notes, photographs, and video shall be suitable for forensic purposes to resolve any damage claims that may arise as a result of construction.

#### B. Submittals.

1. Written documentation of site condition survey at pre-construction and post-construction.

2. Photographs as described herein of pre-construction and post-construction conditions.
3. Video recordings as described herein of pre-construction and post-construction conditions.
4. Submittals shall be made within three days of the surveys. All post-construction data shall be submitted prior to the final project inspection.

C. Site Condition Written Documentation.

Written documentation shall include the time, date, and conditions under which the site survey was made. The documentation shall note the condition of structures, pavement, sidewalks, utilities, fences, and etc. within the work areas.

D. Photographs.

1. General – Contractor shall take enough photographs during each site survey to provide a record of conditions existing prior to construction and conditions after construction. Pre-construction photographs shall be taken prior to any construction or mobilization of equipment, but not more than one week prior to actual start of work. The pre-construction photographs may be staged at different times to match the progression of the Work.
2. The photographs shall document existing damage to public and private facilities, both prior to and after construction. Conditions to be documented include, but are not limited to: sidewalk cracks, broken curbs, separated property walls, improvements within public right-of-ways, access roads used, utility covers and markings, signs, pavement striping, pavement, unique or unusual conditions, adjacent driveways, landscaping, survey markers, and any feature directed by the Engineer. Private property that is adjacent to the public right-of-way shall be documented to the extent visible from the public right-of-way.
3. Photographs shall include items to indicate scale, as needed. In particular, scales or other items shall be laid next to close ups of structural cracks and other damaged areas being recorded. Scaling shall also be used to document elevation differences, as needed.
4. One set of color prints shall be submitted. Additional sets shall be available for reviewing in settling any construction disputes. A set of photos shall also be furnished in electronic format. The resolution shall be at least equal to 7 megapixels. All photos shall be documented as to time and date taken, photographer, project number, location, and orientation. Documentation shall include a brief description of objects photographed.

E. Video Recording.

1. Video recordings shall document the conditions of the entire area affected by construction, as well as nearby structures and facilities. The general documentation requirements for videos are the same as for photographs. Video recorders shall accurately and continuously record the time and date.

2. Video recordings shall include an audio portion made simultaneously during the videoing. The audio recording shall describe the location, time, orientation, and objects being recorded. Special commentary shall be provided for unusual conditions or damage noted.
3. Video equipment shall be capable of producing high resolution images and shall have zoom capabilities.
4. Video recordings shall provide an overall picture of the sites and shall provide detailed images of damaged areas. Video shall extend to the maximum height of structures.
5. The Engineer shall have the right to reject any audio video recordings submitted with unintelligible audio, uncontrolled pan or zoom, or of poor quality. Video recordings shall be repeated when rejected.
6. Video recordings shall be submitted with labels indicating the project, date, recorder, and other pertinent information. Recordings shall be submitted on standard DVDs in a standard format.

F. Timing.

Contractor shall provide written notice of the time scheduled for the site conditions survey and the place it is to begin. Contractor shall obtain the Engineer's concurrence prior to beginning the condition survey. The Engineer reserves the right to cancel the survey due to weather conditions or other problems. Videoing shall be done during times of good visibility and no videoing or photography shall be done during periods of visible precipitation or when standing water obscures pavement. Contractor shall provide the Engineer with an opportunity to have a representative present when taking the photos and provide guidance during photographing.

G. Site Surveyor.

The site condition surveyor(s) shall be experienced in construction and potential damage concerns. The site condition surveyor(s) shall be familiar with the photography and video equipment being used.

H. Field Quality Control.

Prior to submitting videos and photographs, the Contractor shall spot check the photos and videos in the field to insure they accurately reflect the actual conditions and to insure they are correctly labeled.

I. Soils Compaction Testing.

1. All soils compaction testing will be done by a licensed geotechnical engineer furnished by the Town. Soils compaction testing will be done for all footings and foundations prior to placement of rebar or concrete.
2. For pipeline construction, soil compaction testing will be done at 100-foot intervals at the bottom of the trench prior to placement of pipe bedding; at the top

of the pipe bedding above the pipe; every two vertical feet of trench backfill; at the top of the trench backfill, which could be the bottom of the pavement section; and at the top of the aggregate base prior to pavement construction.

### 3.6 SUBMITTAL REQUIREMENTS AND RECORD DRAWINGS

- A. General. The Contractor shall furnish all materials and perform all Work required for furnishing submittals to Town in accordance with Contract Documents.
- B. Record Drawings
  - 1. The Contractor shall maintain one record set of Drawings at the Site. On these, it shall mark all Project conditions, locations, configurations, and any other changes or deviations which may vary from the information represented in the original Contract Documents, including buried or concealed construction and utility features which are revealed during the course of construction. Special attention shall be given to recording the horizontal and vertical location of all buried utilities that differ from the locations indicated, or which were not indicated on the Contract Drawings. Said record drawings shall be supplemented by any detailed sketches as necessary or directed to fully indicate the Work as actually constructed. These master record drawings of the as-built conditions, including all revisions made necessary by Addenda and Change Orders shall be maintained up-to-date during the progress of the Project. Red ink shall be used for alterations and notes. Notes shall identify relevant Change Orders by number and date.
  - 2. For all Projects involving the installation of any pipeline, Contractor shall survey and record the top of the pipe at a minimum of every 100 linear feet, and at each bend, recording both the horizontal and vertical locations.
  - 3. Record drawings shall be accessible to Town's Representative at all times during the construction period. Failure on the Contractor's part to keep record drawings current could result in withholding partial payment.
  - 4. Upon Completion of the Project and as a condition of final acceptance, the Contractor shall finalize and deliver a complete set of Record Drawings to Town's Representative. The information submitted by the Contractor will be assumed to be correct, and the Contractor shall be responsible for, and liable to Town, for the accuracy of such information, and for any errors or omissions which may or may not appear on the Record Drawings.
- C. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to complete the Manuals and Record Drawings shall be included in Contractor's bid and distributed in the Schedule of Pay. No additional compensation shall be made to the Contractor for this Work.

### 3.7 MATERIALS

- A. Materials to be Furnished by the Contractor
  - 1. Inspection of Materials. Materials furnished by the Contractor which will become a part of the Project shall be subject to inspection at any one or more of the



following locations, as determined by Town's Representative: at the place of production or manufacture, at the shipping point, or at the site of the Work. To allow sufficient time to provide for inspection, the Contractor shall submit to Town's Representative, at the time of issuance, copies of purchase orders or other written instrument confirming procurement of the materials, including drawings and other pertinent information, covering materials on which inspection will be made.

2. No later than fourteen (14) Days prior to manufacture of material, Contractor shall inform Town's Representative, in writing, the date the material is to be manufactured.
3. Contractors Obligations. The inspection of materials at any of the locations specified above or the waiving of the inspection thereof shall not impact whether the materials and equipment conform to the Contract Documents. Contractor will not be relieved from furnishing materials meeting the requirements of the Contract Documents due to Town's inspection or lack of inspection of the equipment or materials. Acceptance of any materials will be made only after materials are installed in the Project.
4. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to accommodate Town's testing efforts, including any travel required by Contractor's forces, shall be included in Contractor's bid and distributed in the Schedule of Pay Items related to the materials requiring testing. No additional compensation shall be made to the Contractor for this Work.

### 3.8 LOCAL CONDITIONS AND REQUIREMENTS

#### A. Access to Work and Haul Routes

1. General. All work on the rights-of-way necessary for access to the Site shall be performed by the Contractor.
2. Access, Damage, Restoration. The Contractor shall make his own investigation of the condition of available public or private roads and of clearances, restrictions, bridge-load limits, permit or bond requirements, and other limitations that affect or may affect transportation and ingress or egress at the Site. Claims for changes in Contract Price or Contract Times arising out of the unavailability of transportation facilities or limitations thereon shall not be considered by Town.
3. The Contractor shall maintain and repair any damage arising out of Contractor's operations to all roads used during construction of the Project, and upon completion of all Work, but prior to final acceptance, the roads shall be restored to their original condition. Prior to using any road for access to the Site, the Contractor shall conduct a photograph and/or video survey of the roadway with a copy submitted to Town's Representative.
4. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to complete this Work, shall be included in

Contractor's bid and distributed in the Schedule of Pay Items. No additional compensation shall be made to the Contractor for this Work.

B. Power. Contractor shall provide at its own expense all necessary power required for operations under the contract. The Contractor shall provide and maintain in good order such modern equipment and installations as shall be adequate in the opinion of the Engineer to perform in a safe and satisfactory manner the Work required by the contract.

C. Construction Water.

1. Construction water shall not be used for purposes other than those required to satisfactorily complete the contract.
2. All connections to the Town's water system used for the purposes of obtaining construction water shall utilize a temporary construction meter and backflow prevention device supplied by the Town. The Town-furnished backflow prevention device shall be tested immediately after installation and the construction meter and backflow prevention device shall not be placed into service until the backflow prevention device passes such tests. Backflow prevention device testing shall be performed in accordance with applicable standards, and test results shall be provided to the Engineer. If the temporary construction meter and backflow prevention device are moved to alternate location(s) during construction, the backflow prevention device shall again be tested as described above immediately after re-installation.
3. For each temporary construction meter requested by the Contractor for the performance of work under this contract, an amount equivalent to the deposit requirement for temporary construction meters listed in the current approved version of the Town's Policies and Procedures Manual shall be withheld from the final contract payment until the temporary construction meters are returned.

D. Operation of Existing Water Facilities

1. The Contractor shall not operate any of the existing water systems, including pumps, motors, and hydrants, but shall contact the Town two (2) working days in advance with a list and location of the water system facilities that will require operating, opening, stopping, or closure by the Town.
2. At the option of the Engineer, the Contractor may be permitted to operate valves for the purpose of making connections to existing mains. The Town will perform all notification to existing customers regarding temporary loss of service.
3. Contractor shall submit a request on Town's standard form for any shut-down of existing water facilities.

E. Construction at Existing Utilities

1. General. Where the Work to be performed crosses or otherwise interferes with water, sewer, gas, or oil pipelines; buried cable; or other public or private utilities, the Contractor shall perform construction in such a manner so that no damage

will result to either public or private utilities. It shall be the responsibility of the Contractor to determine the actual locations of, and make accommodations to maintain, all utilities.

2. **Permission, Notice and Liability.** Before any utility is taken out of service, permission shall be obtained by the Contractor from the owner. The owner, any impacted resident or business owner and the Town Representative will be advised of the nature and duration of the utility outage as well as the Contractor's plan for providing temporary utilities if required by the owner. The Contractor shall be liable for all damage which may result from its failure to maintain utilities during the progress of the Work, and the Contractor shall indemnify Town as required by the Contract Documents from all claims arising out of or connected with damage to utilities encountered during construction; damages resulting from disruption of service; and injury to persons or damage to property resulting from the negligent, accidental, or intentional breaching of utilities.
3. **Cost.** Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to complete this Work, shall be included in Contractor's bid and distributed in the Schedule of Pay Items. No additional compensation shall be made to the Contractor for this Work.

#### F. Traffic Control

1. **General.** Contractor shall abide by traffic control plans approved by the appropriate jurisdiction.
2. **Protections.** Roads subject to interference by the Work shall be kept open or suitable temporary passages through the Work shall be provided and maintained by the Contractor. The Contractor shall provide, erect, and maintain all necessary barricades, suitable and sufficient flasher lights, flag persons, danger signals, and signs, and shall take all necessary precautions for the protection of the Work and the safety of the public. No construction work along public or private roads may proceed until the Contractor has proper barricades, flasher lights, flag persons, signals, and signs in place at the construction site.
3. **Cost.** Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to complete this Work, shall be included in Contractor's bid and distributed in the Schedule of Pay Items. No additional compensation shall be made to the Contractor for this Work.

#### G. Cleaning Up

1. Contractor at all times shall keep premises free from debris such as waste, rubbish, and excess materials and equipment. Contractor shall not store debris under, in, or about the premises. Contractor shall also clean all asphalt and concrete areas to the degree necessary to remove oil, grease, fuel, or other stains caused by Contractor operations or equipment. The use of water, resulting in mud on streets, will not be permitted as substitute for sweeping or other methods. Dust control may require having a water truck onsite for the

duration of the project, and/or use of temporary hoses and pipelines to convey water.

2. Contractor shall fully clean up the site at the completion of the Work. If the Contractor fails to immediately clean up at the completion of the Work, the Town may do so and the cost of such clean up shall be charged back to the Contractor.

### 3.9 ENVIRONMENTAL QUALITY PROTECTION

#### A. Environmental Conditions

NOT USED.

#### B. Landscape and Vegetation Preservation

1. General. The Contractor shall exercise care to preserve the natural landscape and vegetation, and shall conduct operations so as to prevent unnecessary destruction, scarring, or defacing of the natural surroundings in the vicinity of the Work.
2. Damage and Restoration. Movement of crews and equipment within the rights-of-way and over routes provided for access to the Work shall be performed in a manner to prevent damage to property. When no longer required, construction roads shall be restored to original contours.
3. Upon completion of the Work, and following removal of construction facilities and required cleanup, land used for construction purposes and not required for the completed installation shall be scarified and regraded, as required, so that all surfaces are left in a condition that will facilitate natural revegetation, provide for proper drainage, and prevent erosion.
4. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to complete this Work, shall be included in Contractor's bid and distributed in the Schedule of Pay Items. No additional compensation shall be made to the Contractor for this Work.

#### C. Protected Species

1. General. If, in the performance of the Work, evidence of the possible occurrence of any Federally listed threatened or endangered plant or animal is discovered, the Contractor shall notify the Town Representative immediately, giving the location and nature of the findings. Written confirmation of the evidence, location and nature of the findings shall be forwarded to Town within 2 Days.
2. Procedures. The Contractor shall immediately cease all construction activities in the immediate area of the discovery to the extent necessary to protect the endangered plant or animal.

If directed by the Town Representative, Contractor will refrain from working in the immediate area, suspend the Work in its entirety, or alter its performance to

ensure full compliance with all applicable permits, laws and regulations. Any Town directed changes to the Work as a result of a siting will be pursuant to the Contract Documents.

3. False Siting. Any costs or delays incurred by Town or the Contractor due to unreasonable or false notification of an endangered plant or animal will be borne by the Contractor.
4. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to comply with this paragraph, shall be included in Contractor's bid and distributed in the Schedule of Pay Items. No additional compensation shall be made to the Contractor for this Work.

D. Preservation of Historical and Archeological Resources

1. General. If, in the performance of the Work, Contractor should unearth cultural resources (for example, human remains, animal bones, stone tools, artifacts and/or midden deposits) through excavation, grading, watering or other means, the Contractor notify the Construction/Archeological Monitor and/or the Town Representative immediately, giving the location and nature of the findings. Written confirmation of the evidence, location and nature of the findings shall be forwarded to the Construction/Archeological Monitor and/or Town within 2 Days.
2. Procedures. The Contractor shall immediately cease all construction activities in the immediate area of the discovery to the extent necessary to protect the cultural resource.

If directed by the Town Representative, Contractor will refrain from working in the immediate area, suspend the Work in its entirety, or re-sequence and/or alter its performance to ensure full compliance with all applicable permits, laws and regulations. Should the presence of cultural resources be confirmed, the Contractor will assist the Town Representative and the Construction/Archeological Monitor in the preparation and implementation of a data recovery plan. The Contractor shall provide such cooperation and assistance as may be necessary to preserve the cultural resources for removal or other disposition. Any Town directed changes to the Work as a result of the cultural resource will be pursuant to the Contract Documents.

3. Contractor's Liability. Should Contractor, without permission, injure, destroy, excavate, appropriate, or remove any cultural resource on or adjacent to the Site, it will be subject to disciplinary action, arrest and penalty under applicable law. The Contractor shall be principally responsible for all costs of mitigation and/or restoration of cultural resources related to the unauthorized actions identified above. Contractor shall be required to pay for unauthorized damage and mitigation costs to cultural resources (historical and archeological resources) as a result of unauthorized activities that damage cultural resources and shall indemnify Town pursuant to the Contract Documents.

4. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to comply with this paragraph, shall be included in Contractor's bid and distributed in the Schedule of Pay Items. No additional compensation shall be made to the Contractor for this Work.

E. Dust and Pollution Control

1. Contractor shall provide all necessary material, equipment and labor to prevent and control the emission of dust and any other potential pollutant on site.
2. Contractor shall not discharge into the atmosphere from any source smoke, dust or other air contaminants in violation of the law, rules, and regulations of the governing agency.
3. Cost. Unless otherwise called for by the Contract Documents, the cost of all material, equipment, and labor required to comply with this paragraph, shall be included in Contractor's bid and distributed in the Schedule of Pay Items. No additional compensation shall be made to the Contractor for this Work.

F. Fugitive Dust

1. In addition to all other environmental and air quality requirements of the Contract Documents, Contractor must also comply with the most recent version of any rules implemented by the Air Quality Management District (AQMD) with jurisdiction over the Project in order to reduce the amount of particulate matter entrained in the ambient air as a result of the Project. All equipment shall be AQMD compliant and permitted, as needed.
2. Town has considered these other requirements when determining the Contract Times and no additional time or compensation will be added to the Contract due to these requirements.

G. Management of Storm, Surface and Other Waters

1. Storm water, surface water, groundwater, and nuisance, or other waters may be encountered at various times during construction of the Project. Federal and State laws require the Town and its contractors to manage such waters pursuant to the requirements of California State Water Resources Control Board Order Number 2009-0009-DWQ, the Federal Clean Water Act, and the California Porter Cologne Water Quality Control Act. Contractor acknowledges that it has investigated the risk arising from such waters in conjunction with the Project, and assumes any and all risks and liabilities arising therefrom.
2. The Contractor shall perform all construction operations in such a manner as to comply, and ensure all subcontractors to comply, with all applicable Federal, State, and local laws, orders, and regulations concerning the control and abatement of water pollution; and all terms and conditions of any applicable permits issued for the Project. In the event there is a conflict between Federal, State, and local laws, regulations, and requirements, the most stringent shall apply.

3. Contractor violations. If noncompliance should occur, the Contractor shall report this to the Town Representative immediately, with the specific information submitted in writing within 2 Days. Consistent violations of applicable Federal, State, or local laws, orders, regulations, or Water Quality Standards may result in Town stopping all site activity until compliance is ensured. The Contractor shall not be entitled to any change in Contract Price or Contract Times, claim for damage, or additional compensation by reason of such a work stoppage. Corrective measures required to bring activities into compliance shall be at the Contractor's expense.
4. Compliance with Construction General Storm water Permit. Contractor shall be required to comply with all aspects of the State Water Resources Control Board (State Board) Water Quality Order No. 2009-0009-DWQ, National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity (Permit) for all projects that involve construction on or disturbance of one acre or more of land or which are part of a larger common area of development.
  - (a) Contractor shall prepare and implement a Storm Water Pollution Prevention Plan (SWPPP) for the Project site based on the appropriate Risk Level requirements, and draft and coordinate submittal of all Permit related documents with Town's Legally Responsible Person and/or Authorized Signatory as those terms are defined in the Permit. The Contractor shall submit the SWPPP to the Town Representative for review not less than fifteen (15) Days prior to the start of on- site construction work. Town will file the Notice of Intent and pay the filing fee.
  - (b) The SWPPP shall be developed by a Qualified SWPPP Developer and implemented by a Qualified SWPPP Practitioner as those terms are defined in the Permit and shall include industry standard requirements for water quality control including but not be limited to the following:
    - (1) Sediment and erosion control measures to manage sediment and erosion including vegetative practices, structural control, silt fences, straw dikes, sediment controls or operator controls as appropriate. Storm water management measures shall be instituted as required, including velocity dissipaters, and solid waste controls shall address controls for building materials and offsite tracking of sediment.
    - (2) Wastewater and storm water management controls to divert offsite surface flows around the Project site and to divert surface flows within the Project area away from areas of open earth or stockpiles of building and other materials. Wastewater from general construction activities, such as drain water collection, aggregate processing, concrete batching, drilling, grouting, or other construction operations, shall not enter flowing or dry watercourses without having met the authorized non-storm water discharge requirements listed in State Board Water Quality Order No. 2009-0009-DWQ, Section III.C., including proper notification to the Regional Water Board.
    - (3) Pollution prevention measures including methods of dewatering, unwatering, excavating, or stockpiling earth and rock materials which

include prevention measures to control silting and erosion, and which will intercept and settle any runoff of sediment-laden waters.

- (4) Turbidity prevention measures for prevention of excess turbidity including, but are not restricted to, intercepting ditches, settling ponds, gravel filter entrapment dikes, flocculating processes, recirculation, combinations thereof, or other approved methods that are not harmful to aquatic life. All such wastewaters discharged into surface waters, shall contain the least concentration of settleable material possible, and shall meet all conditions of section 402, the National Pollutant Discharge Elimination System (NPDES) permit.
  - (5) Overall construction site management measures to address changes at the Project site as the Project moves through different phases and changes that account for rainy and dry season management practices.
  - (6) Pollution control measures and construction activity methods that will prevent entrance, or accidental spillage, of solid matter, contaminants, debris, or other pollutants or wastes, into streams, flowing or dry watercourses, lakes, wetlands, reservoirs, or underground water sources. Such pollutants and wastes include, but are not restricted to: refuse, garbage, cement, sanitary waste, industrial waste, hazardous materials, radioactive substances, oil and other petroleum products, aggregate processing, tailings, mineral salts, and thermal pollution.
  - (7) Control measures for stockpiled or deposited materials prohibiting the stockpile or deposit of excavated materials, or other construction materials, near or on stream banks, lake shorelines, or other watercourse perimeters where they can be washed away by high water or storm runoff, or can, in any way, encroach upon the watercourse.
  - (8) Develop and implement a Rain Event Action Plan (REAP), if required, that must be designed and implemented to protect all exposed portions of the site 48 hours prior to any likely precipitation event.
  - (9) Monitoring, reporting and record keeping, as necessary to achieve compliance with applicable Permit requirements, including but not limited to annual reports and rain event reports.
- (c) Before any Permit related documents, including the SWPPP, rain event reports, or annual reports may be submitted to the State Board or implemented on the Project site, they must first be reviewed and approved by Town.
- (d) Town retains the right to procure and maintain coverage under the Permit for the Project site if the Contractor fails to draft a SWPPP or other Permit related document, or fails to proceed in a manner that is satisfactory to Town. Town reserves the right to implement its own SWPPP at the Project site, and hire additional contractors to maintain compliance. Whether Contractor has adequately maintained compliance with the Permit shall be Town's sole determination. In the event that Contractor has failed or is unable to maintain compliance with the Permit, any costs or fines incurred by



Town in implementing a SWPPP, or otherwise maintaining compliance with the Construction General Permit shall be paid by the Contractor.

- (e) Failure to implement the SWPPP or otherwise comply with the Permit is a violation of federal and state law. Contractor hereby agrees to indemnify Town as required by the Contract Documents for any noncompliance or alleged noncompliance with the Permit arising out of or in connection with the Project, except for liability resulting from the sole established negligence, willful misconduct or active negligence of Town. Town may seek damages from Contractor for delay in completing the Contract in accordance with the Contract Documents, caused by Contractor's failure to comply with the Permit.
- 5. In addition to compliance with the Permit, Contractor shall comply with the lawful requirements of any applicable municipality, district, drainage district, flood control district, and other local agencies regarding discharges of storm water, surface water, groundwater or other nuisance waters off of the Project site.
- 6. Oil storage tanks management.
  - (a) Storage tank placement. All oil or other petroleum product (hereinafter referred to collectively as oil) storage tanks shall be placed at least 20 feet from streams, flowing or dry watercourses, lakes, wetlands, reservoirs, and any other water source.
  - (b) Storage area dikes. Storage areas shall be diked at least 12 inches high or graded and sloped to permit safe containment of leaks and spills equal to the capacity of all tanks and/or containers located within each area, plus a sufficient amount of freeboard to contain the 25-year rainstorm.
  - (c) Diked area barriers. Diked areas shall have an impermeable barrier at least 10 mils thick. Areas used for refueling operations shall have an impermeable liner at least 10 mils thick buried under 2 to 4 inches of soil.
  - (d) Spill Prevention Control and Countermeasure Plan (SPCC). Where the location of a construction site is such that oil from an accidental spillage could reasonably be expected to enter into or upon the navigable waters of the United States or adjoining shorelines, and the aggregate storage of oil at the site is over 1,320 gallons or a single container has a capacity in excess of 660 gallons, the Contractor shall prepare an SPCC Plan. The Contractor shall submit the SPCC Plan to the Engineer at least 30 days prior to delivery or storage of oil at the site. The Plan must have been reviewed and certified by a registered professional engineer in accordance with 40 C.F.R., part 112
- 7. Underground tank prohibition. The Contractor shall not use underground storage tanks.
- 8. Construction safety standards. The Contractor shall comply with the sanitation and potable water requirements of Section 7 of United States Bureau of Reclamation's publication "Reclamation Safety And Health Standards."
- 9. Other Permits.

- (a) Other permits applicable to the Project are listed in the Special Conditions. The Contractor shall obtain all other necessary licenses and permits.
  - (b) Monitoring. The Contractor is required to conduct monitoring in order to meet the requirements of the permits, which may include sampling, testing and inspections.
  - (c) Recordkeeping. The Contractor shall retain all records and data required by the permits for the time specified in the contract.
10. Cost. Except as specified herein, the cost of complying with this section shall be included in the Schedule of Pay Items for work which necessitate the water pollution prevention measures required by this paragraph.

#### **END OF GENERAL REQUIREMENTS**

**EXHIBIT "A"**  
**CHANGE ORDER FORM**

**Town of Colma**

*1198 El Camino Real  
Colma, CA 94014*

**Contract Change Order #**

**Project:**

**Change Order No.:**

**Orig. Contract Amt.:** \$ Days

**Contract No.:**

**Contractor:** **Prev. Appvd. Changes:** \$ Days

**Owner:** Town of Colma **This Change:** \$ Days

**Revised Contract Amt.:** \$ Days

This Change Order covers changes to the subject contract as described herein. The Contractor shall construct, furnish equipment and materials, and perform all work as necessary or required to complete the Change Order items for a lump sum price agreed upon between the Contractor and Town of Colma, otherwise referred to as Owner.

Item No.	Description of Changes	Increase/ (Decrease) in Contract Amount	Contract Time Extension, Days
1			
2			
	<b>Totals</b>	<b>\$</b>	

This Contract Change Order consists of **2 pages** and any exhibits attached to this Contract Change Order shall not be part of the Contract Change Order unless specifically initialed by or on behalf of both the Contractor and the Town of Colma.

Contract Change Order # \_\_\_\_\_ Page 1 of 2

The amount of the contract will be increased by the sum of \$\_\_\_\_\_ and the contract time shall be extended by working days. The undersigned Contractor approves the foregoing Change Order # as to the changes, if any, in the contract price specified for each item including any and all supervision costs and other miscellaneous costs relating to the change in work, and as to the extension of time allowed, if any, for completion of the entire work on account of said Change Order #. The Contractor agrees to furnish all labor and materials and perform all other necessary work, inclusive of the directly or indirectly related to the approved time extension, required to complete the Change order items. This document will become a supplement of the contract and all provisions will apply hereto. It is understood that the Change Order shall be effective when approved by the Owner.

Contractor accepts the terms and conditions stated above as full and final settlement of any and all claims arising out of or related to the subject of this Change Order and acknowledges that the compensation (time and cost) set forth herein comprises the total compensation due for the work or change defined in the Change Order, including all impact on any unchanged work. By signing this Change Order, the Contractor acknowledges and agrees that the stipulated compensation includes payment for all Work contained in the Change Order, plus all payment for any acceleration or interruption of schedules, extended overhead costs, delay, and all impact or cumulative impact on all Work under this Contract. The signing of this Change Order acknowledges full mutual accord and satisfaction for the change and that the stated time and/or cost constitute the total equitable adjustment owed the Contractor as a result of the change. The Contractor hereby releases and agrees to waive all rights, without exception or reservation of any kind whatsoever, to file any further claim or request for equitable adjustment of any type, for any reasonably foreseeable cause that shall arise out of, or as a result of, this Change Order and/or its impact on the remainder of the Work under the Contract.

Accepted:

\_\_\_\_\_  
(Signature) Contractor's Authorized Representative

\_\_\_\_\_  
Date

Recommended:

\_\_\_\_\_  
(Signature) **\*\*INSERT NAME, TITLE\*\***

\_\_\_\_\_  
Date

Approved:

\_\_\_\_\_  
(Signature) **\*\*INSERT NAME, TITLE\*\***

\_\_\_\_\_  
Date

Item No.	Justification for Change(s)
1	
2	

This Contract Change Order consists of **2 pages** and any exhibits attached to this Contract Change Order shall not be part of the Contract Change Order unless specifically initialed by or on behalf of both the Contractor and the Town of Colma.

Contract Change Order #

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